

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

**IN RE:** : **ORPHANS' COURT DIVISION**  
:  
**D.K. & R.S.** :  
:  
:  
**MINOR CHILDREN** : **NO. 6169 ADOPTION**

**Date: February 26, 2010**

**OPINION IN SUPPORT OF THE ORDERS**  
**OF NOVEMBER 18, 2009, IN COMPLIANCE WITH**  
**RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Fathers, Adam K. and Paul S., have separately appealed this Court's Orders of November 18, 2009, terminating the parental rights of each father, to their respective child: of Adam K. to his son, D.K., age 5; and, of Paul S. his child R.S., age 8. These Orders were entered following joint evidentiary hearing at which the mother of both children voluntarily relinquished her parental rights to each child, as evidenced by another order of November 16, 2009.

This Court found from the evidence presented at the termination hearing, both children had been in formal Agency custody for more than 12 months before the Termination Petition was filed. Since at least August of 2006, three years before the petition was filed, both Adam K. and Paul S. had essentially ignored their sons and refused and failed to perform their parental duties, in that: neither father had any meaningful contact with his child; neither father made any significant effort to comply with his respective Family Service Plans while the children were in placement; neither father attempted to communicate with his child by letter, cards, gifts, telephone calls, nor did he exercise his opportunities to visit with his child while in placement.

Neither father has shown any ability or desire backed up by action to end his studied neglect of his child. Neither child has a child/parent relationship with his father.

Both of the children have been diagnosed with ADHD and have significant behavior problems and mental health issues, which will continue for a long time making them difficult children for any parent to manage. As a result we found both the children to be in need of a “forever home” where the developmental, physical and emotional needs and welfare of both children could be met.

Termination of the parental rights of Adam K. and Paul S. is required to remedy the conditions which led to placement and give each child the permanency, stability, and consistency needed for his well being. Having the knowledge he has a place to live with parents to care for him the rest of his childhood will best serve the needs and welfare of each child. Accordingly, we entered our Order terminating the parental rights of each father to his child, stating a summary of our finding and reasoning on the record, at the conclusion of the evidentiary hearing. We recommend that Order be affirmed.

### **PROCEDURAL AND FACTUAL BACK GROUND**

The Petition for Involuntary Termination of Parental Rights was filed on August 12, 2009. R.S. had been in a resource home by Agency placement since May 27, 2008. D.K. had been placed in a kinship home by Agency placement on May 27, 2008. In July, 2008 he was placed in a resource home, being the same home in which another step-sibling, K.S., age 7 had also been placed by the Agency on May 27, 2008. In December, 2008 R.S. was placed in the same home. Prior to placement neither R.S. nor D.K. had ever resided in a home with their fathers. Prior to 2006 both children had lived with their mother, L.P. Since 2006 L.P. and the

three children transitioned between the home of the maternal grandmother, great grandmother and a great aunt. At times mother lived in the homes; at other times she did not. The three children, D.K., R.S., and K.S. were adjudicated dependent at a hearing held on July 30, 2007 at which time it was established that L.P. had not obtained nor maintained stable housing. Neither father was considered as a resource for their child at that time and were not involved in their lives.

Following the adjudication of dependency, periodic permanency review hearings were held, the last being on August 11, 2009. Of significance at each hearing was that neither father had visited with his child – with the exception that in March, 2009, Adam K. did have three supervised visits with D.K. The neglect of each father to visit, write, call or in any way perform any parental care for his son was of such concern to this Court at the April 21, 2009 permanency hearing, that both fathers and the mother were advised that termination of parental rights was likely if substantial progress was not made. (See the Order of April 21, 2009 and related order at March 31, 2009 and related order at March 31, 2009 and relevant allegations of Permanency Review Petition filed March 12, 2009, Agency Exhibits 33, 35-37, 39-41; See also N.T. 11/16/09 pp. 22-25 and 97-98. Nevertheless, at the August 11, 2009 permanency hearing it was acknowledged that neither father had visited, written, called, or contacted his child. (See Orders of August 11, 2009, Agency Exhibit number 73) See also N.T. 11/16/09 pp. 24-25 and 97-98.

