

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA
ORPHANS' COURT DIVISION**

IN RE: : **NO. 2022-6805**
 :
JS, :
 :
 minor child :

OPINION AND ORDER

AND NOW, this 14th day of **April, 2023**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by KV (“Mother”) and BV (“Stepfather”) on May 4, 2022. Said petition is in regard to JS, born [redacted]. Petitioners seek to terminate the parental rights of the child’s biological father, JS (“Father”), as a prerequisite to BV adopting the child. A pre-hearing conference was held on August 1, 2022, after which an Order was entered by this Court on August 10, 2022, appointing Jessica Feese, Esquire, of the Lycoming County Public Defender’s Office as counsel for Father and Sarah Stigerwalt-Egan, Esquire, as counsel for the Child. A hearing on the Petition for Involuntary Termination of Parental Rights was scheduled for November 29, 2022.

On August 23, 2022, Jessica Feese, Esquire, filed a Petition for Leave to Withdraw Appearance, alleging that Father indicated he had a private attorney. Following a hearing on September 26, 2022, at which Father failed to appear or participate by phone, Attorney Feese’s Petition was granted, contingent upon Father’s privately retained counsel filing an entry of appearance or Father filing a pro se entry of appearance. Father was reminded that the hearing scheduled for November 29, 2022, would proceed as scheduled regardless of the status of his counsel, and if Father’s privately retained counsel did not file an entry of appearance or Father did not file a pro

se entry of appearance, Attorney Feese would remain counsel of record to represent him in the matter.

Due to Attorney Feese leaving her position at the Public Defender's Office, Jeana Longo, Esquire, filed an entry of appearance on behalf of Father. She filed a continuance request on November 22, 2022, citing the fact that she only entered her appearance on November 8, 2022, and would not have adequate time to prepare exhibits and witnesses, and that counsel for the Child was no longer available on the scheduled hearing date. The continuance request was initially denied, as all counsel had expressed availability at the pre-hearing conference. Unfortunately, the matter ultimately had to be continued over the objection of Mother and Stepfather's counsel. Sarah Stigerwalt-Egan, Esquire, was released as counsel for the Child and Terra Koernig, Esquire, was appointed as counsel for the Child.

On February 7, 2023, Jeana Longo, Esquire, filed a Petition for Leave to Withdraw as Counsel, indicating that Father had asked her to withdraw as counsel because he felt she was not an honest attorney. After a hearing on March 20, 2023, the Court entered an Order permitting Attorney Longo to withdraw as counsel for Father. The Order indicated the Court's intent to proceed with the hearing on March 29, 2023, as scheduled. Father submitted several continuance requests, each of which were denied. A hearing on the Petition for Involuntary Termination of Parental Rights was held on March 29, 2023. Although JS did not request in advance to participate by remote means, he was permitted to participate by telephone and represented himself. KV and BV appeared personally and were represented by Christina Dinges, Esquire. Terra Koernig, Esquire, counsel for JS, also appeared.

Finding of Facts

1. JS (“Child”) was born on [redacted]. The Child currently resides with KV (“Mother”) and BV (“Stepfather”) at [redacted].
2. The Child’s biological father is JS (“Father”). Father’s last known address was [redacted].
3. Mother and Father were divorced on February 10, 2020.
4. Mother and Stepfather were married on September 5, 2020.
5. Father has not had contact with the Child since sometime in 2019.
6. The Child has resided with Mother since her birth and with Stepfather since at least September 5, 2020. Prior to their marriage, Stepfather spent considerable time with Mother and the Child.
7. Mother filed a Petition for Protection from Abuse against the Father on December 17, 2018.
8. After a hearing and decision by the court on the Petition for Protection from Abuse, a Final Order was entered on January 2, 2019, with Mother being the protected party and Father being the Defendant.
9. Under the Protection from Abuse Order, Mother was awarded primary custody of the Child, and Father was granted periods of partial custody as Mother agreed, which were to be supervised by Mother’s father.
10. The Final Protection from Abuse Order was extended on January 24, 2022, and remains in effect until March 2, 2025.
11. The extended Protection from Abuse Order granted primary custody of the Child to Mother and indicated that Father had no partial physical custody rights.

