

*Seville v. Mills*

*Involuntary termination of parental rights under the Adoption Act, 23 Pa.C.S. section 2511.*

1. Petitioners seeking the involuntary termination of a parent's rights to a child must show by clear and convincing evidence both that the parent was estranged from the child for six months and has demonstrated a settled purpose or intent to relinquish a parental claim, or has failed or refused to perform parental duties.
2. The court must consider the parent's individual life situation and any explanation she offers for her failure to fulfill her obligations to her child.
3. The court should ascertain whether the parent utilized all resources at her disposal to maintain a place of importance in the child's life; parental duties cannot be deferred until a more convenient time, nor can a parent's passive reliance on her biological connection with the child preserve her parental rights.
4. After deciding that a parent's conduct warrants termination of parental rights, the court must consider whether termination will promote the child's developmental, physical and emotional welfare.
5. Where a parent showed no sustained interest in changing her lifestyle to establish a home environment conducive to raising her child, but rejected opportunities to obtain education and suitable employment and continued to engage in illegal activities and unwholesome associations which exposed the child to imperiling situations, termination of parental rights was warranted.
6. Where there were no visits, phone calls, messages, letters, cards, gifts or financial assistance from a parent to her child for a period of six months, and where the parent demonstrated a lack of perseverance and vigor in making herself a central figure in her child's life, the termination of her parental rights was warranted.
7. Any strain in the parent's relationship with her own mother who was caring for the child was an insufficient reason to remove herself completely from her child's life and to fail to nurture the tenuous parent-child bond formed during the child's infancy.
8. Where the child is closely bonded with his grandparents who have fulfilled his need for love, security and guidance on a daily basis and the mother shows no signs of altering her lifestyle to meet those needs, the child's well-being is served by bringing finality to the parental status of the parties.

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#### DECREE NISI

Herman, J., May 27, 1998:

#### INTRODUCTION

Mark and Judith Seville filed this petition on October 15, 1997 seeking the involuntary termination of the parental rights of Brandyn Mills and Troy Meredith. The child at issue is K. M. born December 18, 1991, the respondent's natural son. Judith Seville is K. M. 's maternal grandmother and Brandyn's mother. Mark Seville is Judith's husband and K. M. 's step grandfather. The court appointed Jill McCracken, Esquire guardian ad litem for K. M. Brandyn Mills filed an answer in opposition and Troy Meredith consented to the termination of his parental rights. A hearing was held on January 27 and March 16, 1998. Both sides were represented by counsel. Counsel and the guardian ad litem thereafter submitted briefs to the court. This matter is ready for decision.

#### THE LAW OF INVOLUNTARY TERMINATION

This petition is brought under section 2511(a)(1) of the Adoption Act.<sup>1</sup> That section provides: "The rights of a parent in regard to a child may be terminated after a petition filed on any of the following grounds: The parent by conduct continuing for a period of at least six months either has evidenced a settled purpose of relinquishing parental claim to the child or has refused or failed to perform parental duties." The petitioner must show by clear and convincing evidence both that the parent was estranged from the child for six months and has demonstrated a settled purpose or intent to relinquish a parental claim, or has failed or refused to perform parental duties. *Adoption of M.S. v. Wagner*, 664 A.2d 1370 (Pa.Super. 1995). After deciding that a parent's conduct warrants termination of parental rights, the court must then give primary consideration to whether termination will promote the child's developmental, physical and emotional needs and welfare. Section 2511(b); *In re Child M.*, 681 A.2d 793 (Pa.Super. 1996), appeal denied 686 A.2d 1307.

In deciding whether termination is appropriate, the court must consider the parent's individual life situation and any explanation she offers as to why she failed to fulfill her obligations for the six-month period. Specifically, the court must consider any practical barriers she faced in fulfilling those obligations and whether she demonstrated reasonable firmness in attempting to overcome those barriers. That information should then be examined in light of the totality of

<sup>1</sup>23 Pa.C.S.A. section 2511.

circumstances in the case. *In re K.C.W.*, 689 A.2d 294 (Pa.Super. 1997).

Key to this analysis is whether the parent has utilized all resources at her disposal and actively exerted herself to maintain a place of importance in the child's life by consistent communication and association with the child. Parental duties cannot be deferred until a more convenient time, nor can a parent's merely passive reliance on her biological connection with the child preserve her parental rights. *In Interest of Q.J.R.*, 664 A.2d 164 (Pa.Super. 1995); *In re Adoption of Sabrina*, 472 A.2d 624 (Pa.Super. 1984); *In re Adoption of R.W.G.*, 431 A.2d 274 (Pa. 1981).

