

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

2019 MAY 24 A 11:15

IN RE: TERMINATION OF PARENTAL :  
RIGHT OF BRANDON HALL AND : No. 18-9157  
ASHLEY SYKES IN AND TO B.C.H. :

CARBON COUNTY  
REGISTER OF WILLS  
CLERK OF ORPHANS COURT

Nicholas Masington, Esquire	Counsel on behalf of Jeffrey & Melissa Hall
Vincent Garvey, Esquire	Counsel on behalf of Ashley Sykes
Cynthia Hatton, Esquire	Counsel on behalf of B.C.H., a minor

MEMORANDUM OPINION

Matika, J. - May 24, 2019

Before this Court is the "Petition for Termination of Parental Rights" filed by Jeffrey Hall and Melissa Hall (hereinafter "the Halls" or singularly "Jeffrey Hall" or "Melissa Hall"), paternal grandparents of the subject child, B.C.H. The Halls are asking the Court to involuntarily terminate the parental rights of the biological mother, Ashley Sykes (hereinafter "Sykes"), and to confirm the consent of the biological father, their son, Brandon Hall (hereinafter "Brandon Hall") to the termination of his parental rights and eventual adoption of B.C.H. by the Halls. For the reasons stated in this opinion, the petition will be denied.

FACTUAL AND PROCEDURAL BACKGROUND

On March 20, 2015, a child, B.C.H. was born to Sykes and Brandon Hall. At that time the parties were in an intact relationship. That relationship ended in or around June, 2016,

when B.C.H was about fifteen (15) months old. When the parents separated, B.C.H. came to live with the Halls. On September 23, 2016, a custody order was signed by this Court formalizing the arrangement between the Halls and the parents regarding the ongoing custody of B.C.H. Since that time, B.C.H. has been in the primary physical custody of the Halls subject to partial physical custody in both parents "from time to time as the parties may agree."<sup>1</sup>

According to the testimony of the Halls, their son, the biological father, Brandon Hall lives approximately 1/3 of a mile from their home and according to Brandon Hall, he sees and inquires of B.C.H. daily, more often than biological mother Sykes, does.

The Halls also presented testimony through Petitioner's Exhibit #1, what they termed to be a summation of their recollection of the contacts between Sykes and B.C.H. from the date of the aforementioned Court Order until the time of the hearing. Additionally, Jeffrey Hall testified as to additional contacts after August, 2018 until the hearing date.<sup>2</sup>

Jeffrey Hall also testified that Sykes was never refused a

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<sup>1</sup> There is a further provision in that custody order which states that "all periods of partial custody by either Defendant shall by mutual agreement of both Plaintiffs and Defendants after reasonable request, and such agreement shall not be unreasonably withheld."

<sup>2</sup> This exhibit and accompanying testimony showed that since July, 2016, and up to the date of the hearing, Sykes visited with B.C.H. between 34-37 times (most occurring in 2016), FaceTimed with B.C.H. 146 times (most occurring in 2018) and texted the Halls about B.C.H. a total of 40 times (none of which occurred in 2018). During the relevant six (6) month period prior to the filing of the petition, Sykes visited 3 times and FaceTimed B.C.H. 55 times.

facetime call with B.C.H. (other than when it was inconvenient for the Halls) nor had she asked for visits with B.C.H. since May, 2018. Jeffrey Hall also acknowledged that Sykes would normally contact his wife and not him to arrange for contacts. According to Jeffrey Hall, any periods of physical custody that would be exercised by Sykes would occur at the home of the Halls and that any requests made by Sykes were never denied by the Halls.

Upon cross examination by Attorney Vincent Garvey, counsel for Sykes, Jeffrey Hall acknowledged that he "restricts" Sykes' access to visits with B.C.H. to dates and times when he would be present. Jeffrey Hall also acknowledged that, due to Sykes residing so far away and the fact that she is employed, these issues further limit the dates and times when she can see B.C.H. Jeffrey Hall also testified that he would be a better father to B.C.H. Then the following colloquy occurred between Attorney Garvey and Jeffrey Hall:

Q. You can do better than your own son?

A. Right now, he is still recovering from paying off his college loans because he went to better himself to become a better father.

