

Adoption of M.E.B.

IN RE: ADOPTION OF M.E.B.
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Orphans Court Division, Adoption Docket #43-2005

Involuntary Termination of Parental Rights; Refusal or Failure to Perform Parental Duties; Obstacles in Maintaining Parent-Child Relationship; Best Interests of the Child

1. As per the Adoption Act, 23 Pa.C.S.A. §2511(a)(1), the rights of a parent may be terminated 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.
2. The party seeking termination has the burden of proof and must establish the statutory requirements for involuntary termination by clear and convincing evidence.
3. "Parental Duties" is defined as parent having an affirmative duty to love, protect and support his child and to make an effort to maintain communication and association with that child.
4. In determining if one fails to perform parental duties, the court will always consider the evidence in light of existing circumstances. Hence, courts recognize that obstacles may confront a parent, and the obstacles are given weight in determining whether the parent has failed to perform their parental duties.
5. Incarceration alone does not automatically provide grounds for the termination of parental rights; however, it does not suspend a parent's responsibility for the child. The incarcerated parent needs to utilize the resources at his or her command to continue a close relationship with the child.
6. If the actions of an opposing parent or other third party impede on the parent's ability to maintain a relationship with child, the court will not tolerate these actions and the rights of the parent will not be terminated because of lack of contact.
7. Where an incarcerated Father failed to place phone calls or send any gifts, cards and/or letters to the minor child while he was incarcerated, Father showed a total lack of concern for the well-being of the child, and therefore, he failed to perform his parental duties.
8. Where the custodial parent reasonably rejected one request for a visit with the child, her actions did not rise to a level of "thwarting the maintenance of the parental relationship." Father failed to show any effort to circumvent this limited obstacle and perform his parental responsibilities as best as possible under the circumstances.
9. If the party seeking the termination of parental rights proves the statutory requirements of 23 Pa.C.S.A. §2511(a)(1), the court must consider the "best interests" of the child in its final determination.
10. Where Stepfather has emotionally and financially supported the minor child and formed a healthy father-daughter relationship during the last several years, it was in the child's best interest to involuntarily terminate the parental rights of Father.
11. Due to the combination of the statutory requirement of involuntary termination being met and it being in the best interests of the child, the Court terminated the rights and duties of the natural father.

Appearances:

Stephen D. Kulla, Esq., *Attorney for Petitioner*

OPINION

Van Horn, J., February 27, 2006

Findings of Fact

1. This matter is before the Court due to the filing of a Petition for Involuntary Termination of Parental Rights regarding T.E.B. filed by A.M.S. on August 24, 2005. T.E.B. ("Father") is the biological father of M.E.B., born June 9, 2000.

2. The biological mother of M.E.B. is A.M.S. ("Mother"), formerly A.M.B.

3. The biological parents were never married.

4. M.E.B. has resided with Mother during her entire lifetime; she has never resided with Father.

5. M.E.B. has resided with M.R.S., along with Mother, since September 2004. M.R.S. ("Stepfather") married Mother on September 10, 2005.

6. A Custody Order has been in place since August 18, 2000. This Order provides specific periods of visitation for Father. The times were initially slated to be supervised with gradual expansion to unsupervised periods of custody.

7. After the Custody Order was entered, Father's problems with the law began. Beginning in the early part of 2002, he has been incarcerated for numerous periods of time based on the following convictions: Disorderly Conduct, Terroristic Threats, Driving Under the Influence, Reckless Endangerment, and Driving Under Suspended License.

8. Due to the convictions and resulting probation violations, Father was incarcerated during the following periods of time: February 20, 2002 through May 7, 2002; September 26, 2002 through November 11, 2002; May 11, 2005 through August 11, 2005, and December 8, 2005 through the present.[1]

9. Father had contact with M.E.B., although subject to significant periods of non-contact,[2] until June 13, 2004. Since this date, as per the credible testimony of Mother and Stepfather, he has made no significant contact, via telephone, mail or other medium, with his daughter.