The Agency, therefore, pursued termination of the parental rights of L.P., Adam K. and Paul S. to the three children. The evidentiary hearing was held November 16 and 18 2009. At the outset of the hearing, L.P., mother of R.S., D.K., and K.S., who was also subject of the Agency's petition as alleged in paragraphs I. through M. of the petition, voluntarily relinquished

her parental rights to each child. See N.T., 11/16/09, pp. 3-15. In addition it was determined that through recently completed DNA testing, appellant – father Paul S. was not the father of the third child, K.S. Paul S. acknowledged he was not claiming to be the father of K.S. and was without objection to any parental right he had to K.S. being terminated. See N.T. 11/16/09, pp.4-6, 16-19; N.T. 11/18/09 pp. 66-67, 108-109.

At the conclusion of the hearing we announced a summary of our findings and reasoning on the record. N.T. 11/18/09 pp. 120-128. In addition to stating our findings and reasoning we noted that the Agency had established as fact the allegations of the petition and we also adopted as part of our reasoning the closing argument of the children’s Guardian Ad Litem, John Petrovito with, however, some insignificant exceptions. N.T. 11/18/09 p. 120. As to Adam K. first, we disregarded the allegations as to adequate housing,. Id. at 125; second, we disregarded the findings and recommendation of the CASA report especially as to housing, Id. at 126; third we did not base our decision upon his failure to complete parenting classes and noted A.K. had completed two classes between July 2009 and the hearing, although taken primarily to allow him to care for his two other younger children. Id. at 127. As to Paul S. we did not rely upon his failure to complete parenting classes. In terminating the rights of each father to these children, we found that neither had, nor could remedy the lack of parenting care which had led to the children’s placement and since placement had refused to perform parental duties. Each child was in need of a permanent home and a permanent parent for the benefit of their immediate and long range welfare. See, N.T. 11/16/09, pp 52-57; 108-116

Adam K. filed a Notice of Appeal on January 4, 2010, with the required Concise Statement of Matters Complained of on Appeal pursuant to Rule 1925(b), Pennsylvania Superior

Court docket number 51 MDA 2010. Paul S. also filed a Notice of Appeal with attached Concise Statement on January 4, 2010, Pennsylvania Superior Court docket number 50 MDA 2010.

Both Fathers' first allegation of error asserts that the Court incorrectly determined respectively that both Fathers' rights should be terminated because they asserted that the problems complained of by the Agency which resulted in termination could be cured within a reasonable period of time.

Adam K.'s second allegation of error asserts that the Court erred in termination of his parental rights based on his failure to visit with the minor child where the lack of visitation was caused by a false statement made by another person and where the problem can be remedied.

Paul S.'s second allegation of error asserts that the Court erred in termination of his parental rights based on his failure to visit with the minor child where the lack of visitation was caused by other factors beyond his control.

Upon review of the Concise Statement of Matters Complained of on Appeal of both Adam K. and Paul S., this Court believes that its reasoning set forth on the record on November 18, 2009, is self-explanatory and adequately sets forth the reasons for this Court's determination that the parental rights of each parent should be terminated. Nevertheless, we will proceed in this Opinion to briefly and specifically address the matters raised in the parents' Concise Statements.

## **DISCUSSION**

The Agency's petition sought termination under four specific grounds the adoption act 23 Pa. C.P.S. Section 2511(a)(1),(2),(5), and (8), and (b). The Agency has met its burden of

proving that the parental rights should be terminated as to each father as to their respective sons under each of the applicable statutory sections. Neither one of these fathers had ever been a presence in the lives of their child. The children were in various types of informal placement with services by the Agency since August 2006. In May, 2008 they came into formal Agency care with R.S. being placed into a resource home and D.K. at first into a kinship home and then in July, 2008 into a resource home. The Family Service Plans for these children and their fathers essentially required that the each father establish a relationship with his child to work toward rebuilding a parent/child relationship and to demonstrate the ability to provide an appropriate home for the child. Paul S., is in the Army having been stationed at a base in Watertown, New York until April, 2009 and is now at a base in Georgia. Despite his relatively stable Army assignment and his assertions housing suitable for his son is and has been available, he has not ever come forth with a plan or commitment that he could have housing suitable to provide for the child. A.K. has a home at this point with two other small children in it that would be adequate for D.K also, although in his testimony Adam K. did express some doubts as to his permanent ability to afford that type of home. Nevertheless this Court did not consider the lack of housing against these parents but instead relied almost solely on the fact that neither parent made any reasonable effort to perform a father's duties to his child. Each father instead even the most basic and simple duties of exercising his opportunities to visit with or take part in the life of his child through written, or telephone communication, ignoring sending of cards on birthdays, sending of pictures or other actions which would say to the child – I am your father who cares for you, who will provide for you, who wants you, who loves you.

