

IN RE: ADOPTION OF E.M.T., Born January 21, 2008
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Fulton County Branch
Orphans' Court Division, Adoption Docket No. 11-2010-OC

Infants; Dependent, Neglected, and Delinquent Children; Subjects and Grounds; Abandonment, Desertion, Neglect, or Nonsupport Forfeiting Parent's Rights.

1. A party seeking the termination of parental rights must establish by clear and convincing evidence that grounds exist under the Adoption Act to support the permanent severance of such reciprocal duties of parent and child. 23 Pa. C.S.A. §2511 (a), (b).
2. The analysis contains two inquiries. First, grounds must be established under 23 Pa. C.S.A. §2511(a), the focus being the conduct of the parent, and whether such conduct justifies the termination of parental rights. Thereafter, the Court must conduct the analysis required under 2511(b), considering whether termination would best serve the needs and welfare of the child.
3. Under Section 2511(a)(1), the conduct of a parent must reveal a settled intent to relinquish parental claim to the child or a refusal or failure to perform parental duties for at least six (6) months prior to the filing of the termination petition. Once such intent to relinquish or a refusal or failure to perform duties has been shown, the Court must consider a parent's explanation for their conduct, and take into account the post-abandonment contact between parent and child.
4. The requirements of Section 2511(a)(6) are satisfied where: (1) the parent knows or has reason to know of the birth of a newborn child; (2) the father does not reside with the child; (3) has not married the other parent; (4) for a period of four months prior to filing the petition for termination, has failed to make reasonable efforts to maintain substantial and continuing contact with the child; and (5) for the same period has failed to provide substantial financial support for the child.
5. In conducting the second part of the analysis under 2511(b), the Court must discern the nature and status of the parent-child bond, and consider the effect upon the child of the severance of such ties. If a parent-child bond exists, the Court must consider whether termination would destroy something necessary and beneficial.
6. Parental duty is a positive, affirmative duty, requiring action and sincere, genuine effort to obtain and maintain a place in the child's life, utilizing all available resources.
7. The Superior Court has rejected the argument no performance of parental duties is required prior to a paternity test, finding that to relieve all fathers of their parental duties until parentage is dispositively confirmed is inconsistent with the policies of this Commonwealth.
8. Though there may indeed be cases where receipt of a paternity test result is the earliest time a father could be expected to assume parental duty, here the quantum of knowledge possessed by T.H.B. about the Child necessitated action far, far earlier.
9. Under 2511(a)(1), natural father's inaction in the face of uncertainty as to whether he was the child's father is inconsistent with the retention of his parental rights, the duty to assert his parental rights not being contingent upon a DNA test confirming paternity.
10. Under Section 2511(a)(6), though he disputes the conclusion, it is clear to the Court that T.H.B. had reason to know of the Child's birth, admitting he was sexually involved with the Child's Mother, did not use protection, knows conception is more likely with unprotected sex, and is aware of the gestational period for a human child. He further admits to knowing

about the pregnancy and the birth, and while maintaining he harbored "confusion" over E.M.T.'s parentage, acknowledges he did nothing affirmatively to resolve his confusion.

Appearances:

Abigail J.W. Salawage, Esquire, *Counsel for Petitioners*

Ann M. Rotz, Esquire, *Counsel for the Natural Mother*

Michael J. Connor, Esquire, *Counsel for the Natural Father*

M. Teri Hall Stiltner, Esquire, *Guardian Ad Litem for the Child*

DECREE

Van Horn, J., December 8, 2010

December 8, 2010, the above-captioned matter having come before the Court for private hearing on October 13, 2010, at 11:00 a.m.; and it appearing to the Court that the facts set forth in the petition are true and correct, and further that service of notice of the foregoing private hearing, together with a copy of the petitions for involuntary termination of parental rights, has been made upon L.A.S., Natural Mother; Ann M. Rotz, Esquire, Attorney for the Natural Mother; T.H.B., Natural Father; Michael Connor, Esquire, Attorney for the Natural Father; and M. Teri Hall Stiltner, Esquire, Guardian Ad Litem for the Child, in the manner required by this Court, and as evidenced by the Affidavit of Service filed in this matter by Abigail Salawage, Esquire, Attorney for the Petitioners K.P.S. and A.M.S.; the Court makes the following findings of fact and conclusions of law:

