

G.S.H. v. H.B.F.

G.S.H. and M.A.H., his wife, Petitioners, v. H.B.F, II, Respondent  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch  
Orphan's Court Division, No. 14-2002, Vol. 4, Page 44

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

1. The court can terminate parental rights if the petitioner shows by clear and convincing evidence both that the parent was estranged from the child for six months before the petition was filed and has shown a settled intention to relinquish parental claims, or has failed to perform parental duties; if the foregoing is proven, the court then determines whether termination is in the child's developmental, physical and emotional interest.
2. The court must decide whether the parent's particular life situation created obstacles to parenting and whether he or she used reasonable firmness in attempting to overcome those obstacles in order to maintain a place of importance in the child's life; parental duties cannot be deferred until a more convenient time, nor can the mere biological connection preserve an unmotivated parent's rights.
3. Although mother was less than completely cooperative in allowing father unimpeded access to their young daughter, father remained excessively passive in enforcing his rights by not paying support despite knowing the child was his, and by taking no legal action for the five years before the petition was filed.
4. Father displayed only a vague, general interest in having a relationship with his daughter; his over-reliance on his own mother to maintain the connection to the child showed he lacked a genuine passion and commitment to forming a meaningful father-daughter relationship.

Appearances:

Anne M. Shepard, Esq., *Counsel for Petitioners*

Mahesh K. Rao, Esq., *Counsel for Respondent*

Julie G. Dorsett, Esq., *Guardian Ad Litem*

OPINION

Herman, J., September 30, 2002

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Introduction

Before the court is a petition filed by mother and stepfather to involuntarily terminate the parental rights of father to M.L.H. The court appointed Julie G. Dorsett, Esquire, guardian ad litem for the child. The court held a hearing on July 29, 2002 at which both parties were represented by counsel. The guardian also participated in the hearing. The notes of testimony were transcribed and the parties submitted written argument. This matter is ready for decision.

The Law of Involuntary Termination

This petition was brought under section 2511(a)(1) of the Adoption Act.[1] That section provides that a parent's rights to a child may be terminated on the following grounds: "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." 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. In re Adoption of M.S., 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 Adoption of Godzak, 719 A.2d 365 (Pa.Super. 1998). The court may not separately consider the best interests of the child until it first finds that the petitioner has satisfied the statutory requirements for termination under subsection (a). Adoption of Charles E.D.M., 708 A.2d 88 (Pa. 1998).

In deciding whether termination is appropriate, the court must consider the parent's individual life situation and any explanation he offers as to why he failed to fulfill his obligations for the six-month period. Specifically, the court must consider any practical barriers he faced in fulfilling those obligations and whether he demonstrated reasonable firmness in attempting to overcome those barriers. In re E.S.M., 622 A.2d 388 (Pa.Super. 1993). That information should then be examined in light of the totality of circumstances in the case. In re K.C.W., 689 A.2d 294 (Pa.Super. 1997).

A custodial parent who actively prevents the noncustodial parent from having a relationship with the child may not point to the noncustodial parent's lack of contact as grounds for termination. However, such obstruction is a factor which the court must consider in deciding whether a noncustodial parent has shown a settled purpose to relinquish parental rights. In re Adoption of M.S., supra. Key to this analysis is whether the parent has utilized all resources at his disposal and actively exerted himself 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 his biological connection with the child preserve his parental rights. In re Adoption of L.D.S., 665 A.2d 840 (Pa.Super. 1995); In re Adoption of R.W.G., 431 A.2d 274 (Pa. 1998).

#### Factual Findings

M.L.H. was born on November 20, 1997, making her 5½ years old at the time of the hearing. Mother and father were never married, and M.L.H. has never lived with father. After several reconciliations and separations, the relationship between mother and father finally ended in 1997 when mother was pregnant with M.L.H. The child has lived with mother since birth and with mother and stepfather since January of 1999. Father and mother have known each other's addresses (both in Franklin County) since M.L.H.'s birth.

Mother asked father shortly before M.L.H.'s birth to give up his rights to the child and became angry when he refused. Mother then did not tell father about M.L.H.'s birth and did not name him (or any man) on the birth certificate. As a result, the child bears her mother's maiden name. The paternal grandmother learned of the birth on her own and told father. Once father learned of the birth, he purchased baby clothes for M.L.H. and brought them to the home of mother's sister. Mother discarded the clothes in the trash.

