

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

IN RE: :
Involuntary Termination :
of Parental Rights of : No. 22-9061
Lance Moser, Jr. and :
Tarah Strausberger in :
and to S.M.M., a Minor :

Frank L. DeVito, Esquire : Counsel for Carbon County
Children & Youth Services

Adam R. Weaver, Esquire : Counsel for Lance Moser, Jr.

Jane S. Sebelin, Esquire : Counsel for Tarah Strausberger

Mark E. Combi, Esquire : Counsel for S.M.M.

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CARBON COUNTY
REGISTER OF WILL
CLERK OF ORPHANS COURT

MEMORANDUM OPINION

Serfass, J. - January 20, 2023

Here before the Court is the appeal of our Final Decree of December 16, 2022 granting the "Petition for the Termination of Parental Rights Pursuant to the Adoption and Safe Families Act" filed by the Carbon County Office of Children and Youth Services (hereinafter "Appellee") and terminating the parental rights of Lance Moser, Jr. (hereinafter "Father/Appellant") and Tarah Strausberger (hereinafter "Mother") (collectively "Parents"), the natural parents of the subject child, S.M.M. (hereinafter "the Child"). We file the following Memorandum Opinion pursuant to Pa.R.A.P. 1925(a), respectfully recommending that our Final Decree of December 16, 2022 be affirmed for the reasons set forth hereinafter.

FACTUAL AND PROCEDURAL HISTORY

The subject child, S.M.M., was born to Lance Moser, Jr. and Tarah Strausberger on March 12, 2010 and is now twelve (12) years old. Father and Mother were not married to each other at the time of the Child's birth, have never been married to each other and are not now in a relationship. Appellee became involved with the Child in January of 2019 due to Mother's drug use and erratic behavior. The Child lived with Parents until March of 2019 due to both parents being incarcerated on drug-related charges.

Appellant was incarcerated in state prison prior to Appellee's involvement in January of 2019. Appellant was released from incarceration sometime in 2020 and reincarcerated later that year. Appellant was then released from incarceration in February of 2021 and again incarcerated in March of 2022 in the Carbon County Correctional Facility. Appellant has pending criminal charges in Carbon County and is expecting to serve a sentence on a DUI charge ranging between three (3) years and seven (7) years. Mother has been incarcerated in the Carbon County Correctional Facility and released from incarceration several times between May of 2019 and November of 2021. Mother has been involved with the Treatment Trends drug treatment program since March of 2022.

Since March 25, 2019, the Child has resided in foster placement with Jacqueline Tomko and Tim Szmidt of Bethlehem, Pennsylvania. The Child resides in the foster home with her nine-year-old brother,

L.A.M., III, who is the subject child in a companion involuntary termination case.

On January 31, 2022, Appellee filed its "Petition for the Termination of Parental Rights Pursuant to the Adoption and Safe Families Act" in accordance with 23 Pa.C.S.A. §2512(a)(2). On February 2, 2022, this Court appointed Mark E. Combi, Esquire as guardian ad litem for the Child. Hearings on Appellee's involuntary termination petition were held before the undersigned on May 18, 2022, July 6, 2022, and August 16, 2022. Testimony was taken from Peter Nyamari, Caseworker at Carbon County Children and Youth Services, Parents, Paternal Grandmother, the Child and the Child's brother, L.A.M., III.¹

Appellee also presented the testimony of Dr. John P. Seasock, who performed a psychological evaluation with bonding assessment of S.M.M. on March 29, 2022.² Dr. Seasock's testimony and evaluation indicated that S.M.M. has no bond with Appellant and views him as a stranger. Dr. Seasock determined that S.M.M. has a "significant emotional and psychological attachment" to her foster family. (See Children & Youth Exhibit 2, p. 4). Attorney Combi concluded that

¹ Testimony was also taken from Bridget Tremblay, Case Manager at Treatment Trends, Inc., regarding Mother's status in the drug treatment program.

² Dr. Seasock indicated that S.M.M. does have a bond with Mother, but she has severe anxiety regarding visitations with Mother and explained she would probably "kill herself" if she was placed with Mother. (*Id.* at p. 4). Dr. Seasock also performed a psychological evaluation of Mother on April 28, 2022. Dr. Seasock recognized Mother suffers from bipolar disorder and expressed concern about her long-term stability without psychiatric care. Dr. Seasock indicated that Mother "does not currently possess the necessary cognitive, emotional, and behavioral ability to independently parent a child." (See Children & Youth Exhibit 1, p. 5).

terminating the parental rights of Parents would be in the Child's best interest based upon Dr. Seasock's evaluation.