10. Father testified that his periods of incarceration are the main problem with maintaining consistent contact with M.E.B.; he testified that he does not want his daughter to know when he is in prison.

11. Furthermore, in July of 2004, L.B., paternal grandmother ("Grandmother"), dropped off all M.E.B.'s belongings that were in the possession of Father to Mother's residence. Grandmother testified that the items were in Father's apartment, and he lost this apartment. She did not want to put the items in storage, so she returned all the items to M.E.B. The Court does not find the reasons given to be credible; the Court sees this event as a signal of Father's intention to terminate the relationship with M.E.B.

12. While both Father and Grandmother testified about birthday cards forwarded to M.E.B. in June of 2005, the Court finds their testimony totally incredible due in part to inconsistencies in the testimony. Father first testified that he ordered the child's card from prison, signed the card, and sent it to Grandmother in order for her to forward the card to M.E.B. However, his mother later testified that she actually purchased the birthday card and signed the card for Father. She then stated that she tried to find the correct residence for M.E.B. by asking a neighbor and then placed cards in "a door." Both Mother and Stepfather credibly testified to not receiving the birthday cards for M.E.B. The Court obviously noted the conflicting testimony between Father and Grandmother and does not believe either testimony regarding a birthday card.

13. The only other attempted contact made by Father since June 2004 was two brief phone conversations with Mother in August 2005. Father and Mother both testified to these calls regarding Father's desire to visit with M.E.B. The first phone call was the initial request in which Mother asked to take some time to think about a possible visit. The parties then experienced trouble in reaching each other. When the parties reached each other in a second call, Mother denied the request because M.E.B. was

starting school in the next week and Mother did not think it was an appropriate time for the visit. Besides these phone calls, Father made no further request or inquiries for visitation or contact.

14. Father has continuously failed to pay child support for M.E.B., and he owes approximately \$2,500 in arrearages.

15. Over the last year and a half, M.E.B.'s Stepfather, M.R.S., has given emotional and financial support to M.E.B. He has certainly served in the capacity of father to M.E.B. during this time. M.E.B., in turn, has developed a close parental bond with her Stepfather.

16. Both Stepfather and M.E.B. want to have their relationship finalized through adoption.

17. Carrie Bowmaster, Esquire, was appointed by the Court on November 9, 2005 to serve as Guardian Ad Litem for the child in these proceedings. During the hearing, she reported on a meeting with M.E.B. Attorney Bowmaster reported M.E.B.'s knowledge of the adoption and her love for her stepfather. M.E.B. stated to Attorney Bowmaster that she loved M.R.S. and desired for her surname to be changed. Attorney Bowmaster also reported that M.E.B. did not speak of Father in any regard during their meeting.

18. Attorney Bowmaster reported to the Court that she strongly supports granting the Petition to Terminate the Parental Rights of T.E.B. as being in the best interest of M.E.B.

Discussion

As per the Adoption Act, 23 Pa.C.S.A. §2511(a)(1), the rights of a parent may be terminated 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." Since the clauses have been interpreted as being in the alternative, the termination can be based if the record satisfies either. In re Adoption of J.S.M., Jr., 424 A.2d 878, 879 (Pa. 1981). The party seeking termination has the burden of proof and must establish the statutory requirements for involuntary termination by clear and convincing evidence. Id.