However, Father was specifically advised that if he wished to establish his custody rights he should do so by the filing of a custody complaint.

12. Father has never filed a complaint for custody to establish or enforce his custodial rights.

13. Father does not pay child support or provide financially for the Child.

14. Father or members of his family sent gifts to the Child on approximately four occasions prior to the filing of the Petition for Involuntary Termination of Parental Rights.

15. Father or members of his family sent gifts to the Child on approximately three occasions after the filing of the Petition for Involuntary Termination of Parental Rights.

16. Stepfather and the Child have a loving relationship and he treats her as his own child.

17. The Child calls Stepfather "Daddy." When interviewed by her counsel, she indicated she wanted to be adopted "because I want him to be my dad."

18. Stepfather desires to proceed with adopting the Child if the Petition for Involuntary Termination of Father's Parental Rights is granted.

19. Mother and Stepfather understand the rights and responsibilities that will be conferred upon Stepfather if he adopts the Child.

Discussion

In cases of termination of parental rights, the burden of proof is on the party seeking termination to establish by clear and convincing evidence the existence of grounds for doing so. **In re Adoption of A.C.H.**, 803 A.2d 224, 228 (Pa. Super.2002). The standard of clear and convincing evidence means testimony that is "so clear, direct,

weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitation, of the truth of the precise facts in issue.” In re J.D.W.M., 810 A.2d 688, 690 (Pa.Super.2002). Petitioners argue that the basis for termination in this case may be found in 23 Pa.C.S. §2511(a)(1), which provides as follows:

§2511. Grounds for Involuntary Termination

(a) GENERAL RULE.--The rights of a parent in regard to a child may be terminated after a petition filed on any of the following grounds:

- (1) The parent by conduct continuing for a period of at least six months immediately preceding the filing of the petition either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties.

A court may terminate parental rights under Section 2511(a)(1) where a parent demonstrates a settled purpose to relinquish parental claim to a child **or** fails to perform parental duties for at least six months prior to the filing of the termination petition. In the Interest of C.S., 761 A.2d 1197, 1201 (Pa. Super. 2000). The orphans' court must then consider the parent's explanation for his or her abandonment of the child, in addition to any post-abandonment contact. In re Adoption of C.J.A., 204 A.3d 496, 503 (Pa. Super. 2019).

In the instant case, Father has demonstrated both a settled purpose to relinquish parental claim and a failure to perform parental duties for at least six months prior to the filing of the termination petition. When determining whether to terminate the rights of a parent, the Court should consider the entire background of the case and not simply:

mechanically apply the six month statutory provision. The court must examine the individual circumstances of each case and consider all explanations offered by the parent facing termination of his . . . parental rights, to determine if the evidence, in light of the totality of the circumstances, clearly warrants the involuntary termination.

In re: B.N.M., 856 A.2d 847, 855 (Pa. Super. 2004), appeal denied, 582 Pa. 718, 872 A.2d 1200 (2005) citing **In re: D.J.S.**, 737 A.2d 283, 286 (Pa. Super. 1999).

In determining what constitutes parental duties, the Pennsylvania Supreme Court has said:

There is no simple or easy definition of parental duties. Parental duty is best understood in relation to the needs of a child. A child needs love, protection, guidance, and support. These needs, physical and emotional, cannot be met by a merely passive interest in the development of the child. Thus, this Court has held that the parental obligation is a positive duty which requires affirmative performance. This affirmative duty encompasses more than a financial obligation; it requires continuing interest in the child and a genuine effort to maintain communication and association with the child. Because a child needs more than a benefactor, parental duty requires that a parent "exert himself to take and maintain a place of importance in the child's life."

With these principles in mind, the question whether a parent has failed or refused to perform parental duties must be analyzed in relation to the particular circumstances of the case. A finding of abandonment, which has been characterized as "one of the most severe steps the court can take," will not be predicated upon parental conduct which is reasonably explained or which resulted from circumstances beyond the parent's control. It may only result when a parent has failed to utilize all available resources to preserve the parental relationship.

In re: Burns, 379 A.2d 535, 540 (Pa. 1977)(citations omitted).

The Court finds, as of the date of the filing of the Petition for Involuntary Termination of Parental Rights, Father had evidenced both a settled purpose of relinquishing parental claim to the Child and had failed to perform his parental duties for a period well in excess of six months.

