

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: : ORPHAN'S COURT DIVISION  
ADOPTION OF :

APRIL MAE U. :

: NO. 5770

OPINION AND ORDER

On March 31, 2004, a hearing was held on the petition filed by Grandparents to determine if the parental rights of Kimberly G. (Mother) should be terminated. Father, Ronald U., Jr., had previously consented to relinquishing his parental rights and a hearing was held to voluntarily terminate them on December 24, 2003. However, this Court declined to enter an order finalizing the termination until the Court ruled on the involuntary termination of Mother's rights.

Mother and Father were boyfriend and girlfriend from 1996 until sometime in 2000. During their relationship, Mother gave birth on April 15, 1997 to a daughter, April Mae U.. While the couple was together, the child resided with them. After Mother and Father broke up and they lived apart, the child remained with her mother. After one week, Mother believed that the child would be better served if she lived with her father, and so the child went to live with him. At the time Mother was not employed and was struggling personally. Although the child seemed to be doing well with her father, his parents –the Petitioners- were beginning to assume the bulk of the responsibility for the child. In July 2000, Mother, Father and his parents (Grandparents) entered into a custody agreement wherein the grandparents were given primary legal and physical custody of the child. Grandparents were then able to obtain health insurance for the child. While Father has shown no real interest in his daughter, Mother wished to

continue to spend time with the child, albeit on an extremely limited basis. In order for the Mother to have visitation with the child, Grandparents would require the Father to transport the child to her. However, if Father were not available, Grandparents would still allow the child visits with her mother.

In 2001, Grandparents began keeping track of Mothers contacts with the child. Mother visited with the child 9 times in 2001 and 6 times in 2002. Mother would not call to speak with the child, just to arrange an upcoming visit. When the child began kindergarten, Mother never inquired as to the details of her schooling. In 2003, the child entered first grade, and Mother never called Grandparents to obtain any information. Grandparents have lived in the same location and had the same telephone number since 1969. In 2003, Mother visited with the child on March 28-29 and called her on March 24th, April 9th and April 15<sup>th</sup>. In May 2003, Grandparents filed for support from Mother, which was ordered and subsequently paid by Mother through a wage attachment. In October 22, 2003, Grandparents filed the petition to adopt the child. Mother contacted Grandparents to see the child on November 27<sup>th</sup>. In January 2004, Grandparents did not hear from Mother. In February, Mother began sending cards and gifts to the child.

Mother testified that she has been employed with the housekeeping staff of the Genetti Hotel since June 2001. She reports that she suffers from depression and anxiety. In fact, Mother freely admits that she never asked to resume custody of April because she has been dealing with problems in her own life. Mother knew her daughter was being taken care of, so she didn't need to worry. Mother further testified that she has 3 children total; a son, Richard who she believed was in prison, April, and another

daughter with whom she shares custody with the child's father. Mother stated that she did not have a driver's license and would need to rely on others to have visitation with the child. Mother states she has told the child that she doesn't have enough money to take proper care of her.

It is well settled that a trial court's decision regarding whether to grant a petition to terminate parental rights is governed by the statutory requirements of 23 Pa.C.S.A. § 2511. To satisfy section 2511, the moving party must demonstrate by clear and convincing evidence that conduct existed, for at least six months prior to filing the petition, which reveals a settled intent to relinquish a parental claim to a child or a refusal or failure to perform parental duties. In re E.D.M., 550 Pa. 595, 708 A.2d 88 (1998). Once the evidence establishes a failure to perform parental duties or a settled purpose to relinquish parental rights, the court must engage in three lines of inquiry: (1) the parent's explanation for his or her conduct; (2) the post-abandonment contact between parent and child; and (3) the effect of termination of parental rights on the child pursuant to Section 2511(b). *Id.* at \_\_\_, 708 A.2d at 92 (citing In re: Adoption of Atencio, 539 Pa. 161, 650 A.2d 1064 (1994)).

#### § 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 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). The Court finds from the testimony that Mother has failed to perform her duties under the statute. Mother gave no explanation as to when she might

be able to resume custody of the child, let alone why she has not made regular contacts with her daughter. Mother clearly has problems both mentally as well as physically, and although she opposes the termination of her parental rights, cannot establish a time frame within which she would be sufficiently established to assume primary physical and legal custody of the child. "This court has repeatedly recognized that 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 immediate physical and emotional needs." In re Shives, 363 Pa. Super. 225, 231, 525 A.2d 801, 804(1987).

The Court must also consider the needs and the welfare of the child as well.

Section 2511(b) of the Adoption Act clearly states:

(b) Other considerations. - The court in terminating the rights of a parent shall give primary consideration to the 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.

In In re Burns, 474 Pa. 615, 379 A.2d 535 (1977), the Supreme Court stated:

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'...Before a trial court may terminate the parental rights of a noncustodial parent, 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."

Shives, supra, 363 Pa. Super. at 225, 525 A.2d at 803 (Pa. Super. 1987). Ultimately, the Courts primary concern is the best interest of the child.

While Mother has been financially supporting the child through a wage attachment since May 2003, Mother has made no efforts to show a continuing interest in the child and take a place of importance in her life. Since the Mother's reason for not taking a greater interest in her child's life is due to her "own problems" to which she has no immediate plans to change, this Court does not believe the termination of the Mother's rights would have a detrimental effect on the child. Mother's sporadic contacts with the child appear to contribute very little to her development and upbringing. It is clear to the Court that her grandparents are truly the child's parents in every way. By terminating Mother's rights, the Court is merely legalizing the relationship that has existed for sometime.

The Court cannot overlook another potential consideration, which directly impacts the best interests of the child. Grandparents are both 60 years of age and the child is just about 7 years old. Unfortunately, due to the age of the Grandparents should they both not be able to guide the child to her 18<sup>th</sup> birthday, without the termination of the Mother's rights, the child would be returned to her Mother. As insecure as the Mother's situation is at present, there is no guarantee that she would be able to take care of the child in the future should the need arise. With termination of the Mother's rights, Grandparents would have the ability to provide for the child as if they had been able to be with her, continuing to look after her best interests as they have for the majority of her life.

Therefore, the Court believes that Grandparents have shown by clear and convincing evidence that Mother has shown a settled purpose of relinquishing her claim as a parent and that the best interests of the child would be served by terminating the parental rights of Mother as well as confirming the Consent of the Father.

### **DECREE**

**AND NOW**, this 12th day of April, 2004, after hearing on the petition filed for the involuntary termination of the parental rights of Kimberly G. to April Mae U., the Court GRANTS the petition. It is ORDERED AND DIRECTED that the rights of Kimberly G. are terminated now and forever.

After hearing on the confirmation of consent, the Court grants the Petition and it is ORDERED AND DIRECTED that the parental rights of Ronald U., Jr. are terminated now and forever.

April Mae U. may be the subject of adoption proceedings without any further notice to Kimberly G. or Ronald U., Jr.

### **Notice to the Natural Mother 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 that you choose to provide could be important to the child's present and future medical care needs. The law makes it possible for you to file current medical information and 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 the court to 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 to file medical history information by contacting the Adoption Medical History Registry. Members of the registry staff are available to answer your questions. Please contact the registry staff at:

Department of Public Welfare  
Adoption Medical History Registry  
Hillcrest, Second Floor, P.O. Box 2675  
Harrisburg, PA 17105-2675  
Telephone: 1-800-227-0225

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

County Children and Youth Social Service Agency  
Any private licensed adoption agency  
The Lycoming County Register and Recorder's Office

BY THE COURT,

\_\_\_\_\_  
Nancy L. Butts, Judge