The heart of plaintiffs' constitutional claim is that the county's method of assessment somehow deprives them of due process. Plaintiffs' counsel admitted during oral argument, however, that the statutory appeals process does afford the taxpayers sufficient notice and opportunity to be heard. The court need not rely on plaintiffs' concession, though, since it is well established that a mere challenge to the method of assessment does not rise to the level of a "substantial constitutional question." *Lal,* supra.

The lack of a "substantial consitutional question," alone, is fatal to the plaintiffs' case. If, arguendo, the plaintiffs did present a substantial constitutional question, they have still failed to demonstrate the inadequacy of their legal remedy. Again, plaintiffs' position that the appeals process is inadequate for class actions because of a possible multiplicity of suits was specifically rejected by the Commonwealth court in *Narehood*, supra.

In the final analysis, plaintiffs have not exhausted their statutory remedy, nor have they satisfied the requisite elements for the court to bypass the appeals process and exercise equitable jurisdiction. As such, plaintiffs' complaint must be dismissed.

Plaintiffs have erred in their initial choice of forum by filing their complaint in a Common Pleas court without first petitioning the tax assessment appeals board. The court simply does not have jurisdiction over the matter. Should the court attempt to exercise jurisdiction at this time, the mistake would still have to be rectified at a later date. This would only serve to compound the costs, delay, and frustration that the plaintiffs may have already experienced in their quest for relief.

ORDER OF COURT

March 6, 1986, the plaintiffs' class action suit in equity is dismissed since the Court of Common Pleas has no jurisdiction in this matter.

IN RE: ADOPTION OF ALAN P. (Termination Proceeding), Fulton County Branch, No. 61 of 1985 - OC

Involuntary Termination of Paternal Rights - Effect of Support Payments and Medical Coverage - No Contact with Child - Due Diligence

1. The mere contribution of support does not prevent termination of parental rights.

2. A mere statement of future intent to resume a relationship is ineffective against a continued course of neglect.

3. A parent must use due diligence in attempting to locate his child and this includes checking a phonebook or contacting other relatives.

4. Feelings of discomfort at visiting a child at the other parent's home is an insufficient excuse for not visiting a child.

James M. Schall, Esq., Counsel for Petitioners

DeWayne T. Newton, Esq., Counsel for Respondent

WALKER, J., February 26, 1986:

In early 1983, Harry P. and Linda S. (formerly Linda P.) divorced. Custody of Alan, their only child, was granted to Linda. From that time until April of 1985, Harry paid Linda $33 a week for support. Additionally, Alan was provided with medical insurance under Harry's work-related insurance plan. Linda remarried in May, 1984 to Eric S., and they have lived together with Alan as a family since that time.

The undisputed evidence reveals that Harry had absolutely no physical, written, or verbal contact with Alan for a period of at least one year prior to the hearing. There was considerable testimony (from Linda, her father, Eric, and both of Eric's parents) that Harry had not visited with Alan for almost two years. The fact that Alan could not identify Harry as his father at the hearing lends credibility to their statements.

In November of 1985, Eric and Linda filed a petition for involuntary termination of Harry's parental rights, as a prerequisite for adopting Alan.

The court must now determine if Harry's action (or inaction) constitutes any of the following: (a) evidence of a settled purpose to relinquish parental claims; (b) a refusal or failure to perform parental duties for over six months; or (c) a neglect or refusal causing the child to be without essential parental care, control, or subsistence. 23 Pa. C.S.A. §2511.

Under 23 Pa.C.S.A. §2511(a)(1), the court must examine whether the parent's conduct for the past six months evidences a settled purpose of relinquishing parental claims to the child. Alternatively, the court must determine whether the parent has refused or failed to perform parental duties for six months.

The requirement that such conduct last for at least six months is easily satisifed in the instant case since Harry by his own admission, had had no contact with Alan for at least one year. As stated earlier, there is strong evidence to suggest that Harry had no contact with Alan for a period of up to two years.