In determining whether a parent has refused or failed to perform parental duties, the court has defined the meaning of the term "parental duties" as the parent having "an affirmative duty to love, protect and support his child and to make an effort to maintain communication and association with that child." Adoption of McCray, 331 A.2d 652, 655 (Pa. 1975). Accordingly, the court requires the parent to make an effort to maintain a place of importance in the child's life if he or she wishes to retain parental rights. J.S.M., Jr., 424 A.2d at 880. For this determination, the Court will always consider the evidence in light of existing circumstances. In re D.J.Y., 408 A.2d 1387, 1390 (Pa. 1979), citing Adoption of David C., 387 A.2d 804, 807 (Pa. 1978). "Parenthood is too precious a right to be withdrawn on the basis of a sterile rule of thumb that ignores the realities of circumstances." J.S.M., Jr., 424 A.2d at 880. The court will not rule that the involuntary termination requirements are met if the conduct is reasonably explained or resulted from circumstances beyond the parent's control. In re Burns, 379 A.2d 535 (Pa. 1977). Hence, our courts do recognize that obstacles may confront a parent in many of these cases, and the obstacles are given weight in determining whether they have failed to perform their parental duties.

First, incarceration of the parent is certainly an obstacle in maintaining a parent-child relationship. Pennsylvania Courts have stated that "incarceration alone does not automatically provide grounds for the termination of parental rights, nor does it suspend a parent's responsibility for the child." In re Adoption of J.M.M., 782 A.2d 1024, 1030 (Pa. Super. 2001). Therefore, the courts will be forgiving but they are certainly not willing to completely toll a parent's responsibilities during the period of incarceration. In re Adoption of Sabrina, 472 A.2d 624, 629 (Pa. Super. 1984). The court will inquire into whether the parent has utilized the resources at his or her command while in prison to continue a close relationship with the child. Id. Small acts, such as making telephone calls to an appropriate person for the purpose of inquiring into the well-being of the child, writing letters to the child, or purchasing cards or gifts for the child especially on important dates such as major holidays and the child's birthday, would certainly be deemed as reasonable efforts to foster the parent-child relationship and save the rights of the incarcerated parent.

Second, in some cases, the absence of communication between a parent and child unfortunately may be due to the opposing parent or other third party creating barriers to impede communications between the absent parent and the child. This deliberate contact from another party certainly qualifies as an obstacle. Therefore, if the parent can show a reasonable resolve to overcome the impediments to the relationship and pursues a course of conduct during the period in question consistently aimed at maintaining the parental relationship, the Court will not tolerate the actions of another, and the rights of the parent will not be terminated. D.J.Y., 408 A.2d at 1390, citing Adoption of S.H., 383 A.2d 529, 530 (Pa. 1978). Again, if the parent does not exercise reasonable firmness to overcome the obstacles presented,

the parent's rights may still be forfeited.

In our case, Father makes three main arguments in an effort to convince the Court to dismiss Mother's Involuntary Termination Petition. The court has thoroughly considered all three arguments.

1. In June of 2005, Father made an attempt, through paternal grandmother, to deliver a birthday card to his daughter. The delivery of the birthday card serves as a contact within the six (6) months preceding the filing of the petition; therefore, the Plaintiff has not fulfilled the statutory requirements for involuntary termination.

As stated in the Court's Findings of Fact, this Court found the testimony of both Father and Grandmother on this point totally incredible. As per Father's testimony, he stated that he purchased the birthday card for M.E.B. by way of the prison's "commissary," signed the card, and then sent it to Grandmother for delivery to the child because he was not aware of the proper address. However, Grandmother later testified that Father was not able to mail any cards from the prison at the time, so she actually purchased the birthday card and signed the card for Father. She further stated that she attempted to hand-deliver the card to the proper residence by asking a neighbor and then placing cards in "a door." The conflicting testimony between Father and Grandmother leads this Court to believe that neither party attempted to deliver birthday cards to M.E.B. Furthermore, the Court was further convinced of this fact when both Mother and Stepfather credibly testified to never receiving birthday cards for M.E.B.

Nevertheless, even if Father attempted to deliver a birthday card to M.E.B., the Court is not satisfied that this qualifies as "performing parental duties." One birthday card is not sufficient to show love, protection and support for the child required by statute. Therefore, the delivery of a birthday card is irrelevant, and the Court finds that Father failed to perform parental duties for at least six (6) months prior to the filing of the Petition as he consistently failed to exert himself as an important individual in her life.

