

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**IN RE: TERMINATION OF** :  
**PARENTAL RIGHTS OF** :  
 : **No. 5998**  
**G.S. and S.D.** : **ORPHANS COURT DIVISION**  
**AND** :  
**THE ADOPTION OF C.M.D.** :

**OPINION AND ORDER**

Before this Honorable Court, is Petitioners R.Y. and T.Y.'s Petition to Involuntarily Terminate the Parental Rights of G.S. (hereinafter "Respondent Mother") and S.D. (hereinafter "Respondent Father"), and Adoption of the C.M.D. (hereinafter "Child"). The Petitioners allege that the Respondent Father and the Respondent Mother have not fulfilled their parental obligations with regard to the Child since the birth of the Child and February 2006 respectively, and that it is in the Child's best interest that the Court terminate their parental rights and permit the Petitioners to adopt the Child. For the following reasons, the Court GRANTS the Petitioners' Petition to Terminate the Parental Rights of the Respondents.

***Background***

The child at issue was born on December 23, 2001. The Respondent Father has not had contact with the Child since after February 2002 and has not, since the Child's birth, provided any financial support for the Child. As early as May 2002, per the request of the Respondent Mother, the Petitioners have maintained physical custody of the Child. On November 24, 2003, the Petitioners filed for Emergency Custody of the Child and, after a December 9, 2003 conference, the Court granted the Petitioners legal and physical custody of the child with the Respondent Mother to have pre-scheduled partial custody. At the January 8, 2004 custody pre-trial conference, the Respondent Mother discontinued her attempts to regain legal and physical

custody of the Child and, per stipulation of the parties, the Court ordered that the Petitioners maintain legal and physical custody with the Respondent Mother to maintain pre-scheduled partial custody. On several occasions between early 2004 and March 2006, upon Motion of the Respondent Mother, the Court modified the Respondent Mother's pre-scheduled partial custody, but legal and physical custody of the Child has rested with the Petitioners since December 2003.

On November 1, 2006, the Petitioners filed the instant Petition to Involuntarily Terminate Parental Rights. After continuing the February 1, 2007 hearing on said Petition due to the Respondent Mother's hospitalization, the Court rescheduled a hearing on the Petition for March 13, 2007. At the March 13, 2007 hearing, the Respondent Mother requested a continuance in order to obtain counsel; the Court rescheduled her portion of the hearing, to April 16, 2007. The Court then conducted a hearing on the voluntary termination of the Respondent Father's parental rights reserving decision pending the outcome of the April 16, 2007 hearing on the involuntary termination of the Respondent Mother's parental rights.

At the April 16, 2007 hearing, the Petitioners testified, and the Respondent Mother agreed, that the Child has resided with them since February 2002 and that they have resided at the same address since May 2002 and that they have maintained the same phone numbers and email addresses since on or before May 2002. The parties also agreed that the Respondent Mother had physical contact with the child four or less times in 2006. Furthermore, the testimony presented at the April 16, 2007 hearing, established that the Respondent Mother did not, in the six months preceding the filing of the Petition to Involuntarily Terminate her Parental Rights, have any telephone contact with the child, she did not send the child any cards, notes, or gifts, that she showed no interest/concern regarding the Child's medical problems, and that she was lax in remaining current with her child support obligation as to the Child.

## ***Discussion***

The Adoption Act provides that, the Court may terminate the rights of a parent, in regard to a child, when the petitioner establishes, by clear and convincing evidence, that, “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 child or has refused or failed to perform parental duties.” 23 Pa.C.S.A. § 2101, *et seq.*; *Santosky v. Kramer*, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982) and *In re J.E. and E.E., minors: Appeal of R.E. and R.E.*, 2000 PA Super 20, 745 A.2d 1250 (2000); and 23 Pa.C.S.A. § 2511(a)(1).

In order to establish a “settled purpose of relinquishing one’s parental claim to a child,” the petitioner must prove that, the respondent deliberately, for at least six continuous months prior to the filing of the petition to terminate parental rights, persisted in severing his/her relationship with the child, *In re Involuntary Termination of Parental Rights and Adoption of Baby Girl Fleming, a minor: Appeal of Frank J. Yelinko and Elizabeth J. Yelinko*, 471 Pa. 73; 369 A.2d 1200 (1977); i.e. the petitioner must show “an affirmative indication of positive intent coupled with finality of purpose,” *In re Adoption of R.W.B.*, 485 Pa. at 174, 401 A.2d at 350 (1979) citing *In re Adoption of McAhren, et al: Appeal of McAhren*, 460 Pa. 63, 331 A.2d 419 (1975) and *Wolfe Adoption Case*, 454 Pa. 550, 312 A.2d 793 (1973).