Findings of Facts

1. Petitioners, A.M.S., Jr. and K.P.S., have the care and custody of their biological granddaughter, the minor child E.M.T., born January 21, 2008, in Franklin County, Pennsylvania. E.M.T. was born to L.A.S. and T.H.B.
2. E.M.T. is a Bi-racial female child who is nearly three (3) years old, having been born on January 21, 2008, in Franklin County, Pennsylvania. Her religious affiliation is yet undetermined.
3. L.A.S., the natural mother, daughter of A.M.S. and K.P.S., has an address of 72 South Main Street, Apartment 4, Chambersburg, Pennsylvania 17201; she is twenty five (25) years of age, having been born November 20, 1985; her race is Caucasian; she was unmarried at the time of the birth of the child and during the year prior thereto; and her religious affiliation is none.
4. The natural father, T.H.B., has a current address of 127 N. Main Street, Chambersburg, Pennsylvania 17201; he is forty five (45) years of age, having been born November 29, 1965; his racial background is African American; he is not currently married, and was not married at the time of the child's birth nor during the year prior thereto; his religious affiliation is unknown.
5. L.A.S. executed a consent to the adoption of E.M.T., which has not been revoked. L.A.S. confirmed her consent to the termination of her parental rights at hearing, pursuant to 23 Pa. C.S.A. §2504.
6. The legal grounds for the involuntary termination of the parental rights of T.H.B. are as follows:
 - i. 23 Pa. C.S.A. §2511 (a)(1) – 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.
 - ii. 23 Pa. C.S.A. §2511 (a)(6) – In the case of a newborn child, the parent knows or has reason to know of the child's birth, does not reside with the child, has not married the child's other parent, has failed for a period of four months immediately preceding the filing of the petition to make reasonable efforts to maintain substantial and continuing contact with the child and has failed during the same four-month period to provide substantial financial support for the child.

7. At the time of the child's conception, L.A.S. was sexually involved with a man named T.T., as well as with T.H.B., and other unknown males. Around the time of conception, L.A.S. resided with T.H.B. for a period of time, and then left his home to reside with T.T.
8. At some time during the first or second trimester of pregnancy, L.A.S. informed both T.T. and T.H.B. of the impending birth and their possible parentage.
9. When E.M.T. was born, T.T. accompanied L.A.S. to the hospital, thereafter moving with her into her parents' home with the Child. T.T. resided in the natural mother's family for six (6) weeks, during which time he fought constantly with L.A.S. over the parentage of the Child, finally moving back to Chambersburg.
10. When the Child was approximately two (2) months old, T.T. obtained the results of a DNA blood test taken shortly after E.M.T.'s birth, the results indicating he was not her biological father.
11. L.A.S. resided with her parents and the Child for twelve (12) weeks following the birth, assisting her mother, K.P.S., in the care of the Child. After this period, L.A.S. relocated to Chambersburg for the purpose of being with T.T., leaving the Child in her parents' home.
12. Since L.A.S. removed herself from her parents' home, A.M.S. and K.P.S. have provided for all the Child's physical needs, as well as giving her love, comfort, security, and affection. L.A.S. has provided neither nurturance nor economic support to E.M.T.
13. L.A.S. consents to the termination of her parental rights, and supports the adoption of the Child by her parents, A.M.S. and K.P.S. She acknowledges she has never been the primary caretaker of E.M.T., and that no parent-child bond exists between them.
14. At some time soon after T.T. discovered he was not the Child's biological father, he and L.A.S. were engaged in a physical altercation at the home of T.H.B. The altercation was a result of, and centered upon, the recent DNA test confirming T.T. was not E.M.T.'s parent. T.H.B. was present for the altercation, removing T.T. and L.A.S. from his home after the two became violent.
15. When the Child was between two (2) and four (4) months of age, L.A.S. met T.H.B. on the street by the public library in Chambersburg. At that time, she again informed T.H.B. he could be E.M.T.'s biological parent, and should obtain a DNA test. L.A.S. further told T.H.B. the child remained in the home of her parents, and offered to provide their telephone number and address. T.H.B. declined the information.
16. While the Child was between the age of four (4) months and two (2) years, L.A.S. occasionally met T.H.B. on the street in Chambersburg. At times, he would ignore her and the two would pass without speaking. Other times, one would approach the other, L.A.S. occasionally offering T.H.B. contact information for her parents and the child, which was always declined.
17. Approximately six (6) months prior to hearing, L.A.S. encountered T.H.B. in Chambersburg, and asked if he wished to have a relationship with the Child, directing him to contact A.M.S. and K.P.S. T.H.B. declined.
18. L.A.S.'s sister, M.S., is also "acquainted" with T.H.B., being involved in a sexual relationship with him in the past, and having lived in his home with her sister. M.S. sees T.H.B. occasionally in Chambersburg. T.H.B. is aware M.S. is L.A.S.'s sister, that the two share parentage, and that M.S. has the contact information for the Child. He has never requested such information from her, despite this awareness.
19. At the Child's birth, A.M.S. and K.P.S. resided in Burnt Cabins, Fulton County, Pennsylvania. When the Child was approximately two (2) years old, they relocated to Hustontown, Fulton County, Pennsylvania, completing a change of address form with the post office.
20. Prior to the filing of the Petition for Involuntary Termination of Parental Rights, T.H.B. has never called the Child, sent her gifts or letters, visited her, provided her financial support, or emotional nurturance. T.H.B. himself has never contacted any of L.A.S.'s family regarding the Child. A.M.S. and K.P.S. never had any such contact from a source on T.H.B.'s behalf regarding the Child.
21. On April 22, 2010, A.M.S. and K.P.S. petitioned to terminate the parental rights of their daughter and an "unknown father," further filing a petition for the appointment of counsel for the unknown parent. Though A.M.S. and K.P.S. knew T.H.B. was one of several possible fathers of the Child, they did not reveal this possibility to the Court in their Petition.