Mother refused grandmother's request to see the baby for approximately one month. Mother then began allowing grandmother to keep the child at grandmother's home overnight on the condition that father not be there at the same time. At one point grandmother suggested to mother that father be allowed to see M.L.H. Thereafter mother would not allow grandmother to have the child overnight. Grandmother has nevertheless maintained frequent and regular contact with M.L.H. through the present time. She sometimes shows father photographs of M.L.H. and keeps him abreast of her activities and welfare.

Father has sent no cards or gifts directly to M.L.H. at mother's home since sending the baby clothes because he suspects mother will simply throw such items away if she knows they come from him. Instead he has given grandmother gifts which she then passes along to the child. Father has done this within the past six months. Mother has not sought financial support for M.L.H. from father and he has never paid support even though he has always known M.L.H. is his child. He did not believe he was obligated to pay because he was not named on the birth certificate and was not court-ordered to do so. Father now has offered to pay support voluntarily if his rights are not terminated.

Also residing in mother's household is D.F., born April 20, 1994. D.F. is the older sister of M.L.H, also the child of mother and father. D.F. bears father's last name and knows that she is his daughter. An Order of Court has been in place since 1996 giving him partial physical custody of D.F. Father pays mother

support for D.F. Mother testified that father once took D.F. without telling her where the child was and she was afraid similar problems would occur if she identified father on M.L.H.'s birth certificate.

On those occasional instances when father expressed an interest in having more contact with M.L.H., mother would respond by restricting his access to D.F. When the parties exchanged custody of D.F., mother would cover M.L.H.'s face with a blanket and leave quickly so as to minimize father's contact with M.L.H. Father testified that he did not press his desire for partial custody or visitation of M.L.H. for fear that mother would continue to retaliate by denying him access to D.F. Father adopted a low-key approach to enforcing his rights to M.L.H. in the hopes that mother's attitude on the subject would eventually soften. Father eventually stopped asking for contact because he "just got tired of fighting." (N.T. Proceedings of Involuntary Termination of Parental Rights, July 29, 2002, p. 51).

Other than giving M.L.H. gifts through grandmother, father has never initiated conversations with M.L.H. when he comes to mother's home to pick up D.F. for weekend visits. Consequently M.L.H. knows him distantly and only as her sister's father. The first time father made an effort to speak to M.L.H. directly occurred after this petition was filed and served on him.

Mother admitted that if father had sought custodial or other contact with M.L.H. any time after the child was three years old, including the six-month statutory period, she would have refused such contact because she believed that father had already had ample opportunity to follow through with his requests if he'd been genuinely interested. Despite mother's uncooperative attitude, there was no evidence that father even made such a request during the six-month period before this petition was filed.

Between M.L.H.'s birth in November 1997 and mid-1999, father believed that he could not enforce his custody rights because he was not named on the birth certificate. He also mistakenly believed that paternity testing was an expensive proposition. Father did not reach these conclusions based on incorrect information or advice from legal counsel. Instead, they were assumptions he made on his own and he did not make any inquiry to verify his beliefs. Father first learned that these beliefs were incorrect in mid-1999 at a support conference concerning D.F. Father through his private counsel at the time expressed an interest in having partial custody of M.L.H. Mother strongly objected because the child was already more than 2½ years old and had no emotional attachment to him.

Father testified that he wanted to file an action to secure his custody rights to M.L.H. soon after the 1999 conference but did not then have sufficient funds to do so, and was told by a local legal services agency that it did not file custody actions. He took no steps in the following three years toward obtaining counsel. Only after being served with the petition for termination in May of 2002 did he again seek (and this time, obtain) representation with a legal services agency in order to respond to the petition. Grandmother has suggested to father over the past five years that he should pursue his rights to M.L.H. more aggressively. She expressed disappointment to the court at her son's lack of action on the matter.

Father has worked as a self-employed floor installer for the past three years. His income is neither large nor dependable and he supports two other children in addition to D.F. Nevertheless there is no evidence that he even tried during the past five years to set aside even a small amount of money to retain counsel for the purpose of pursuing his rights to M.L.H. He also recently made a discretionary purchase of a new vehicle under a payment plan of \$300 per month.