In compliance with our direction, Appellant's counsel submitted proposed findings of fact and conclusions of law for the Court's consideration on October 5, 2022. Counsel for the remaining parties filed their proposed findings and conclusions on October 6, 2022.

On December 16, 2022, we issued our Final Decree terminating Parents' parental rights based upon our finding that Appellees had established by clear and convincing evidence that both parents failed to fulfill their parental duties for a period of at least six (6) months preceding the filing of the involuntary termination petition and that the termination of Parents' parental rights would best serve the needs and welfare of the Child. (Court's Final Decree of 12/16/22). On January 6, 2023, Appellant filed an Appeal to the Superior Court of Pennsylvania requesting review and reversal of this Court's Final Decree of December 16, 2022, together with his Concise Statement pursuant to Pa.R.A.P. 1925(a)(2)(i).

ISSUES

In his Concise Statement, Appellant raises the following issue:

1. Whether the Court erred in finding that Appellee had established by clear and convincing evidence valid grounds for the termination of Appellant's parental rights where Appellant maintained contact with the Child while incarcerated.

DISCUSSION

Section 2512 governs who may file a petition for termination of parental rights. In this case, Appellee had the authority to file its petition pursuant to Section 2512(a)(2) because it is an agency. The grounds upon which a party may seek the termination of the parental rights in and to a child are set forth in 23 Pa.C.S.A. §2511. Appellee sought the termination of parental rights pursuant to Section 2511(a)(1), which provides for termination when "[t]he 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." 23 Pa.C.S.A. §2511(a)(1).

Under this subsection, Appellee could have pursued its claims in one of two different ways: 1) that Parents had, for at least six (6) months prior to the filing of the instant petition, conducted themselves in such a way that they had shown that they wanted to relinquish their parental rights to the Child; or 2) that Parents had, for at least six (6) months prior to the filing of the instant petition, refused or failed to perform parental duties for and on behalf of the Child. These duties are broad, and involve both the tangible and intangible aspects of being a parent.

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, [the

Pennsylvania Supreme 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.'

In re C.M.S., 832 A.2d 457, 462 (Pa.Super. 2003) (quoting In re Burns, 379 A.2d 535, 540 (Pa. 1977)), appeal denied, 859 A.2d 767 (Pa. 2004).

"In termination cases, the burden is upon the petitioner to prove by clear and convincing evidence that its asserted grounds for seeking termination of parental rights are valid." In re S.H., 879 A.2d 802, 806 (Pa.Super. 2005). "The standard of clear and convincing evidence is defined as 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.L.C. & J.R.C., 837 A.2d 1247, 1251 (Pa.Super. 2003). "The trial court is free to believe all, part, or none of the evidence presented and is likewise free to make all credibility determinations and resolve all conflicts as the evidence." In re M.G., 855 A.2d 68, 73-74 (Pa.Super. 2004).

In seeking to terminate the parental rights of Appellant in and to S.M.M., Appellee contended that Appellant refused or failed to perform parental duties during the relevant six-month period prior

to the filing of the termination petition, *i.e.*, from July 2021 until January 2022. If the trial court determines that the parent's conduct warrants termination under Section 2511(a), it must then determine whether termination would best serve the best interests of the child under Section 2511(b), taking into consideration the development, physical and emotional needs of the child. In re B.C., 36 A.3d 601, 606 (Pa.Super. 2012). In cases where a bonding evaluation is performed, the trial court can equally emphasize the safety needs of the child, and should also consider the intangibles, such as the love, comfort, security, and stability the child might have with the foster parent, as well as the importance of continuity of relationships and whether any existing parent-child bond can be severed without detrimental effects on the child. In re Z.K.S., 946 A.2d 753 (Pa.Super. 2008). "In cases where there is no evidence of any bond between the parent and child, it is reasonable to infer that no bond exists." Id. at 762-63.

"Although it is the six months immediately preceding the filing of the petition that is most critical to the analysis, the trial court must consider the whole history of a given case and not 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 or her 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).