A parent has an affirmative duty to be part of a child's life; Father has clearly not met this affirmative duty. Father has not attended any medical appointments or school conferences for the Child. Although Father testified that he has had frequent contact with the Child's school, the Child's attorney confirmed with the school that all of Father's contacts were made during the 2022-2023 school year, after the filing of the Petition for

Involuntary Termination of Parental Rights. Father did send gifts for the Child on occasion, mostly in 2019/2020 or after the filing of the Petition. Father has never paid child support or provided for the Child's basic necessities. Father's last contact with the Child was sometime in 2019. Since that time, Father has never made a meal for the Child, never helped her with homework, and never comforted her when she was sick or scared. In short, since 2019, Father has failed to perform any parental duties relative to the physical and emotional needs of the Child.

In addition to failing to perform parental duties, Father has evidenced a settled purpose to relinquish parental claim to the Child. This is especially apparent given that Father failed to file a complaint for custody to establish or enforce his custodial rights. Father was specifically advised in the Extended Final Protection from Abuse Act Order to file a custody complaint if he wished to establish custody rights. At the time of the hearing on the Petition for Involuntary Termination of Parental Rights, Father acknowledged consciously choosing not to file a custody complaint because he "did not want to put his child through an ignorant system." Instead, Father conveyed his belief that it was Mother's responsibility to file for custody and attempted to place blame on Mother for alienating the Child from him by filing the Petition for Involuntary Termination of Parental Rights prior to instituting a custody complaint. The Father made no attempt since 2019 to come to Pennsylvania to visit the Child.

Father was permitted to testify, uninterrupted, for a significant length of time until he stated everything he wanted to tell the Court. The Court does not find Father's explanation or argument persuasive. The Protection from Abuse Order entered on January 2, 2019, granted Father periods of supervised physical custody of the Child as the parties could agree. The Order specifically stated that the custody provision was

temporary and either party could initiate custody proceedings. Father only took advantage of his periods of partial custody for a short time and did not initiate custody proceedings. Again, when the Protection from Abuse Order was extended, Father was specifically advised in the Order that he should file a custody complaint if he wished to establish his custodial rights. The Court finds Mother placed no obstacles in Father's path that would prevent him from exercising his parental rights, privileges, and obligations with regard to Child. Father was aware of Mother's current address since at least January of 2022, when the Extended Final Protection from Abuse Order was entered. Prior to that, Father was aware of the address where Mother's parents resided. Father simply chose not to pursue custody of the Child through the legal system.

For all of the foregoing reasons, this Court finds that Petitioners have, by clear and convincing evidence, established that Father has evidenced a settled purpose of relinquishing parental claim to the Child and has refused or failed to perform parental duties for a period well in excess of six (6) months.

As the statutory grounds for termination have been met, the Court must also consider the following:

23 Pa.C.S. § 2511(b) OTHER CONSIDERATIONS.—The Court in terminating the rights of a parent shall give primary consideration to the developmental, physical and emotional needs and welfare of the child. The rights of a parent shall not be terminated solely on the basis of environmental factors such as inadequate housing, furnishings, income, clothing and medical care if found to be beyond the control of the parent. With respect to any petition filed pursuant to subsection (a)(1), (6) or (8), the court shall not consider any efforts by the parent to remedy the conditions described therein which are first initiated subsequent to the giving of notice of the filing of the petition.

The Court must take into account whether a bond exists between the child and parent, and whether termination would destroy an existing, necessary and beneficial

relationship. **In the Interest of C.S.**, *supra*, at 1202. When conducting a bonding analysis, the Court is not required to use expert testimony. **In re: K.K.R.-S.**, 958 A.2d 529, 533 (Pa. Super. 2008) (citing **In re: I.A.C.**, 897 A.2d 1200, 1208-1209 (Pa. Super. 2006)). “Above all else . . . adequate consideration must be given to the needs and welfare of the child.” **In re: J.D.W.M.**, 810 A.2d 688, 690 (citing **In re: Child M.**, 681 A.2d 793 (Pa. Super. 1996), appeal denied, 546 Pa. 674, 686 A.2d 1307 (1996)).