22. Appointed counsel diligently investigated the circumstances surrounding the Child's conception, discovering the possible paternity of T.H.B. Counsel moved for paternity testing, Ordered by the Court August 12, 2010. The testing confirmed T.H.B. was indeed the biological father of E.M.T.

23. Since discovering his paternity, T.H.B. maintains he has wished to be a part of E.M.T.'s life. However, he has not called A.M.S. and K.P.S. to request any visitation. T.H.B. directed his attorney submit a request to the Petitioners' attorney for visitation, to which he received no response. T.H.B. took no further action to arrange informally for contact with the Child.

24. Though T.H.B. inquired whether Court appointed counsel would file a custody action, when he was told the appointment was solely for the purpose of the termination proceedings, he made no effort to obtain custody counsel. T.H.B. was provided contact information for Mid Penn Legal Services by Court appointed counsel, but did not call the office to see if he was eligible for free legal services.

25. T.H.B. testified that since learning of his paternity, he has assumed the Court would require him to complete parenting classes. However he testified he has not enrolled in classes, and has not located a provider, despite his belief such training would be required prior to contact with the Child.

26. A.M.S. and K.P.S. have provided economically, physically, and emotionally for E.M.T. The couple provides all necessary medical and daily care for the child, support her, and love her. E.M.T. refers to K.P.S. and A.M.S. as "mom" and "dad" and has a rich relationship with the rest of her extended family. Though the Child is confused about her parentage, calling her aunt "grandma" and her soon to be uncle "grandpa" to emulate the relationships possessed by her cousins with K.P.S., she is clearly bonded to the two and views them as her parents.

27. No parental bond exists between E.M.T. and her natural mother, the Child believing L.A.S. to be her sister. No parental bond exists between E.M.T. and her natural Father, the Child having never met him, spoken to him via telephone, seen his picture, or been told anything about him.