The six-month period at the focus of the court's inquiry is that between April 10, 1997, allegedly Brandyn's last intentional visit with K. M. , and October 15, 1997, the date on which the Sevilles filed the petition for involuntary termination.

## DISCUSSION

*Issue One: Whether the evidence shows six months of estrangement and a settled purpose by Brandyn to relinquish her parental claims, or that she has refused or failed to perform parental duties.*

Judith and Mark Seville and Brandyn Mills were living in Germany when K. M. was born on December 18, 1991. Brandyn was 17 years old and unmarried. The Sevilles had been transferred to Germany by their employer Letterkenny Army Depot. Brandyn cared for K. M. while the Sevilles went to work.

Brandyn returned with K. M. to the United States in June 1992. The Sevilles returned in July 1992. Between that time and January 1993 the Sevilles lived at a hotel while their house was being prepared. K. M. and Brandyn lived during that time at the home of Judith's parents, Mr. and Mrs. Walter Holub. The Holubs are Brandyn's grandparents and K. M. 's great-grandparents. K. M. returned to live with the Sevilles once the house was ready but Brandyn refused to live with them.

Judith and Brandyn entered into a custody stipulation on February 26, 1993.<sup>2</sup> They agreed that Judith would have residential custody and to share legal custody. Brandyn was entitled to "open visitation." The stipulation further provided: "The parties agree that the custody arrangement described herein shall *cease* upon the occurrence of the following events and residential custody of the child shall revert to the mother immediately: 1) The mother obtains full-time employment with medical benefits; 2) The mother obtains an apartment with adequate facilities for the child and 3) The mother decides for herself to make the child a priority in her life." (emphasis in original).

The Sevilles and Holubs convinced Brandyn to attend Hagerstown Junior College in the fall of 1992. The Sevilles offered to pay her tuition and expenses including a car if she graduated. Brandyn lived in the Holub home and they babysat K. M. while she attended classes. Brandyn passed two of her classes but failed the rest because she did not take the final exams. She admitted she did not take the exams because she was working at a local massage parlor. She worked as an escort and prostitute until her arrest in September 1996.

Beginning in January 1994 when K. M. was two years old the Sevilles enrolled him in day care at Wilson College while they worked full time. K. M. attended day care until he started school in the fall of 1997. There was credible evidence presented that the Sevilles always brought him in and picked him up promptly and that he was well-groomed and happy upon arrival. The Sevilles gave Brandyn permission to pick K. M. up at the end of the day and she did so approximately twice. Other times she did not come as expected and the Sevilles had to pick him up.

K. M. has lived consistently with the Sevilles at their home in Chambersburg since January 1993. From that time until the present Brandyn has not maintained a stable residence. The Sevilles credibly testified that they often did not know where Brandyn was residing or when they would see her next. She lived for a while in a trailer with a male companion who had a criminal record. Sometime in 1996 she moved to Harrisburg with a female friend.

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<sup>2</sup>Troy Meredith was also a party to the stipulation. (Exhibit A attached to the petition).

Brandyn met one Corey Wilson in July 1996. In August of that year K. M. stayed with Brandyn and Wilson for a few weekends at the motel room which was their residence. Brandyn left K. M. alone with Wilson, a virtual stranger to K. M., while she worked at night. After Brandyn was arrested for prostitution in September 1996, the Seviles forbade Brandyn to take K. M. with her to the motel. They insisted she visit with K. M. only at either their home or that of her grandparents the Holubs. K. M. often enjoys staying overnight with Holubs on weekends and Brandyn visited him there a few times that fall. The Holubs credibly testified that Brandyn slept all day and stayed out at night.

Brandyn filed a criminal complaint against Corey Wilson for an incident which took place on December 24, 1996. Wilson was charged with various offenses including robbery, simple assault, indecent assault and terroristic threats. Brandyn brought these charges because Wilson threatened to kill her and blow up the Holub house with K. M. inside. He held a knife to Brandyn's throat and threatened to slice it. He tried to drive into the path of an oncoming vehicle while Brandyn was in his vehicle. Brandyn was pregnant with his child at the time. Brandyn also charged him with vandalizing her car in February of 1997. Both incidents occurred while Wilson was drinking. Brandyn later dropped the charges once she and Wilson reconciled in April of 1997.