Q. So because of his college loans, you want to step in and have him voluntarily consent to terminate his parental rights?

A. That was his choice. It wasn't mine.

Q. But you agreed to that?

A. Sir, I don't understand your question.

Q. You didn't say to your son; we are not going to adopt him, we want you to stay the father and take all the responsibilities?

A. My point -

Q. You said; we will agree to adopt your son for you.

A. No. We said; we will adopt him until - because we can give him a better life.

Q. You were saying something about until. Is there a time when you are thinking of giving the custody back to him?

A. It depends on his actions.

Q. Okay. So what you are telling me then is that right now he can terminate it and maybe two years from now you are going to give him back?

A. Sir, I can't see into the future.

Q. But that is a possibility.

A. Anything is a possibility.

Next, Jeffrey Hall was cross-examined by Attorney Cynthia Hatton, Guardian Ad Litem for B.C.H. He acknowledged that any pictures of Sykes that may have been in the home for B.C.H. to see have been removed and further in any conversations with B.C.H. regarding a parent or parents, mother's name would never be

mentioned.

Brandon Hall, the biological father also testified. He confirmed, not surprisingly, the accuracy of the testimony presented by both of his parents.<sup>3</sup> Brandon Hall also expressed his understanding of what it meant if the Court confirmed his consent to the adoption of B.C.H. by his parents and the relinquishment of his parental rights.

Brandon Hall further testified that the reason he is voluntarily relinquishing his parental rights was because he cannot be there for B.C.H. every day and that his parents can provide him with more consistency than he can.

Subsequently, upon cross-examination by Attorney Hatton, Brandon Hall confirmed his intent to re-adopt B.C.H. at a future date:

Q. You said, maybe I am confused, you said you wanted to do this because you were going to school and now you have a job and you can't be there for him as much as your parents?

A. As much as I would like to, yes.

Q. I got that right?

A. Yes.

Q. Okay. And you said something about that you want

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<sup>3</sup> While her testimony is not referenced in this opinion, the testimony of Melissa Hall, mirrored that of her husband.

them to do that because you are really busy and you can't raise him; I am not at that point right now. Do you remember saying that?

A. Yes.

Q. What did you mean by that?

A. I am not at the point where I can provide for him everything that he needs that my parents can. They can give him everything he needs, everything he wants. They have a good, stable home for him consistently. I cannot do that right now.

Q. Okay. But you anticipate that you will be able to do that in the future?

A. I know what my goals are. I know I will do anything for him to make a life for him as best as I can.

Q. So when you get to that point where you are able to give him that type of life that you want to give him, then what? Do you want him back?

A. Yes.

Q. You want him back?

A. Once I get to that point in my life I know that I can be consistent and give him all those things, yes.

Q. So you would then want your - I am just confused. You want your parental rights back then?

A. I would adopt him back. I would attempt to adopt him

back, yes.

Q. Okay. So basically, what Attorney Garvey said was the only reason why we are going through the proceeding, is to terminate mom's rights, because you eventually are going to be getting them back, right?

A. That's not what I said. It didn't - I never said I will eventually get him back. That never came out of my mouth.

Q. You eventually will get him back?

A. I did not say that. I said I eventually want to try to get him back when I am stable enough.

Q. Okay. And that would mean you would have to adopt him?

A. Yes, I would try to.

Q. Okay. Did you talk with your parents about that?

A. Yes.

Q. And what's their feelings about that?

A. Again, when I am settled, they agree with me. When they feel I am good enough on my own -

Q. They will let you adopt him back?

A. We will go, yes.

Q. They will allow this to adopt him back?

A. When they feel I am ready.

Q. Okay.

A. Because as well, I am doing it for the best interests.

I feel having her in his life, even for the little amount that she is, it is going to confuse him. He does not know who she is.