The next inquiry, then, is whether Harry's support payments and medical coverage for Alan negates an intent to relinquish or constitutes the performance of parental duties. Since Harry did not make support payments for more than six months prior to the hearing, they need not be considered. Even if they were taken into account, the mere contribution to support does not prevent termination. *In Re Folcarelli*, 19 D.&C.3d 407 (1981). Parental duties embrace not only the obligation to provide support, but also include a desire to see the child, to communicate with him, and to evidence his or her concern about the child's welfare. *Adoption of D.J.L.*, 64 D.&C.2d 295 (1974).

Harry's only contribution to his son's well-being for ten months prior to the hearing was to provide Alan with medical coverage. However, though Alan was a named insured under Harry's insurance, testimony elicited at the hearing revealed that Alan never actually received any benefits from the coverage. This may have been because Harry never inquired as to Alan's health or medical needs.

Other than paying support and medical coverage, Harry's only indication that he wished to retain parental rights is his challenge to the involuntary termination. The Pennsylvania Supreme Court has stated, however, that "Abandonment is not an ambulatory thing the legal effects of which a delinquent parent may dissipate at will by the expression of a desire for a return of the discarded child." *Davis Adoption Case*, 353 Pa. 579, 587, 46 A.2d 252, 256 (1976). This is only logical; if a mere challenge to the proceedings was sufficient to prevent termination, then the process of involuntary termination would become a non sequitur.

Even if Harry's actions do not evidence an intent to relinquish his parental claim, his rights over Alan may be terminated if he has caused Alan "to be without essential parental care, control, or subsistence necessary for his physical or mental well-being." 23 Pa. C.S.A. §2511(a)(2). This essential parental care has been defined as providing "care, control, love, protection, support, and subsistence" to the child. *Appeal of Diane B.*, 456 Pa. 529, 435, 321 A.2d 618, 621 (1974). Also, this parental obligation is a positive duty which requires an affirmative effort on the parent's part to exert himself to take a place of importance in the child's life. *In Re Adoption of J.S.M.*, 492 Pa. 313, 424 A.2d 878 (1981).

The only remote connection between Harry and his son, for one year prior to filing the petition, was the allowance of a portion of Harry's paycheck to be withheld for Alan's medical coverage. Their relationship was so tenuous that, at the hearing, Alan could not even identify Harry. It is clear from the evidence that Harry has not affirmatively expressed care, control, love, and protection for his son. Nor has Harry made any attempt to maintain a place of importance in Alan's life.

Counsel for Harry correctly points out that termination may not be ordered if there is a reasonable possibility that conditions causing the separation can be remedied. 23 Pa.C.S.A. §2511(a)(2). See *In Interest of C.M.E.*, 301 Pa. Super. 579, 448 A.2d 59 (1982). In his brief, counsel for Harry states that Harry intended to resume his relationship with Alan after the boy turned five years old. This argument, though inventive, is devoid of support from any evidence on record. A mere statement of future intent must fail when weighed against the continued course of neglect that Harry has indulged in.

> "Parental rights may not be preserved by complete indifference to the daily needs of a child or by merely waiting for some more suitable financial circumstances or convenient time for the performance of parental duties . . ." *Smith Adoption Case*, 412 Pa. 501, 505, 194 A.2d 919, 922 (1978).

In considering whether Harry's conduct constitutes an intent to abandon and/or a lack of essential parental care, the court must determine whether his actions can be reasonably explained. All circumstances must be considered when analyzing a parent's performance of parental obligations. However, a parent must use

all available resources to preserve the parental relationship and exercise reasonable firmness in declining to yield to all obstacles. *Adoption of S.H.*, 476 Pa. 608, 383 A.2d 529 (1978). Harry's proffered excuses for severing contact with Alan must be examined in light of this standard.

The reason for Harry's failure to contact Alan in any way for an extended period of time was, he explains, because he did not know Alan's address. Also, Harry stated that he would feel uncomfortable visiting Alan in Linda's home. The court will consider the merits of these excuses and dispose of them with the brevity that they deserve.