The Seviles filed a complaint for custody on or about January 16, 1997. A temporary Order of Court was entered awarding them legal and physical custody of K. M. Brandyn was granted visitation to be exercised at the Seviles' home at mutually agreeable times. The Seviles and Brandyn attended a conciliation conference on February 20, 1997. Brandyn, appearing *pro se*, was unemployed, had no set residence and could not provide K. M. with medical insurance. She agreed to the continuation of the temporary Order.

After the entry of the January 16, 1997 Order, Brandyn visited K. M. at the Seville home on four occasions: March 5, March 8, April 9 and April 10, 1997. Judith urged her during those visits to abandon her life of prostitution and establish a stable lifestyle conducive to caring for K. M. Brandyn resented Judith's perspective and the discussions were heated. One of these discussions took place in K. M.'s presence. It was around this time that the Holubs told Brandyn

to leave their home because of her lifestyle. After she moved out the Holubs found marijuana and drug paraphernalia in her room. (Petitioners' exhibits #1-5). Brandyn stopped visiting K. M. and phoning the Seviles and the Holubs. Judith tried repeatedly during May and June to contact Brandyn by calling her beeper number which was the only method of contacting her in the event of an emergency with K. M. Brandyn admitted she was aware of Judith's pagings but nevertheless chose not to respond.

The Seviles have lived in the same house since at least January of 1997. They have a listed phone number. However, between April 10 and October 15, 1997, Brandyn sent K. M. no gifts nor did she telephone him. She has provided him with no financial assistance since at least January of 1997.

The only contact between Brandyn and K. M. in this period was one brief chance encounter on August 1, 1997. On that date Brandyn and Corey Wilson came to the Holub home to remove the remainder of her belongings because they were moving to a trailer with their new baby born July 2, 1997. Wilson admitted the Holubs had no advance knowledge Brandyn was coming that day. K. M. happened to be there but was merely polite to Brandyn because several months had passed since he last saw her. She promised him she would return the next day but did not do so.

*Issue Two: Whether Brandyn's failure to meet parental obligations is excused by her particular circumstances.*

Brandyn offers four explanations for her failure to maintain contact with K. M. during the six-month period: her strained relationship with Judith, her difficult second pregnancy, the Seviles' parental deficiencies, and her purported belief she was required to maintain a separate residence for six months as a condition of having contact with K. M.

Brandyn contended Judith physically and verbally abused her for several years. We agree their relationship has been strained but we reject Brandyn's perspective as to the cause of that strain. There was credible testimony Brandyn has a quick temper and is the initiator in family arguments. Brandyn's testimony about abuse was not credible.

Judith, her husband Mark and the Holubs have tried in vain for years to help Brandyn pursue a more stable and productive life. They offered her places to live and the opportunity to finish her education and obtain suitable employment. She did not avail herself of those opportunities but chose instead to lead an unsettled life entailing illegal activities and unwholesome associations. Her unwillingness to make K. M. 's needs her main priority frustrated Judith and contributed to occasional arguments.

Brandyn testified she was hospitalized in April of 1997 with pregnancy difficulties and was directed by her doctor to avoid any stress which might endanger her unborn baby. She allegedly stopped coming to the Chambersburg area to visit K. M. because she wanted to avoid confrontations with Judith. Such health concerns, even if legitimate, do not justify her sustained lack of involvement in K. M. 's life on a daily, weekly or even monthly basis. She participated in his life only when it was convenient for her to do so. Her priorities clearly lay elsewhere. Even her manner of testifying conveyed a similar lack of interest and commitment, nor did she have any real understanding as to what type of home environment is necessary to promote K. M. 's welfare.

Brandyn asserted the Seviles planned for years to alienate K. M. 's affections and deprive her of custody. In support she notes Mrs. Holub's testimony that Judith told her as early as August of 1997 of her intention to file this petition to terminate Brandyn's parental rights. Brandyn contends this evidence shows the Seviles and the Holubs thwarted her efforts to maintain contact with K. M. between August 1 and October 15, 1997. We disagree for two reasons. First, although Brandyn testified she tried to phone the Holubs during that time frame in order to check on K. M. , she did not leave any messages on their answering machine and made no other efforts to contact him.

Second, in light of all the evidence presented, Judith's stated intention in August of 1997 to pursue termination was completely understandable. Brandyn was in a relationship with Corey Wilson, a man with a drinking problem who had assaulted her and threatened to kill her, the Holubs and K. M. Brandyn refused to acknowledge the seriousness of these violent episodes on the witness stand and instead attempted to defend Wilson's conduct. She became pregnant with

this man's child but expressed no plans to marry him. Her employment remained questionable. In addition, she ignored Judith's repeated attempts to contact her by beeper, disregarding her responsibility to be available to K. M. in the event he experienced health problems or had other needs. Brandyn's contact with K. M. on August 1 was purely accidental. She did not come to the Holub residence to see the child but merely to retrieve some personal items in preparation for a move. The Seviles received no word from her for more than two months thereafter. In light of the foregoing, her allegations of thwarted access were not credible.