A parent fails or refuses to perform his/her parental duties when he/she neglects to maintain an important role in the child’s life. *In re Adoption of Orwick, a minor: Appeal of Orwick*, 464 Pa. 549; 347 A.2d 677 (1975). Although what constitutes sufficient satisfaction of parental duties must be considered in light of the existing circumstance, all parents share some basic responsibilities. *In re Adoption of David C.: Appeal of Gertrude U.*, 479 Pa. 1, 387 A.2d 804 (1978). These responsibilities encompass more than financial support; they require

continuing interest in the child and a genuine effort to maintain communication and association with the child. *In re Adoption of David C.*, 479 Pa. at 8, 387 A.2d at 807 (1978) citing *In re Adoption of McCray: Appeal of McCray*, 460 Pa. 210; 331 A.2d 652 (1975); see *In re Burns*, 474 Pa. 615, 379 A.2d 535 (1977) (court upheld the decision to terminate a mother's parental rights after said mother expressed dissatisfaction with the placement of her children foster care, but failed, for ten months, to contact the agency or her children); *In re Diaz: Appeal of Yvonne Laventure*, 447 Pa. Super. 327; 669 A.2d 372 (1995) (court upheld the decision to terminate a mother's parental rights after she only visited the child four times in six years); and *In re Adoption of L.D.S., a minor: Appeal of L.A.S., natural mother*, 445 Pa. Super. 393; 665 A.2d 840 (1995) (held that, the mother's two phone calls to her child in over six months were not sufficient to support contention that a mother had not failed her parental duties).

The court should consider the "totality of the circumstances" when assessing the petitioner's proffered evidence under the statute, *In re Adoption of B.D.S.*, 494 Pa. 171; 431 A.2d 203 (1981) citing *In re Adoption of R.W.B.: Appeal of C.W.*, 485 Pa. 168; 401 A.2d 347 (1979), but, above all else, the court must give primary consideration to welfare and the needs, both tangible and intangible, of the child, *In re J.I.R.*, 2002 PA Super. 295, 808 A.2d 934, 937 (2002) and *In re the Involuntary Termination of Parental Rights of Matsock: Appeal of Matsock*, 416 Pa. Super 520, 611 A.2d 737 (1992). "The trial court, in considering what situation would best serve the children'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.: Appeal of C.S. Sr.*, 2000 PA Super 318, P18; 761 A.2d 1197, 1202 (2000) citing *In re P.A.B., M.E.B., M.A.B.: Appeal of G.B. and P.B.* 391 Pa. Super. 79, 570 A.2d 522 (1990).

After the petitioner establishes the statutory elements by clear and convincing evidence, the court must engage in three lines of inquiry: (1) the parent's explanation for this/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)<sup>1</sup> of the Adoption Act. *In re C.M.S., a minor*, 2003 PA Super 292, P24; 832 A.2d 457, 464 (2003) citing *In re E.D.M.*, 550 Pa. 595, 708 A.2d 88 (1998).

Here, the Petitioners have established the statutory elements under Section 2511(a) (1) of the Adoption Act. It is clear that the Respondent Mother deliberately severed contact with the Child for at least six continuous months prior to filing of the Petitioners' Petition. The Respondent Mother knew where the Child was and knew how to reach her, but failed to make contact for at least six months prior to the filing of the Petitioners' Petition. It is equally clear that the Respondent Mother failed and/or refused to perform her parental duties for at least six continuous months prior to the filing of the Petitioner's Petition. Although the Respondent Mother sporadically paid child support and intermittently made limited contact with the Child, her efforts were limited and unreliable.

At the April 16, 2007 hearing on this matter, the Respondent Mother testified that she often lacked adequate transportation to visit the child; however, the statute does not require face-to-face interaction between parent and child; instead, it requires mere attempts to maintain contact of any kind, which the Respondent Mother failed to do. At the April 16, 2007 hearing, the Respondent Mother also claimed that the Petitioners prohibited and or restricted her ability to

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<sup>1</sup> "The court, in terminating the rights of the parent, shall give primary consideration to the developmental, physical and emotional 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. With respect to any petition filed pursuant to subsection (a)(1) . . . , 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." 23 Pa.C.S.A. § 2511(b).

visit the Child; however, emails introduced at the hearing and testimony from all parties indicated otherwise. For example, the Petitioners, via email, invited the Respondent Mother to the Child's doctors appointments, and invited her and her family to numerous events (e.g. birthday parties, cookouts, holiday dinners, etc.) almost all of which the Respondent Mother ignored.

Finally, the Court does not believe that terminating the Respondent Mother's parental rights will have a detrimental effect on the Child. Although the Respondent Mother has made limited attempts to remain current on her child support obligations, she has made no effort to show a continuing interest in the Child, nor has she attempted to establish a place of importance in the Child's life. For nearly her entire life, the Child has resided with and been cared for by the Petitioners. During this time, the Respondent has maintained numerous residences, failed to remain in contact with the Petitioners and her child, and failed to exercise her parental duties.

### **ORDER**

**AND NOW**, this \_\_\_\_ day of April 2007, the Petition to Involuntarily Terminate the Parental Rights of G.S. and S.D. is hereby GRANTED. It is ORDERED and DIRECTED that the parental rights of G.S. and S.D., with regards to C.M.D., are TERMINATED now and forever.

The Child may be the subject of adoption proceedings without any further notice to the Respondents.

**Notice to the 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 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,

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Nancy L. Butts, Judge

xc: Mark L. Taylor, Esq.  
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Judges  
Honorable Nancy L. Butts  
Laura R. Burd, Esq. (Law Clerk)  
Gary L. Weber, Esq. (Lycoming Reporter)