Ashley Sykes, the biological mother was the last witness to testify.<sup>4</sup> She acknowledged that she has not been seeing B.C.H. that often due not only to her employment and her living arrangements but also due to limitations placed upon her by the Halls - and in particular Jeffrey Hall in whose presence she felt uncomfortable. She also contradicted the testimony of the Halls regarding whether or not she inquired about B.C.H. Also contrary to the Petitioners' testimony, Sykes testified that, with the exception of one Christmas, she did in fact appear and visit and brought gifts for B.C.H.'s birthdays and Christmases. Sykes also testified that while some of her inability to visit with B.C.H. is because of the Halls, she is also not seeing him as often as she would like because of trying to make herself a better person to "benefit my son to give him a better life." Lastly, Sykes testified that she did not "push a lot of issues" because she did not want to get them (the Halls) mad and further limit her contact with B.C.H. and that she did not otherwise perform parental duties towards B.C.H. because the Halls made it hard to do so.

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<sup>4</sup> Ashley Sykes identified herself as "Ashley Hurysh", having gotten married, presumably since the petition was filed.



### LEGAL DISCUSSION

23 Pa.C.S.A. §2512 governs who may file a petition for termination of parental rights. In this case, it is evident that the Halls have the authority to file their petition pursuant to Section 2512(a)(3) as they have custody of the subject child, B.C.H., who is under the age of 18. Additionally, the Halls were not required to file a notice of intent to adopt pursuant to 23 Pa.C.S.A. §2531 as they are the grandparents of the subject child.<sup>5</sup>

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. In this case, the Halls seek the termination of the parental rights of both parents<sup>6</sup> and rely upon subsection (a)(1) of the statute which provides for the termination of parental rights, if "the parent by conduct continuing for a period of at least six (6) 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).

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<sup>5</sup> 23 Pa.C.S.A. §2531(c) indicates that a "report of intent to adopt" is not required "when the child is the . . . grandchild . . . of the person receiving or retaining custody or physical care."

<sup>6</sup> While the petition filed by the Halls is labelled exclusively as a petition to "involuntarily" terminate the parental rights of both biological parents, it is in actuality a petition to involuntarily terminate the parental rights of only one biological parent, that being the mother, Ashley Sykes, as the biological father, Brandon Hall has agreed to voluntarily have his parental rights terminated paving the way for his parents to adopt B.C.H. He has asked the Court to confirm his consent to adopt, but only if the Mother's rights are terminated.

In the case at bar, the Halls rely upon the later provision of this subsection as the grounds to terminate the parental rights of the mother, Ashley Sykes. "If the trial court finds the existence of one of the grounds for termination set forth in Section 2511(a), the court must then consider whether termination would best serve "the developmental, physical and emotional needs and welfare of the child" under Section 2511(b). *Id.* §2511(b). The trial court may grant a termination petition if it is satisfied that termination of the parent's rights is consistent with the best interests of the child." *In re Adoption of M.R.D.*, 145 A.3d 1117, 1120 (2016).

"In termination cases, the burden is upon the petitioner to prove by clear and convincing evidence that its asserted grounds for seeking the termination of parental rights are valid. 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 hesitance, of the truth of the precise facts in issue." 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 conflicts in the evidence. *In re Adoption of M.R.B.*, 25 A.3d 1247, 1251 (Pa. Super. Ct. 2011) (internal citations omitted.)

"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. Ct. 2004).

Since the issue in the case *sub judice* centers around whether or not Sykes failed or refused to perform parental duties, this Court must examine the testimony in the context of the meaning of the term parental duties and whether or not they were performed by Sykes and, if not, why not.

In the case of *In re B.N.M.*, *supra* at 855, the court stated:

The Supreme Court has defined parental duty as follows:

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."

*In re C.M.S.*, 832 A.2d 457, 462 (Pa. Super. 2003) (citing *In re Burns*, 474 Pa. 615, 379 A.2d 535 (1977)). See *In re: G.P.-R.*, 851 A.2d 967, 976, (2004) (internal citation omitted). Parental duty requires that the parent act affirmatively with good faith interest and effort, and not yield to every problem, in order to maintain the parent-child relationship to the best of his or her ability, even in difficult circumstances. *In re Adoption of Dale A., II*, 453 Pa.Super. 106, 683 A.2d 297, 302 (1996) (internal citations omitted). A parent must utilize all available resources to preserve the parental relationship, and must exercise reasonable firmness in resisting obstacles placed in the path of maintaining the parent-child relationship. *In re C.M.S.*, *supra* at 462 (citing *In re Shives*, 363 Pa.Super. 225, 525 A.2d 801 (1987)). Parental rights are not preserved by waiting for a more suitable or convenient time to perform one's parental responsibilities while others provide the child with his or her physical and emotional needs. *In re D.J.S.*, *supra* at 287.