As noted by the guardian ad litem, M.L.H. is closely bonded to her stepfather with whom she enjoys a warm and affectionate relationship. Stepfather has provided her with love, guidance, and financial support since his marriage to mother, and M.L.H. clearly views him as her father. M.L.H. recently started questioning why she and D.F. (appear to) have different fathers. M.L.H. will undoubtedly learn some day, either through father, mother or grandmother, that father and not stepfather is her biological father. The future impact of such a discovery on M.L.H. cannot be known with certainty.

### Discussion

#### **I.**

We must first consider whether father has been estranged from M.L.H. for six months and has demonstrated a settled purpose to relinquish his parental claims, or has refused or failed to perform parental duties. We must also ascertain whether father's failure to fulfill his parental duties is excused by his particular circumstances.

There is no question that father has failed to perform parental duties and has been estranged from M.L.H. for well in excess of six months. He has provided the child with no love, guidance, discipline or emotional support whatsoever since she was born, and barely even speaks to her when he comes to mother's home to retrieve D.F. on weekends. He did show some interest in M.L.H. after her birth by sending mother the baby clothes and by occasionally funneling gifts through grandmother. He never

voluntarily contributed to her support, however, and this is an important factor to consider insofar as he never had any doubts that she is his daughter. In re Adoption of C.M.W., 603 A.2d 622 (Pa.Super. 1992).

Father argues that the petitioners failed to prove he has demonstrated a settled purpose to relinquish his parental claims insofar as certain obstacles to parenting were placed in his path. He identifies those obstacles as mother's uncooperative stance, his own erroneous beliefs about his parental rights, his financial limitations, and a reluctance to disrupt the child's relationship with stepfather. After carefully considering all the evidence, we disagree that any of these circumstances presented anything close to an unsurmountable obstacle to father's ability to assert his parental rights.

There was some evidence that mother discouraged father from forming a parent-child bond with M.L.H. She asked him to give up his parental rights before the child was born, did not name him on the birth certificate, and discarded the baby clothes he purchased. She would not allow grandmother to keep the child at her home overnight if father was going to be there. She responded to father's occasional requests for more contact with M.L.H. by making it harder for him to exercise his rights to D.F. Once M.L.H. reached the age of 2½, mother was reluctant to allow father to have partial custody because he had not shown a genuine, concerted desire to participate in the child's life up to that point. Father hoped that taking a non-confrontational approach would eventually soften mother's position on the subject.

While we do not condone mother's ungenerous attitude and behavior toward father, the key question is whether she erected a substantial barrier to his establishing a parent-child bond with M.L.H. Father made only one attempt to directly provide for the child when he purchased the baby clothes. He did not pay support despite knowing from the beginning that she was his child. He allowed others, including stepfather, to supply M.L.H. with all the necessities of life, including love and protection. He made no real effort to interact with M.L.H. when he saw her during regular custody exchanges of D.F. His desire to avoid all conflict or even unpleasantness with mother clearly took priority in his mind over exerting the energy necessary to play a role in this child's life. When mother's resistance did not soften, father did not alter his approach but instead simply capitulated on the whole matter. Indeed, his entire approach is best described as extremely passive. Grandmother has provided the only connection with M.L.H. from the start, and we firmly believe that without her prompting, father would not be responding to this petition now. His most recent efforts to speak to M.L.H. since being served with this petition are both untimely and insincere, or "too little, too late." Matter of Luis R., 635 A.2d 170 (Pa.Super. 1993). He displayed a settled purpose to relinquish his parental rights by continuously neglecting to provide M.L.H. with essential care, nurturing and subsistence, and by not making her a priority in his life during the 5½ years since her birth. Parenting by proxy, or remaining a mere spectator in a child's life, is insufficient to preserve parental rights. Mother's uncooperative stance was minor compared with father's lack of reasonable firmness and resolve.

This reasoning applies with equal force to father's misunderstanding about his legal rights. He believed, based on his own assumptions and not erroneous advice from counsel or anyone else, that his absence from the birth certificate precluded him from pursuing custody rights to M.L.H. He also concluded, without any basis, that paternity testing was beyond his financial reach. He made no attempt whatsoever to find out whether his assumptions were correct. Even after learning at the 1999 support conference that his assumptions were wrong, he again took no action in the ensuing three years to bring him any closer to exercising partial custody of his daughter.