Both fathers were told by the Agency of their right to visit and how the Agency would assist them as well as their obligation to show a fatherly interest in their child. At a review hearing in April the father, A.K. was specifically told that there was no reason why he could not visit his child even though he had said that the Mother told him that the Agency was refusing the right for him to visit. Further in the April review hearing the father, A.K., was given a chance to explain to this Court why he was not exercising his right to visit the child and failed to take the opportunity to do so.

In contrast father, P.S., asserted at various times including the April, 2009 review hearing, that because he was in the military several hours drive away he could not visit the child. We advised him in the April hearing that we did not accept that excuse and that he certainly would have leave opportunities to have visited the children. Rather, in fact, the father's attitude towards visiting this child was demonstrated by what did happen in April. He had obtained a leave of approximately one month in March and April of 2009 in order to relocate to a military base in Georgia. Although much of that leave time was spent with a girlfriend in nearby Lewisburg or with other family who lived within a two hour drive, he did not seek to visit his child at all during that month with the exception that he did ask to visit the afternoon before the April Permanency Hearing. He arrived late. He did make a mistake that could be made by anyone in first going to the Lycoming County Courthouse instead of the Children and Youth building. The Courthouse is two blocks away from the Children and Youth building. After being told where he should go and receiving instructions over the phone as to how to proceed for that two block period he delayed an additional fifty minutes until the virtual closing time of the

Agency and arrived after the child had left. During that fifty minute interval he did not answer calls to his cell phone made by the Agency.

The record is clear also that neither A.K. or P.S. had any interest in his son and made no effort to communicate with him through telephone, sending cards, gifts, or otherwise. Both were advised by the Agency of their opportunities to and abilities to do so. In addition, the Agency advised P.S. of the availability of paid transportation to transport him from his military base to visit the children. He never availed himself thereof.

This Court is unable to understand why at this point having neglected these children throughout their lives either of these fathers would oppose a termination of parental rights, except for some selfish reason or an ego about being a father that has been asserted too late. The opposition of Adam K. and Paul S. to termination is especially hard to understand given each contending that he does not need parenting classes because he knows how to parent and that he has adequate housing available for his son. If so, then why did each not simply exercise his right of visitation to establish a relationship with his son, a basic requirement of the Family Service and Permanency Plans and the fundamental request by the Agency, which was communicated over and over to each father. See Family Service Plan Exhibit 26 and 38; Child Permanency Plan Exhibits 27-29 and 39-41; N.T. 11/16/09 pp. 38-49; 77-79, 97-98; 102-103, Exhibits 53-74. A.K. seems confounded by his obligations to take care of two other children. Using the fact that he has to care for them as an excuse as to why he does not have time to comply with supervised visitation. Mr. Sherman simply has not shown an inclination to exercise his leave time from the military to include his son. He has demonstrated to this Court that no plan or credible intention to do so in the future.



The failure of each Adam K. and Paul S. to establish a relationship with his son as of this date is conclusive evidence each will not, perhaps cannot, establish such a relationship in the future. Accordingly, we concluded basic factors which led to the placement of each K.S. and D.K. will not be remedied by either father and termination of each father's parental rights is required.

No bond exists between these children. R. S. would not recognize P.S. D.K., when he does occasionally meet A.K. on the street, with detachment simply refers to his father by his first name. In psychological counseling neither child expresses any thought of father in any voluntary way. Clearly there is no bond.

The evidence further clearly demonstrates that both of these children are special needs children and have significant behavioral issues. In the words of the psychologist these children now need a "forever home". That is essential to their wellbeing. (See N.T. 11/16/09 pp. 52-58.)

It is also clear that the studied neglect and failure of each father and the failure of each to correct the lack of parent involvement that led to placement continues to exist despite the efforts of the Agency and will not be remedied in the future.

Accordingly, this Court believes that is Orders of November 17, 2008, terminating the parental rights of Adam K. and Paul S. to their children should be affirmed.

BY THE COURT,

William S. Kieser, Senior Judge

cc. Charles F. Greevy, III, Esquire  
John Petrovito, Esquire  
Stephanie Lombardo, Esquire  
James Protasio, Esquire  
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