This same Court went on to also explain the necessity of examining any explanation for neglecting the parental duties obligation.

"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. *In re C.M.S.*, *supra* at 463 (quoting *In re Shives*, *supra* at 803). 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. *In re: G.P.-R.*, *supra* (internal citation omitted). A parent has the duty to exert himself, to take and maintain a place of importance in the child's life." *Id.*

Turning to the case before the Court, we must examine the conduct of Sykes *vis-à-vis* B.C.H. and whether or not she has failed or refused to perform parental duties. As the testimony revealed, Sykes' contact upon separation was more frequent in 2016 than it was in 2018. As time went on, her number of visits decreased, however, her number of FaceTime calls increased. Mother attributed the decrease in visits to her employment, the distance from her residence, and, perhaps more importantly, limitations and restrictions placed upon her attempts to visit by Jeffrey Hall. Granted, Sykes could have done more and perhaps should have done more to foster a better relationship with B.C.H., however, as she stated, the fear she possessed that the Halls would become more resistant to allowing **any** contact with B.C.H. despite the court order should she pursue more visits, lead her not to "push the issue." Alternatively, she resorted to increased FaceTime with B.C.H. as a means to continue her relationship with him. While tenuous at best, she engaged in the performance of some semblance of parental duties toward B.C.H.

Even assuming *arguendo*, this Court could find that the Halls met their 2511(a)(1) burden, it cannot find that terminating the parental rights of Sykes would be beneficial to the developmental, physical, and emotional needs and welfare of B.C.H. especially in light of the testimony of both Jeffrey Hall and Brandon Hall about the prospect of Brandon Hall adopting B.C.H. back from his parents

in the future. Certain of that testimony suggested that the primary goal of the instant petition was not to terminate parental rights and solely adopt B.C.H., but rather terminate parental rights, adopt B.C.H. and once accomplished, reverse the adoption and allow only the biological father to undo that termination and in his words "adopt [B.C.H.] back." This motive explains and lends support and credibility to Sykes' testimony that the Halls made it difficult to maintain a relationship with B.C.H. The goal here was not to do what is in the best interest of B.C.H. as much as it was to eliminate the child's mother from his life.

23 Pa. C.S.A. §2512(b) requires an averment in the petition that an adoption is presently contemplated. That averment is set forth in the Halls' petition. However, as noted in *In re Adoption of M.R.D.*, 145 A.3d 1117, 1120 (2016),

"Section 2512(b)'s adoption requirement is consistent with the rationale behind permitting the involuntary termination of a parent's rights, which we have explained is "to dispense with the need for parental consent to an adoption when, by choice or neglect, a parent has failed to meet the continuing needs of the child," **rather than "to punish an ineffective or negligent parent,** or provide a means for changing the surname of the child." B.E., 377 A.2d at 155; L.J.B., 18 A.3d at 1108 (quoting B.E.)." (emphasis ours).

Here, this Court believes the goal was to punish a negligent parent, Ashley Sykes and eliminate her from B.C.H.'s life, along with temporarily terminating the natural father's rights until a

later date. This Court cannot condone nor approve of that objective.

#### CONCLUSION

For the reasons stated in this opinion, the Court enters the following order:



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ORDER OF COURT

AND NOW, this *24* day of May, 2019, upon consideration of the "Petition for Termination of Parental Rights", filed by the paternal grandparents, Jeffrey Hall and Melissa Hall, and after hearing thereon, it is hereby **ORDERED and DECREED** that said petition to terminate the parental rights of the biological mother, Ashley Sykes in and to the subject child, B.C.H. and to terminate the parental rights of the biological father, Brandon Hall by way of confirming his consent to adopt, is **DENIED** for the reasons stated in the accompanying opinion.

BY THE COURT:

  
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Joseph J. Matika, J.