Discussion

The instant matter requires the Court determine whether upon the birth of a child he suspects may be his biological issue, a man has a duty to act to ascertain the child's parentage, and acquire a place in the child's life, even if he is not certain. Here, the Court it is satisfied T.H.B. possessed sufficient information regarding the birth of E.M.T. that his failure to act merits termination of his parental rights under the statute. Involved in an ongoing sexual relationship with the Child's Mother, aware of the gestational period for a human child, informed of the birth and that another individual was dispositively determined not to be E.M.T.'s sire, T.H.B. was required to take affirmative steps to determine parentage and assert a claim to the Child. Because he did not, the Court will grant the request of the Petitioners.

A party seeking the termination of parental rights must establish by clear and convincing evidence that grounds exist under the Adoption Act to support the permanent severance of such reciprocal duties of parent and child. See In re Z.S.W., 946 A.2d 726, 728 (Pa. Super. Ct. 2008); 23 Pa. C.S.A. §2511(a) (2010). Clear and convincing evidence is testimony "so clear, direct, weighty and convincing as to enable the trier of fact to come to a clear conviction, without hesitation, of the truth of the precise facts in issue." See id. at 728-29. The analysis contains two inquiries. First, grounds must be established under 23 Pa. C.S.A. §2511(a), the focus being the conduct of the parent, and whether such conduct justifies the termination of parental rights. See In Re B, N.M., 856 A.2d 847, 854-55 (Pa. Super. Ct. 2004). Thereafter, the Court must conduct the analysis required under 2511(b), considering whether termination would best serve the needs and welfare of the child. See In re I.J., 972 A.2d 5, 12 (Pa. Super. Ct. 2009).

Under Section 2511(a)(1), the conduct of a parent must reveal a settled intent to relinquish parental claim to the child **or** a refusal or failure to perform parental duties for at least six (6) months prior to the filing of the termination petition. In re Z.P., 994 A.2d 1108, 1117 (Pa. Super. Ct. 2010). Once such intent to relinquish or a refusal or failure to perform duties has been shown, the Court must consider a parent's explanation for their conduct, and take into account the post-abandonment contact between parent and child. See In re Z.S.W., 946 A.2d at 730. The requirements of Section 2511(a) (6) are satisfied where: (1) the parent knows or has reason to know of the birth of a newborn child, (2) the father does not reside with the child, (3) has not married the other parent; (4) for a period of four (4) months prior to filing the petition for termination, has failed to make reasonable efforts to maintain substantial and continuing contact with the child; and (5) for the same period has failed to provide substantial financial support for the child. See In re C.M.S. 832 A.2d 457, 465 (Pa. Super. Ct. 2003). Only one subsection of the statute need be satisfied in order to terminate parental rights, in conjunction with the consideration mandated under 2511(b). See In re B.L.W., 843 A.2d 380, 384 (Pa. Super. Ct. 2004).

In conducting the second part of the analysis under 2511(b), the Court must discern the nature and status of the parent child bond, and consider the effect upon the child of the severance of such ties. See In re I.J., 972 A.2d at 12. The importance of continuity in relationships to a child cannot be underestimated, and the Court must consider whether a parent child bond exists and whether termination would destroy something existing, necessary and beneficial. See id. The analysis requires an examination of "intangibles such as love, comfort, security, and stability." See In re C.P., 901 A.2d 516, 520 (Pa. Super. 2006).

The Court finds that clear and convincing evidence has been presented to satisfy the requirements of both subsections (a) (1) and (a)(6). First, as to (a)(1), T.H.B.'s conduct has demonstrated a settled intent to relinquish parental claim to the child, and a failure to perform parental duties for at least six months prior to the filing of the petition. Indeed, the evidence presented at hearing makes clear that T.H.B. has failed to take any action respecting the child, whatsoever, during the first three (3) years of her life. Such a failure to assume parental duties of any kind is inconsistent with the retention of parental rights. Parental duty is a concept that cannot be simply or easily defined, but is "best understood in relation to the needs of a child." In re C.M.S., 832 A.2d at 462. Children require love, guidance, protection and support, needs that cannot be met "by a merely passive interest in the development of the child." Id. Parental duty is a positive, affirmative duty, requiring action and genuine effort to obtain and maintain a place in the child's life. See id. Thus, a parent is required to "exert a sincere and genuine effort to maintain a parent-child relationship" using "all available resources" and exercising "reasonable firmness" in resisting obstacles placed in the path of the parent-child relationship. Id.