We recognize that father does not have unlimited financial resources. He has other dependents to support, and his income is neither large nor dependable. However, he has once before managed to muster enough funds to retain counsel for the purpose of litigating support and custody issues with regard to D.F. He recently acquired what appeared to be a non-essential vehicle at the rate of \$300 per month. Surely some funds could have been dedicated to pursuing his parental rights to M.L.H. if that had truly been a priority in his mind.

Another reason father offers for his delay in asserting his rights was his reluctance to confuse M.L.H. about who her father really is. He knew that M.L.H. has been cared for by stepfather since early 1999 when she was two years old and that her bond with him is that of a child to her father. While at first glance this approach seems reasonable and sensitive, it ultimately fails to give father a convincing excuse for taking no steps toward introducing himself into his daughter's life. The circumstances show that father was simply reluctant to make a persistent effort and disturb the status quo.

The guardian ad litem expressed some hesitation in recommending termination of father's rights because she was not completely convinced that father had demonstrated a settled intention to relinquish those rights. She noted that father has sent gifts to M.L.H. through his own mother over the years and has remained somewhat interested in her welfare. However, the guardian ad litem was also troubled by father's passivity and lack of persistence over a five-year period.

We find that the petitioners have proven by clear and convincing evidence that father has failed to perform

his parental obligations for well in excess of the statutory period and that his failure is not excused by his particular circumstances.

## **II.**

We must next decide whether termination of father's parental rights will promote M.L.H.'s welfare. According to the evidence, stepfather has fulfilled all of M.L.H.'s physical and emotional needs since his marriage to mother in early 1999. He has given her the love, guidance, protection and support which a father should provide to his child and has done this consistently since she was two years old. As a result, M.L.H. is a healthy, happy child with a strong attachment to her stepfather whom she sees as her father in every respect. The guardian ad litem also noted M.L.H.'s warm attachment to stepfather.

Father proposes that he be gradually introduced into M.L.H.'s life as her father so as to give her time to shift her bonding to him. We acknowledge that M.L.H. has begun to question why she and D.F. have different fathers, at least to her understanding at this point. M.L.H. and D.F. live in the same household and we have no doubt that sooner or later M.L.H. will learn, either from father or from grandmother, who her biological father actually is, and how grandmother fits into the family structure. Nevertheless, we firmly believe that if we deny the petition for termination, father will revert to his passive, half-hearted approach to parenting, once again relying on his own mother to generate the energy necessary to maintain contact with M.L.H. We detect in his past actions and present demeanor no deep emotional commitment to M.L.H. and this does not inspire the court's confidence as to the future of the father-daughter relationship. Father simply has not shown that he is willing to provide M.L.H. with the consistent, dependable parenting necessary for her long-term well-being. We find that the petitioners have proven by clear and convincing evidence that terminating father's parental rights and allowing stepfather to adopt M.L.H. will promote her best welfare.

### ORDER OF COURT

Now this 30th day of September 2002, the court hereby grants the petition filed by mother and stepfather for the involuntary termination of the parental rights of father to the minor child M.L.H. The rights and duties of H.B.F., II, the natural father of M.L.H., born November 20, 1997 are hereby terminated. Custody of M.L.H. is awarded to G.S.H. and M.A.H., his wife. Petitioners are hereby authorized to proceed with the adoption of M.L.H. without further notification to father.

It is further ordered that the cost of legal representation of M.L.H. by Julie G. Dorsett, Esquire, be paid by the petitioners no later than thirty (30) days from receipt of her bill for services.

It is further ordered that the Clerk of Courts is directed to notify the attorneys of record of the filing of this adjudication pursuant to Pa.R.C.P. 1517. H.B.F., II, shall have ten (10) days from the date of this Decree Nisi to file exceptions hereto pursuant to Pennsylvania Rules of Civil Procedure 227.1. If post-trial motions are not filed within ten (10) days after such notice in accordance with Pa.R.C.P. 227.1, the Clerk of Courts is directed to enter the decree nisi, on praecipe, as the final decree in accordance with Pa.R.C.P. 227.4.

H.B.F., II, is hereby advised, pursuant to 23 Pa.C.S.A. § 2511(c), of his right to place personal information on file with the Court and with the Department of Health to disclose information contained in M.A.H.'s original Certificate of Birth or any other identifying or non-identifying information pertaining to the child at any time after the child obtains the age of eighteen (18) or, if under the age of eighteen (18), to her adoptive parent to legal guardians.