In considering the explanation(s) of a non-custodial parent for neglecting his parental duties, the Superior Court has held:

Where a non-custodial parent is facing termination of his or her parental rights, the court must consider the non-custodial parent's explanation, if any, for the apparent neglect, including situations in which a custodial parent has deliberately created obstacles and has by devious means erected barriers intended to impede free communication and regular association between the non-custodial parent and his or her child. Although a parent is not required to perform the impossible, he must act affirmatively to maintain his relationship with his child, even in difficult circumstances. A parent has the duty to exert himself, to take and maintain a place of importance in the child's life.

Id. at 855-56 (internal citations omitted).

Of significance in this case was the fact that Parents have histories of incarceration and Appellant is currently incarcerated.

Where a parent is incarcerated, the fact of incarceration does not, in itself, provide grounds for the termination of parental rights. However, a parent's responsibilities are not tolled during incarceration. The focus is on whether the parent utilized resources available while in prison to maintain a relationship with his or her child. An incarcerated parent is expected to utilize all available resources to foster a continuing close relationship with his or her children.

Id. at 855 (internal citations omitted).

Appellant understandably argued that his periods of incarceration prevented him from performing his parental duties on behalf of the Child. However, the record contains sufficient evidence indicating that Appellant did not exert a serious willingness to

maintain a relationship with S.M.M. before and after his periods of incarceration. In In re Adoption of M.P.B., III, the trial court terminated a mother's parental rights where the mother had neglected the child for a majority of his life due to her drug addiction, the mother had sent cards and letters to the child while incarcerated but otherwise had no contact with him, and the mother failed to show any efforts to act as a parent to the child even when she was not incarcerated. In re Adoption of M.P.B., III, 4 Pa. D. & C. 5th 272 (C.C.P. Lawrence 2008).

In making this determination, the trial court cited the Superior Court's decision in In re D.J.S., where the Superior Court upheld the termination of the parental rights of a father who failed to make meaningful efforts to maintain a relationship with his child while incarcerated. "In that case, the Superior Court held that letters, some child support, and gifts that the incarcerated father sent to his child did not indicate a serious intent to re-establish a parent-child relationship and a willingness and capacity to undertake a parental role." Id. at 277-78 (citing In re D.J.S., 737 A.2d 283 (Pa.Super. 1999)).

Appellant did not avail himself of any parental programs during his periods of incarceration. Appellant did not inquire about the Child's medical or educational status nor did he send the Child money while incarcerated. Appellant has not filed any custody petition. Appellant is currently incarcerated and does not have stable employment or housing. During the relevant six-month period,

Appellant did not have any contact with the Child as he testified that he was "on the run" between July of 2021 and March of 2022. (See N.T., 7/6/22, p. 54). When S.M.M. was asked if she has any feelings for Appellant, she responded: "No. He is garbage to me, unwanted." (See N.T., 5/18/22, p. 23). Dr. Seasock's testimony and evaluation indicated that S.M.M. has no bond with Appellant and views him as a stranger. Indeed, Appellant's testimony at the involuntary termination hearings and his proposed findings of fact and conclusions of law largely focus on his relationship with the Child's brother, L.A.M., III.

We do not take lightly the seriousness of the termination of Appellant's parental rights. However, based upon the foregoing, we found that Appellant did not utilize all of his available resources nor did he exercise a reasonable firmness in resisting any alleged obstacles placed on the path of maintaining his parent-child relationship to warrant preclusion of Appellee's petition. Appellant failed to take or maintain a place of importance in S.M.M.'s life and demonstrated only a passive interest in the Child. Therefore, we found that there was clear and convincing evidence to support the termination of the parental rights of Appellant pursuant to Section 2511(a)(1).

We next considered whether the termination of Appellant's parental rights would be in S.M.M.'s best interest. S.M.M. has resided with Jacqueline Tomko and Tim Szmidt since March of 2019 and has developed a strong and healthy emotional attachment and bond with Ms.

Tomko and Mr. Szmidt, who have provided a stable, loving environment for the Child. Dr. Seasock's testimony and evaluation indicated that there would be no adverse consequences for S.M.M. if Appellant's parental rights were terminated because she has no relationship with Appellant and has a strong emotional bond with her foster family. Attorney Combi concluded that terminating the parental rights of Appellant would be in the Child's best interest based upon Dr. Seasock's evaluation. Therefore, we found that terminating the parental rights of Appellant would best serve the needs and welfare of the Child.

CONCLUSION

Based upon the foregoing, we respectfully recommend that the instant appeal be denied and that our Final Decree of December 16, 2022 be affirmed accordingly.

BY THE COURT:



Steven R. Serfass, J.