T.H.B. has not ever met the Child. He has never spoken with her via telephone, has never written her a letter, and has never, on any occasion, sent a card or a gift. T.H.B. has not financially supported the child, nor has he ever purchased even a single toy or diaper for her. He has not made any effort to take a place in her life, or to establish a bond with her. The petition was filed by the A.M.S. and K.P.S. against "John Doe" on April 22, 2010. Though the Court must consider the six (6) months prior as most critical to the analysis, it must also consider the whole history of the case, and resist mechanical application of the six (6) month provision. See In re I.J., 972 A.2d 5, 10 (Pa. Super. Ct. 2009). T.H.B., being informed of the pregnancy, the birth and his possible parentage, has taken absolutely no affirmative action and has failed to perform his parental duties for the Child's entire life, let alone for the six (6) months prior to the filing of the petition.

T.H.B. explains his non-action as resulting from his "confusion" over the parentage of the Child. Indeed, T.T. returned from the hospital with Mother, and initially was thought to be E.M.T.'s father. When DNA testing affirmed that no biological connection existed between the Child and T.T., T.H.B. states he did not act because there were numerous other men who could have been the Child's father. T.H.B. further maintains that he did not act to determine whether E.M.T. was his child after finding out the T.T. was not her father because Mother and her family asked him to stay away. Further, the Petitioners did not act to affirm or discount T.H.B.'s possible parentage, and indeed did not disclose such possibility to the Court in their initial petition.

As it is required to do, this Court has considered Father's explanation for his apparent neglect in taking any action to ascertain whether he was the Child's parent. See In re Shives, 525 A.2d 801, 803 (Pa. Super. Ct. 1987). Though he may have harbored the "confusion" to which he testified, it is clear to the Court he realized the possibility the Child was his. In the face of uncertainty, especially following the news less than three (3) months following the birth that T.T. was not E.M.T.'s father, this Court believes that T.H.B. had a duty to affirmatively act if he wished his parental rights to remain undisturbed. The Child is now nearly three (3) **years** old, the other identified possible father clearly being discounted years ago. Even if other possible fathers existed, none were offered as having the same ongoing contact with Mother as did T.H.B. and T.T. T.T. being found not to be the Child's father, T.H.B. was clearly the next most likely candidate. And T.H.B. was clearly aware of his candidacy, being admittedly present for a violent argument between T.T. and Mother on the subject. Indeed, the Superior Court has rejected the argument no performance of parental duties is required prior to a paternity test. See In re Z.S.W., 946 A.2d 726, 731 (Pa. Super. Ct. 2008). Such rationale, relieving "all fathers of their parental duties until their parentage was confirmed" has been deemed inconsistent with the policies of this Commonwealth. Id. Though there may indeed be cases where receipt of a paternity test result is the earliest time a father could be expected to assume parental duty, here the quantum of knowledge possessed by T.H.B. about the Child necessitated action far, far earlier.

The Court is required to consider any post-abandonment contact between T.H.B. and the Child. A parent who wishes to "reestablish his parental responsibilities bears the burden of proof on this question" and must demonstrate "steady and consistent" contact showing "a serious intent" on the part of the parent to "re-cultivate" the relationship and a "willingness and capacity to undertake the parental role." In the Matter of T.D., 949 A.2d 910, 919 (Pa. Super. Ct. 2008) (citation omitted). There has been no action on the part of natural father which would satisfy his burden of proof to show a serious intent to establish a bond with the Child. There has been no contact, at any time, between T.H.B. and E.M.T. T.H.B. has

stated he believed parenting classes would be required of him prior to contact with the Child, but has failed to arrange for such tutelage. T.H.B. maintains he desires visitation with the Child, but has had only one (1) call placed to K.P.S. and A.M.S.'s attorney. When the call was not returned, T.H.B. took no further action. T.H.B. requested his Court appointed attorney file a custody action on his behalf. Yet when told this was not possible, despite being given information as to the provision of free legal services, T.H.B. did not take any action or even telephone the legal aid office, let alone retain an attorney. If such half formed desires can be called action at all, they clearly do not rise to the level of consistent effort demonstrating serious intent to form a relationship with the Child.

