

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

IN RE:	:	NO. 2023-6861
	:	
TJCH,	:	
minor child	:	

OPINION AND ORDER

AND NOW, this 3rd day of **October, 2023**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by KK, on April 26, 2023. Said petition is with regard to the rights to TJCH, who is the biological child of AC and AH. KK seeks to terminate the Child's biological parents' right as a prerequisite to adopting him.

A pre-hearing conference on the Petition was held on July 24, 2023. KK appeared personally and was represented by Timothy Reitz, Esquire, on behalf of Andrea Pulizzi, Esquire. There was no proof that Mother and Father were properly served and therefore an Order was entered scheduling the hearing on the Petition for Involuntary Termination of Parental Rights for October 2, 2023, but a status conference was scheduled for September 5, 2023, to ensure that Mother and Father were properly served. Tiffani Kase, Esquire, was appointed as counsel for the Child. Mother attended the status conference on September 5, 2023, and indicated her intent to contest the termination of her parental rights. E. Vincent Reeves, Esquire, of the Public Defender's Office was appointed as counsel for Mother. Father did not attend.

The hearing took place on October 2, 2023. KK appeared and was represented by Andrea Pulizzi, Esquire. AC appeared and was represented by E. Vincent Reeves, Esquire. AH did not appear although the Court found him to be properly served. Tiffani Kase, Esquire, appeared as Counsel for the Child.

Finding of Facts

1. TJCH ("Child") was born on [redacted]. He currently resides with his guardian, KK ("Guardian"), at [redacted], her partner, and her three children.
2. AC ("Mother") resides at [redacted].
3. AH ("Father") has a last known address of [redacted].
4. Guardian first met the Child when he was about 2 weeks old. She was approximately 16 years old and she frequently babysat for him.
5. Mother would leave the Child with Guardian for extended periods of time. Guardian's mother testified that from Labor Day until Christmas of 2013 Mother did not stop to see the Child or even call to inquire about him.
6. Mother testified that she was "looking for work" and "it wasn't for weeks on end" and she "would call Guardian's mother's house phone" to check on the Child.
7. In 2015, Guardian's mother initiated a custody action against Mother in Lycoming County at Docket # [redacted]. (Mother's Exhibit 1). Guardian was still a minor but Mother had left the Child with them for so long they were concerned about the ability to handle things such as doctor appointments.
8. Ultimately, the request for a custody order was denied because Mother objected due to the fact that Guardian and her mother were not related by blood to the Child.
9. On November 20, 2015, Mother signed a Temporary Guardianship Agreement in the presence of a notary, in favor of Guardian "for as long as necessary." (Mother's Exhibit 1).
10. Mother and Guardian signed an agreement in front of a notary to share physical custody on July 14, 2016. (Mother's Exhibit 1).

11. On February 23, 2018, Mother and Guardian signed an agreement in front of a notary for the Child to reside with Mother every other weekend during the school year and with Guardian every other weekend during the summer. (Mother's Exhibit 1).

12. The Child is currently in 4th grade and participates in wrestling.

13. Mother has never attended a parent teacher conference and only attended one wrestling match which was two years ago, despite Guardian providing her with a schedule each season.

14. Mother's last in-person contact with the Child was on August 29, 2021. The last attempt she made to see or speak to the Child was on Thanksgiving in 2022.

15. Mother never attends doctor or dentist appointments for the Child.

16. Mother does not drop off Christmas or birthday gifts or cards for the Child.

17. Mother has not provided financial support for the Child's daily needs or his extracurricular expenses.

18. Mother has never filed an action in court to enforce her custodial rights.

19. Father has never reached out to the Guardian to inquire about the Child or ask to see him. To the Guardian's knowledge, Father has never met the Child.

20. The Child considers the Guardian's other children his siblings.

21. The Guardian helps the Child with his homework, makes and attends all his doctor and dentist appointments, pays for his wrestling activities, and treats him as if he were her own child.

22. Guardian desires to proceed with adopting the Child if the Petition for Involuntary Termination of Mother's and Father's Parental Rights is granted.

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). Guardian argues 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 children 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 children 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).

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 children. A children needs love, protection, guidance, and support. These needs, physical and emotional, cannot be met by a merely passive interest in the development of the children. 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 children and a genuine effort to maintain communication and association with the children. Because a children needs more than a benefactor, parental duty requires that a parent "exert himself to take and maintain a place of importance in the children'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).

With regard to Father, the Court finds that the Child has been in the Guardian's care since at least 2015 and Father has never reached out to her in an attempt to see the Child or inquire about his well-being. In fact, it is possible that Father has never even met the Child. Father, despite being served with a copy of the Petition for Involuntary Termination of his Parental Rights, failed to appear for the hearing. The Court finds that the Guardian has established by clear and convincing evidence that Father has both evidenced a settled purpose of relinquishing parental claim to the Children and has failed to perform his parental duties for the entirety of the Child's life.

The Court finds as of the date of the filing of the Petition for Involuntary Termination of Parental Rights, Mother also has both evidenced a settled purpose of relinquishing parental claim to the Children and has failed to perform her parental duties for a period well in excess of six (6) months.