With regard to Harry's claim that he did not know Alan's address, the court finds that Harry did not exercise "due diligence" in attempting to locate Alan. Respondent in a similar case, *In Re Adoption of J.S.M., Jr.*, 492 Pa. 313, 424 A.2d 878 (1981), also attempted to justify his neglect by asserting that he did not know the custodial parent's new address. The court rejected this excuse since the custodial parent lived in the same general neighborhood as before and could have been located through due diligence. In the present case, "due diligence" would require that Harry at least look in the phone book, where Linda's address was listed. Failing that, he could have checked with his brother or Linda's father, both of whom were aware of Linda's whereabouts. Clearly, Harry did not utilize all "available resources".

Harry's other perceived obstacle was that he would feel uncomfortable visiting Alan at Linda's home. Again, in preserving the parental relationship, a parent must exercise reasonable firmness in declining to yield to all obstacles. *Adoption of S.H.*, 476 Pa. 608, 383 A.2d 529 (1978). Harry's refusal to exercise his at-will visitation rights because of subjective feelings of discomfort does not evidence the requisite resolve for maintaining the parental relationship. In any case, this excuse does not explain why Harry never bothered to even write or telephone Alan.

Lastly, the court must consider whether the custodial parent, Linda, unduly hindered Harry from exercising his visitation rights. This inquiry is necessary because

"... obstructive behavior on the part of the custodial parent aimed at thwarting the other parent's maintenance of the parental relationship . . will not provide a sound basis for the involuntary termination of parental rights." *In Re Adoption of B.D.S.*, 494 Pa. 171, 180, 431 A.2d 203, 208 (1981).

In that case, the custodial mother moved a number of times without telling the father of her whereabouts. When, after intense efforts, he located the mother, she refused to allow him any contact with their child. That case bears little or no resemblance to the facts before us.

Linda's alleged obstructive behavior was that she did not tell Alan about his natural father, Harry. In no way does this explain or justify Harry's refusal to visit or contact Alan for a period of six months to two years.

The only other evidence that could remotely by construed as obstructive behavior was Linda's statement elicited on cross-examination, that she did not know if she would have allowed Harry to visit Alan, had he attempted. This testimony, however, rests upon the hypothetical situation where Harry *might* have attempted to visit Alan. Since, in fact, Harry did not attempt to visit Alan, there is no evidence of the type of obstructive behavior that has been soundly condemned by the courts.

Though the court finds that the statutory criteria of 23 Pa. C.S.A. §2511(a)(1) and §2511(a)(2) have been met in the present case, they must be evaluated in light of the needs and welfare of the child, pursuant to 23 Pa.C.S.A §2511(b). Alan's court-appointed counsel testified that Alan is a bright, happy, and well-adjusted child whose socialization process with his second family is progressing extremely well. The court is confident that Alan's needs and welfare would best be served by terminating Harry's parental rights, thereby allowing Alan's emotional stabilization to continue without fear of unnecessary disruption from someone who has willingly removed himself from Alan's life.

Entering a decree of involuntary termination of parental rights is, of course, within the sound discretion of the court and it must be based on clear and convincing, competent evidence. *In Re Adoption of K.A.B.*, 317 Pa. Super. 223, 463 A.2d 1166 (1983). The

into the mortgagors hereinafter recited.

BEING the same which Philip A. Roth and Beverly R. Roth, husband and wife, by their deed dated June 5, 1981, and recorded in the office of the Recorder of Deeds of Franklin County, Pennsylvania, sold and conveyed unto C. Garry Hepworth and Rose D. Hepworth, husband and wife.

Together, also, with a right of way between Tracts 1 and 3 above, and Tract 2 above, more fully described and set forth in the Indenture of Rights of Way from *Gary G. Smith* and *Elizabeth N. Smith* to *C. Garry Hepworth* and *Rose D. Hepworth*, dated the 1st day of June, 1981, and recorded in the office of the Recorder of Deeds of Franklin County, Pennsylvania.