Brandyn tried to show the Seviles have a drinking problem and an unstable marriage. There was no credible evidence to support these allegations nor that she ever harbored any doubts about the Seviles' ability to provide for K. M. 's needs. She never tried to limit their caretaking of K. M. by assuming more of those duties herself or by pursuing additional custody rights through the court. Her recent expressions of concern about the Seviles' parenting abilities cannot be accepted as genuine.

Finally, Brandyn testified she failed to maintain contact with K. M. because of erroneous advice she received from two attorneys she consulted around the time of the conciliation in early 1997. The attorneys allegedly told her she had no chance of being granted unsupervised visitation in her own residence until she had such a residence and health insurance for at least six months. Even if we accept her testimony, she presented no evidence that she tried to find appropriate housing or employment with health benefits. Furthermore, such legal advice should not have discouraged her from maintaining a minimum level of contact with her child. *In re Adoption of Baby Boy J.*, 512 A.2d 689 (Pa. Super. 1986) (advice of mother's attorney who told father not to visit child until end of mother's five-year probation for child abuse did not justify father's lack of any affirmative effort to maintain a father-child relationship). She made no effort whatsoever to contact her child between April 10 and October 15, 1997. There were no visits, phone calls, messages, letters, cards, gifts or financial assistance. Her lack of perseverance and vigor in making herself a central figure in K. M. 's life was not justified.

*Issue Three: Whether termination of Brandyn's parental rights will promote K. M. 's welfare.*

Licensed clinical psychologist Dr. James W. Nutter testified at the hearing. He met with the Sevilles and K. M. for approximately two hours and prepared an evaluation in November 1997. He found K. M. to be a happy, well-adjusted child who displayed no signs of anxiety, fear or hesitation about his relationship with the Sevilles. He interacted with the Sevilles in a relaxed, humorous and affectionate manner. This positive relationship with the Sevilles was corroborated by the director of the Wilson College child care center who testified that K. M. always conveyed a sense of excitement about the Sevilles and never appeared distressed about their care of him.

K. M. knows Brandyn is his mother and has some affection for her. This affection is all that remains of an attachment formed in his very early years which Brandyn later failed to nurture. Notably, there was credible testimony Brandyn has disappointed K. M. on several occasions by failing to visit him as promised. Their current bond is similar to that between siblings.

K. M. 's closer bond is undoubtedly with the Sevilles. They are the ones who have acted as his true parents, fulfilling his need for love, security and guidance on a daily basis. The record indicates K. M. is confused about having "two moms." He is entitled to some resolution on this issue. Brandyn has not made K. M. a priority in her life for many years and there is no indication this will change in the future given her lifestyle, personal associations and the burden of raising a second child.

The Sevilles have proven by clear and convincing evidence that termination of Brandyn Mills' parental rights is warranted under section 2511 of the Adoption Act. An appropriate decree nisi will be entered.

#### **DECREE NISI**

**NOW**, this 27th Day of May, 1998, the petition filed by Mark C. Seville and Judith L. Seville for the involuntary termination of the parental rights of Brandyn Mills to the minor child K. M. is hereby **GRANTED**. By this decree the court also confirms the consent of Troy Lee Meredith to the termination of his parental rights to K. M.

Mark C. Seville and Judith L. Seville are hereby authorized to proceed with the adoption of K. M. without further notification to Brandyn Mills and Troy Lee Meredith.

**IT IS FURTHER ORDERED** that the cost of legal representation of K. M. by Jill A. McCracken, Esquire be paid by the county immediately upon requisition by said counsel on the county. The parties will reimburse the county of Franklin equally for one half the value of the services of said guardian ad litem within **fourteen (14) days** of receipt of a bill for such services.

**IT IS FURTHER ORDERED** that the Clerk of Court is directed to notify the attorneys of record of the filing of this adjudication pursuant to Pa.R.C.P. 1517 and, if post-trial motions are not filed within **ten (10) days** after such notice in accordance with Pa.R.C.P. 227.1, to enter the decree nisi, on praecipe, as the final decree in accordance with Pa.R.C.P. 227.4.