Nor does the failure of Mother to bring the Child to T.H.B. for a meeting, or of her family to contact him and offer visitation, excuse this failure to act. Not even Petitioners' dishonesty in filing a petition with the Court stating they had no knowledge of the possible father excuses T.H.B.'s total lack of affirmative action to take a place in the Child's life. Pennsylvania law requires a non-custodial parent proceed with reasonable firmness in maintaining a relationship with their child, utilizing any and all resources available to overcome obstacles placed into his path. See In re C.M.S., 832 A.2d at 463. There are situations where a custodial parent may deliberately create barriers to impede communication and regular association between the child and the non-custodial parent. See id. Even so, a parent who wishes to preserve his rights must take action, and cannot wait for more convenient or suitable time to assume parental duties while their child is cared for by others. See In re B., N.M., 856 A.2d 847, 855 (Pa. Super. Ct. 2004).

In Adoption of Hutchins, the child's mother relocated five times, did not maintain a listed phone number, and denied visitation to the father, later asking the Court to terminate his parental rights. See Matter of Adoption of Hutchins, 473 A.2d 1089, 1092 (Pa. Super. Ct. 1984). The Court held that the father had failed to use reasonable firmness in overcoming obstacles to maintain a relationship with his child, noting that he had met the child's grandmother on the street several times and failed to ask for the mother's address. See id. Here, T.H.B. was offered the address of the Child by L.A.S. and by her sister, and refused the information. In C.M.S., the Court held that the father's failure to attempt any legal action to obtain custody or visitation could not be rationalized by the assertion the child's whereabouts were unknown. See C.M.S., 832 A.2d at 464. Even given the obstacles placed in his path, the father's failure to attempt to form a parental bond with the child, and non-action in asserting his rights, was sufficient to merit termination. See id.

So too, even the dishonesty of Mother's family in failing to disclose to the Court T.H.B.'s possible parentage does not relieve him of his duty to take affirmative action to attain and maintain a parent child relationship. Given the determination in Z.S.W. that parental duties are not contingent on a DNA test dispositively affirming parentage, the Court must concentrate on T.H.B.'s [non] action rather than the dishonesty of the Petitioners. T.H.B. was offered, several times, information as to the Child's whereabouts. Petitioners lived in the same county for the Child's entire life. T.H.B. has seen Mother, and her sister, repeatedly during the past three (3) years, and has never acted affirmatively to ascertain his parental status.

Given the aforementioned facts, the Court also finds that grounds have been satisfied under Section 2511 (a)(6). There is little dispute over the majority of the elements required to satisfy the section. The parties agree that T.H.B. has not resided with the Child or married her mother. Further, it is clear that no financial support has ever been given by T.H.B. to L.A.S. or to her parents for the child. For E.M.T.'s entire life, including the four (4) months preceding the filing of the petition for termination, T.H.B. failed to make reasonable efforts to maintain substantial and continuing contact with E.M.T. The dispute centers around whether T.H.B. knew or had reason to know of the birth, as if he was ignorant of such fact his failure to maintain contact with his Child could be excused.

Though he disputes the conclusion, it is clear to the Court that T.H.B. had reason to know of the Child's birth. T.H.B. admitted during testimony to knowing of the pregnancy and the general timing of the birth. T.H.B. admits L.A.S. informed him in 2008 of her pregnancy, but maintains she did not explicitly tell him the Child could be his. Even if this were the case, T.H.B. also testified that he was sexually involved with L.A.S., and the two did not use protection. Though there was dispute at hearing as to whether L.A.S. lived with natural father continuously, or merely occasionally stayed at his residence, it is clear the two shared a home while engaging in sexual relations. T.H.B. admits he is aware that unprotected sex is more likely than protected intercourse to lead to pregnancy. He admits to engaging in unprotected sex with L.A.S. during the period nine months prior to the Child's birth. T.H.B. testified to his awareness of the normal gestational period for a human child. Thus, when T.H.B. maintains his "confusion" over E.M.T.'s parentage, but admits awareness of the pregnancy and birth, further acknowledging he did nothing affirmatively to resolve his confusion, the Court cannot do otherwise but find the requirements of 2511(a)(6) have been satisfied.