BEING sold as the property of C. Garry Hepworth and Rose D. Hepworth, husband and wife, Writ No. AD 1986-153.

SALE NO. 3

Writ No. AD 1986-202 Civil 1986
Judg. No. AD 1986-202 Civil 1986
The Richard Gill Company
vs.
Kenneth J. Winfield, Jr. and R. Jacqueline Winfield
Atty: Sheldon C. Jelin

ALL that certain lot, piece, or parcel of ground with the buildings and improvements thereon erected, situate, lying and being in the Township of St. Thomas, County of Franklin, and Commonwealth of Pennsylvania, bounded and described according to a survey made by Best-Angle Surveyors of Fort Loudon, Pennsylvania, dated October 12, 1980, as follows:

BEGINNING at an existing iron pin at lands of George Orth; thence along lands of Orth South 70 degrees West 116.82 feet to an existing locust stump; thence crossing Circle Drive South 62 degrees 30 minutes West 28.05 feet to a point at the southern edge of Circle Drive; thence crossing Circle Drive North 49 degrees West 236.28 feet to a point in the centerline of the old road bed; thence continuing with the centerline of the old road bed North 36 degrees 15 minutes West 61.71 feet to a point; thence due East 151.14 feet to a point in Circle Drive; thence along the centerline of Circle Drive, North 74 degrees East 186.45 feet to a point in Circle Drive; thence leaving Circle Drive South 5 degrees 15 minutes East 200.64 feet to an existing iron pin, the point of beginning. Having a street address of 9808 Circle Drive, Chambersburg, PA.

LEGAL NOTICES, cont.

BEING sold as the property of Kenneth J. Winfield, Jr. and R. Jacqueline Winfield, Writ No. AD 1986-202.

TERMS

As soon as the property is knocked down to a purchaser, 10% of the purchase price plus 2% Transfer Tax, or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.

The balance due shall be paid to the Sheriff by NOT LATER THAN Monday, October 20, 1986, at 4:00 P.M., E.S.T. Otherwise, all money previously paid will be forfeited and the property will be resold on Friday, October 24, 1986, at 1:00 P.M., E.S.T. in the Franklin County Courthouse, 3rd Floor, Jury Assembly Room, Chambersburg, Franklin County, Pennsylvania, at which time the full purchase price or all costs, whichever may be higher, shall be paid in full.

Raymond Z. Hussack
Sheriff
Franklin County, Chambersburg, PA

9-19, 9-26, 10-3

court finds that petitionery has satisfied this burden by clear and convincing evidence that Harry has refused or failed to perform his parental duties for a period in excess of six months. As such, a decree shall be entered terminating his parental rights over Alan.

ORDER OF COURT

February 26, 1986, the court terminates the parental rights of Harry P. with respect to the child, Alan P.

MILLER AND WIFE v. NICHOLS AND WIFE, Franklin County Branch, A.D. 1985 - 10

Ejectment - Placement of Mailbox - Roadway Easement

1. A public use easement for country roads is that of passage only.

2. A private mailbox is not an instrument of public use for purposes of a road easement.

3. The placement of defendant's mailbox on plaintiff's land does not benefit the public in general.

E. Franklin Martin, Esq., Counsel for Plaintiffs

Gregory L. Kiersz, Esq., Counsel for Defendants

WALKER, J., February 12, 1986:

Defendants, Nichols, bought a tract of land in Washington Township, Franklin County, in January of 1984. Subsequent to moving in, the defendants were informed by the local postmaster that mail would not be delivered to the north side of the road where their property is situated.

In September of 1984, without securing plaintiffs' permission, the defendants placed their mailbox on plaintiffs' land, in the right of way on the south side of the road. The defendants refused plaintiffs' request that the mailbox be removed and plaintiffs brought suit.