Before granting a petition to terminate parental rights, it is imperative that a trial court carefully consider the *intangible* dimension of the needs and welfare of a child--the love, comfort, security and closeness--entailed in a parent-child relationship, as well as the tangible dimension. Continuity of relationships is also important to a child, for whom severance of close parental ties is usually extremely painful. The trial court, in considering what situation would best serve the children’s needs and welfare, must examine the status of the natural parental bond to consider whether terminating the natural parents’ rights would destroy something in existence that is necessary and beneficial.

In the Interest of C.S., *supra.*, at 1202 (citations omitted).

Terra Koernig, Esquire, counsel for the Child, informed the Court that she met with the Child two times, once at her home and once at her school. In the present case, it is clear that Child has no bond with Father. The Child is six (6) years old and has not had any contact with Father since approximately 2019. Stepfather has been a prominent father figure in her life and provided for all of her physical and emotional needs for the entirety of her memory. Termination of Father’s rights would not destroy an existing necessary and beneficial relationship as there currently exists no relationship between Father and the Child, given the Child’s age and length of time since she last had contact with Father. Child is bonded with Stepfather, who treats her as his own child. It is evident to the Court that Stepfather loves and cares for the Child, and has provided the love and support the Child needs. Additionally, Stepfather has

assumed the parental responsibilities that Father has failed to perform and has evidenced a settled purpose of relinquishing.

The Court notes Mother testified that she is in favor of retaining the Child's Indian culture, and that she has no plans to take that away from her. Mother is willing to educate the Child and encourage her to learn as much about her cultural background as she wishes. The Child's counsel confirmed that Mother regularly makes Indian food and she observed Indian jewelry boxes and a pink rug that Father sent the Child in the Child's room.

The Court is satisfied that termination Father's parental rights and allowing the adoption by Stepfather to proceed is in the best interest of the Child.

Conclusions of Law

1. The Court finds that KV and BV have established by clear and convincing evidence that JS's parental rights should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that KV and BV have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of JS will best be served by termination of JS's parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Ryan M. Tira, Judge

RMT/jel

c. Christina Dinges, Esquire
Terra Koernig, Esquire - 102 W. Wellsboro St., Mansfield, PA 16933
JS
Gary Weber, Esquire

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA
ORPHANS' COURT DIVISION**

IN RE: : **NO. 2022-6805**
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JS, :
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DECREE

AND NOW, this 14th day of **April, 2023**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of JS held on March 29, 2023, it is hereby ORDERED and DECREED:

- (1) That the parental rights of JS be, and hereby are, terminated as to the child above-named;
- (2) That the welfare of the child will be promoted by adoption; that all requirements of the Adoption Act have been met; that the child may be the subject of adoption proceedings without any further notice to the natural father.

NOTICE TO NATURAL PARENTS
PENNSYLVANIA ADOPTION MEDICAL HISTORY REGISTRY

This is to inform you about an adoption law provision relating to medical history information. As the birth parent of a Pennsylvania born child who is being, or was ever adopted in the past, you have the opportunity to voluntarily place on file medical history information. The information which you choose to provide could be important to this child's present and future medical care needs.

The law makes it possible for you to file current medical information, but it also allows you to update the information as new medically related information becomes available. Requests to release the information will be honored if the request is submitted by a birth child 18 years of age or older. The law also permits that the court honor requests for information submitted by the adoptive parents or legal guardians of adoptees who are not yet 18 years of age. All information will be maintained and distributed in a manner that fully protects your right to privacy.

You may obtain the appropriate form for you to file medical history information by contacting the Adoption Medical History Registry. Registry staff are available to answer your questions. Please contact them at:

Department of Human Services
Pennsylvania Adoption Information Registry
P.O. Box 4379
Harrisburg, PA 17105-17111
Telephone: 1-800-227-0225

Medical history information forms may also be obtained locally by contacting one of the following agencies:

1. County Children & Youth Social Service Agency
2. Any private licensed adoption agency
3. Register & Recorder's Office
4. Online at www.adoptpakids.org/Forms.aspx

By the Court,

Ryan M. Tira, Judge

RMT/jel

- c. Christina Dinges, Esquire
Terra Koernig, Esquire - 102 W. Wellsboro St., Mansfield, PA 16933
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