2. During the six (6) month period preceding the filing of the Petition, Father was incarcerated at the Franklin County Prison. This incarceration was an obstacle for the Father to maintain contact with his daughter; therefore, the lack of contact should be excused and his rights should not be terminated.

The Court fully recognizes that incarceration of a parent would put a strain on a parent-child relationship and serve as an obstacle to overcome. However, as per the established precedent such as the McCray opinion cited above, the parent must make reasonable efforts to maintain the relationship while incarcerated. The Defendant directs the Court to the Supreme Court case of Adoption of M.T.T., 354 A.2d 564 (Pa. 1976). The Supreme Court excused a nine-month period of no contact with a child due in part to incarceration of the father. Our case can be clearly distinguished from the cited case. The court noted in M.T.T. that the father had no way of locating his son but he still demonstrated a continuing interest in maintaining a parental relationship through contacting children services about his son. Despite the inability to locate his son, he found a way to inquire about his son's well being so the court excused a nine-month period of no contact with the child. If anything, the Court finds that the M.T.T. case hurts Father's argument. Father, in this case, knew his daughter's location and possible means to contact her yet he failed to make any efforts to contact her. This Court does not find it can follow the M.T.T. court when the facts in this case point to total lack of interest and action by Father.

The law is quite clear that incarceration alone does not automatically provide grounds for the termination of parental rights; however, incarceration does not toll the parent's responsibility for the child. Father did not utilize the resources at hand while he was incarcerated. During his time spent in the Franklin County Prison, he certainly had access to a telephone to place phone calls and mail service to send gifts, cards, and/or letters to M.E.B. Father testified that he did not want M.E.B. to be aware of his incarceration, and this is the reason for the lack of contact. The Court does not see this embarrassment or pride over his situation as a reason to excuse Father from not contacting his daughter; there were ways where he could have provided M.E.B. with letters, cards and gifts without her knowing of his incarceration. If he had a sincere interest in maintaining this relationship, he would have found ways to contact his daughter and still shield her from the reality of his incarceration.

Difficult circumstances were certainly present for Father; however, he made absolutely no good faith interest or effort to maintain the parent-child relationship. Therefore, the Court rejects the excuse of incarceration for the Father's neglect in performing his obligation of maintaining a relationship with the child. The Court cannot excuse his total lack of concern for the well-being of the child or for maintaining a relationship with the child simply because he was incarcerated.

3. In August 2005, Father telephoned Mother in an attempt to request visitation time with his daughter. Mother denied Father's request to see the child. Father classifies this as obstructive behavior aimed at thwarting his parental relationship with the child; therefore, this Court should not tolerate this behavior but rather should excuse Father's absence.

Father is correct in stating that lack of contact between a parent and child which is a result of deliberate conduct of the other parent may not be used as a basis for terminating parental rights. The two cases cited by Father, J.S.M., 424 A.2d 878 (Pa. Super. 1981) and In re Adoption of B.D.S., 431 A.2d 203 (Pa. Super. 1981), present factual scenarios where there is a demonstrated design by the other parent or third party to deter the parent from the performance of the parental duties. This case can be clearly distinguished from those factual scenarios. Mother admits to denying Father's request to see the child in August 2005. Father had been absent from M.E.B.'s life for over a year at that point, and M.E.B. was scheduled to start school in the coming weeks. Mother believed that starting school is a stressful transition for any child to make and adding the stress of Father re-entering the picture would not have been in the best interests of M.E.B.; therefore, she denied Father's request. The Court believes that Mother made a reasonable decision under the circumstances, and her actions most definitely did not rise to a level of "thwarting the maintenance of the parental relationship." Father fails to show any effort to circumvent this obstacle and perform his parental responsibilities as best as possible under the circumstances. This Court will not find that making one request was a reasonable effort. The cases provided by Father as support for his position all involve parents repeatedly attempting to speak with the child on the telephone, to meet with the child and to deliver gifts despite the attempts continually being unsuccessful. Father, in the instant case, certainly did not consistently try to conquer the alleged obstacles.