A parent has an affirmative duty to maintain a place of importance in a child's life and Mother has clearly not met this affirmative duty. When the Child was just two weeks old, Mother began utilizing Guardian as a babysitter. Mother left the Child with Guardian, who was a minor and living at home with her mother, for such an extended period of time that Guardian's mother filed for custody in order to ensure that someone would be able to obtain any necessary medical care and other important decisions. Mother objected and custody of the Child was returned to her, but just a few short months later, in November of 2015, Mother voluntarily entered into a Temporary Guardianship Agreement with the Guardian. Since the entry of that Agreement in 2015, Mother has shown, at most, a passive interest in the Child. The last time Mother saw the Child was on August 29, 2021. Mother has never attended any doctor or dentist appointments for the Child. Mother is aware of what school the Child attends but has never attended a parent teacher conference. Guardian provides Mother with wrestling schedules for the Child but Mother last attended a match two years ago. Mother does not provide cards or gifts for the Child on his birthday or holidays. Mother does not financially assist the Guardian for the Child's food, clothing, shelter, and extracurricular activities.

Mother accuses Guardian of placing obstacles in her path that have prevented her from exercising her parental rights, privileges, and obligations with regard to the Child. However, the Court notes that Mother has never utilized the court system to re-establish or enforce her custodial rights during the eight years that Guardian has cared for the Child. When questioned about this, Mother indicated that she and Guardian were previously cordial and trying to work something out but it went slowly downhill about three years ago. She indicated she has filled out papers for custody, but with "work and having a crazy schedule it was not going to work." Mother herself attributed her lack of

action with regard to utilizing the court system if she felt Guardian was preventing her from having a relationship with the Child as “laziness.” The Court finds that Mother allowed other excuses, such as not having transportation or the Guardian indicating they frequently had other plans when Mother would ask to see the Child, to stop her from making consistent efforts to maintain a place of importance in the Child’s life.

Since at least 2015, including the six months immediately prior to the filing of the Petition for Involuntary Termination of Parental Rights, Mother was content to have someone else be responsible for attending to all of the Child’s physical, mental, and emotional needs. Mother has not supported the Child financially and she has done nothing in terms of providing the Child with intangible support such as comforting him when he is sick, encouraging him when he is scared, or praising his achievements.

This Court finds that Guardian has established by clear and convincing evidence that Mother 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 months pursuant to 23 Pa.C.S.A. §2511(a)(1).

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 children. 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 children.” **In re: J.D.W.M.**, 810 A.2d 688, 690 (citing **In re: Children 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 children--the love, comfort, security and closeness--entailed in a parent-children relationship, as well as the tangible dimension. Continuity of relationships is also important to a children, for whom severance of close parental ties is usually extremely painful. The trial court, in considering what situation would best serve the childrenren’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).

In the present case, the Child is 10 years old. He has likely never met Father, and he never asks the Guardian about him. It is clear that there is no bond between Father and the Child and terminating Father’s parental rights would not destroy something in existence that is necessary and beneficial.

Mother essentially relinquished her custodial rights in favor of Guardian in 2015. The last time the Child had any in-person contact with Mother was over two years ago. Counsel for the Child indicated that the Child is very bright and articulate and he unequivocally expressed his desire to live with and be adopted by the Guardian.

Guardian has been very supportive of the Child and he is extremely bonded with her. He is in a blended family unit with her partner and her children, while still maintaining contact with his biological siblings. Given the preference of the Child and the extremely limited amount of contact Mother has had with him since his birth but

more particularly within the last two years, termination of Mother's parental rights would not destroy an existing necessary and beneficial relationship, as Mother allowed whatever bond they may have had in the past lapse when she made very little effort to maintain a place of importance in his life. Guardian has been a mother-figure to the Child since she became his Guardian. It is evident to the Court that Guardian loves and cares for the Child and treats him as her own. The Guardian has made sacrifices over the years and provided the love and stability the Child deserves and has assumed the parental responsibilities that Mother has failed to perform and has evidenced a settled purpose of relinquishing.

The Court is satisfied that Guardian understands the rights and responsibilities associated with adopting the Child. The Court finds that terminating Mother's and Father's parental rights and allowing the adoption by Guardian to proceed is in the best interest of the Child.

Conclusions of Law

1. The Court finds that KK has established by clear and convincing evidence that the parental rights of AC and AH should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that KK has established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of TJCH will best be served by termination the parental rights of AC and AH.

Accordingly, the Court will enter the attached Decree.

By the Court,

Ryan M. Tira, Judge

RMT/jel

- c. Andrea Pulizzi, Esquire
 E. Vincent Reeves, Esquire
 Tiffani Kase, Esquire
 AH
 Gary Weber, Esquire
 Jennifer Linn, Esquire

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IN RE:	:	NO. 2023-6861
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TJCH,	:	
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DECREE

AND NOW, this 3rd day of **October, 2023**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of AC, held on October 2, 2023, it is hereby ORDERED and DECREED:

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

Mother is advised that she may appeal this Order to the Superior Court of Pennsylvania by filing written notice of appeal in the office of Lycoming County Register and Recorder's Office within thirty (30) days of the date of the filing of this Order. In the event either party elects to appeal from this Order they are bound by the Pennsylvania Rules of Appellate Procedure.

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 children 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 children'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 children 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 Childrenren & 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

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DECREE

AND NOW, this 3rd day of **October, 2023**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of AH, held on October 2, 2023, it is hereby ORDERED and DECREED:

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

Father is advised that he may appeal this Order to the Superior Court of Pennsylvania by filing written notice of appeal in the office of Lycoming County Register and Recorder's Office within thirty (30) days of the date of the filing of this Order. In the event either party elects to appeal from this Order they are bound by the Pennsylvania Rules of Appellate Procedure.

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