Again, the Court will be flexible and excuse a period of no contact if the parent can explain the circumstances and provide examples of how the parent tried to succeed despite the obstacles. Mother's denial of one requested visit certainly did not terminate his ability to maintain a relationship with his child; Father's actions or lack thereof terminated his relationship. The denial of visitation in August 2005 does not excuse the lack of contact for the previous year.

Other Considerations

Above, as per 23 Pa.C.S.A. §2511(a), the Court focused on the conduct of Father in considering the termination of parental rights. However, the Court must also consider the "best interests" of the child in its determination. 23 Pa.C.S.A. §2511(b) states that 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."

For at least the last two (2) years, M.R.S., Stepfather and potential Adoptive Father, has played an important role in M.E.B.'s life. M.E.B. has developed a close parental bond with Stepfather and has expressed the desire to be adopted. On the other hand, Father has only shown sporadic interest in his child, and this has resulted in no parental bond ever developing between Father and M.E.B. M.E.B. only visited with Father on isolated instances, and Father has continuously been in trouble with the law and incarcerated on several occasions. In addition to the lack of emotional support, Father has failed to support M.E.B. financially. Stepfather, alternatively, has provided M.E.B. with the love and support of a father, and M.E.B. has flourished under his care. M.E.B. certainly deserves to experience this healthy father-daughter relationship with Stepfather.

Along with the Guardian Ad Litem appointed in this case, the Court believes that it is in M.E.B.'s best interest to involuntarily terminate the parental rights of Father in order for M.E.B. and M.R.S.'s goal of adoption to be accomplished.

Conclusions

The Court realizes the serious nature of terminating a parent's rights to a child. The decision carries great emotional impact on both the child and the parent; therefore, the Court thoroughly analyzed the facts of this case. First, the Court finds that Father did not make any reasonable efforts to perform his parental duties within the six (6) months preceding the Petition for Involuntary Termination. Though a birthday card may have served as Father's effort to maintain the relationship with M.E.B., the Court is not convinced that a birthday card existed or that one birthday card would even be sufficient to prove that Father performed adequate parental duties to save his rights. Second, the obstacle of incarceration was not an excuse for the period of no contact. The law requires that incarcerated parents utilize the resources available to them. Father failed to do this when he made no attempt to contact M.E.B. despite having the resources, though limited, to do so. Finally, the alleged obstructive behavior is unfounded by the evidence provided to the Court. Mother did not thwart the relationship between Father and daughter; as stated above, his actions since the child's birth accomplished that result alone.

Due to the combination of the statutory requirement of involuntary termination being met and it being in the best interests of the child, the Court hereby terminates the rights and duties of T.E.B., the

natural father of M.E.B.

ORDER OF COURT

And now this 27th day of February, 2006, after consideration of Petitioner's Petition for Involuntary Termination of Parental Rights, briefs submitted by counsel and evidence presented in the hearing on the matter, it is hereby determined that in light of the totality of the circumstances, it having been determined that Petitioner has established by clear and convincing evidence the statutory requirements of 23 Pa.C.S.A. § 2511(a)(1), it is hereby ordered that Petitioner's petition is granted; therefore, the rights and duties of T.E.B., the natural father of M.E.B., are hereby terminated.

[1] The Court is unaware whether Father has since been released. At the time of the hearing and time of counsel submitting briefs, he was still incarcerated in the Franklin County Prison.

[2] Prior to June 13, 2004, Father missed numerous custodial periods with his daughter since the Custody Order was signed in August of 2000. He had no contact with M.E.B. between July 2001 and June 2002, and then he was absent from M.E.B.'s life between September 26, 2002 and November 11, 2002. Since the Petition for Involuntary Termination centers on the six (6) month period prior to filing, the Court will only focus on the alleged lack of contact since June of 2004.