Additionally, we are guided by this Court's prior application of Section 2511(a)(6) in another strikingly similar matter. In In re J.R.D., the child's natural mother told the natural father during her pregnancy that she was expecting and the probable timing of the birth. See In re J.R.D., No. 3-2009-OC, Opinion and Order Re: Termination of Parental Rights, *4

(Fulton OC May 11, 2009). Mother informed the natural father two possible fathers existed, himself and another individual. See id. The natural father, stating the mother always lies, wished to have a DNA test, though he did not affirmatively act to obtain one. See id. Arguing he had no obligation to act prior to the submission of proof of his paternity via the DNA test, the natural father disputed the termination of his parental rights. The Court found grounds clearly and convincingly proven rejecting the contention the four (4) month period should begin with dispositive confirmation of paternity. Instead, the Court held that the natural father's inaction in the face of uncertainty as to whether he was the child's father was inconsistent with the retention of his parental rights. In an unpublished Opinion, this Court's determination was affirmed by the Superior Court, as the natural father's testimony demonstrated he had reason to know he was the child's father. See In re Adoption of J.R.D., 1018 MDA 2009 (Pa. Super. Ct. 2009).

The Court having found clear and convincing grounds for termination exist under (a)(1) and (a)(6), now turns to the bonding analysis required under 2511(b). The Court must "discern the nature and status of the parent-child bond" considering intangibles like "love, comfort, security, and stability" in determining the best interest of the child. In re C.M.S., 884 A.2d 1284, 1287 (Pa. Super. Ct. 2005). The effect upon the child of terminating the parent-child bond must be paid the utmost attention. See id. Here, there will be no effect upon the child due to the severance of her ties with T.H.B. because she is unaware such biological ties exist. Indeed, she has never met T.H.B., does not know him, and has not heard anything about him. She believes her grandparents, K.P.S. and A.M.S., to be her parents and refers to them as "mom" and "dad." K.P.S. and A.M.S. have cared for E.M.T. for her entire life, and she has never known a time when they were not near to her, available to care for her needs. The Child believes that her natural mother, L.A.S., is her sister.

E.M.T. is not bonded to T.H.B. They have never even been in the same room together. Conversely, E.M.T. is deeply bonded to her prospective parents, A.M.S. and K.P.S., to whom she looks for security, support, comfort and love. She enjoys significant contact with her extended family, living next door to her cousins and the aunt she refers to as "grandma." In short, the Child is thriving in her environment, happy, healthy and physically well cared for. It is in her best interest to terminate T.H.B.'s parental rights, allowing her to be adopted by the only caregivers she has ever known, who she looks upon as her true parents.

Father has stated he does not wish his rights to be terminated. Yet a parent cannot protect his rights with a mere statement he does not wish to forfeit them. See In re E.S.M., 622 A.2d 388, 395 (Pa. Super. Ct. 1993). A parent must act.

In granting the request for termination, this Court is not endorsing in any way the actions of the Petitioners in failing to identify T.H.B. as a possible father for the Child in their initial petition. Indeed, the record demonstrates that Mother and her parents were aware T.H.B. was possibly E.M.T.'s father, and they have not aided him in any way in taking a place in the child's life. Yet under our law, they do not have the burden to create or maintain the bond between Father and Child. The duty to act affirmatively to create a parent-child bond lies with Father, who, though he was aware of his possible paternity, did nothing.

Conclusions of Law

1. The Court has jurisdiction of the parties and the subject matter under 23 Pa. C.S.A. § 2501, et seq.
2. The prayer of the petition should be granted, all requirements of the applicable statute having been complied with.
3. The consent of L.A.S. to relinquish her parental rights, and to the adoption of E.M.T. by K.P.S. and A.M.S., was validly executed pursuant to 23 Pa. C.S.A. §2711. Pursuant to 23 Pa. C.S.A. §2504, the Court confirms her consent to the relinquishment of her parental rights.
4. The Court finds by clear and convincing evidence the existence of valid grounds to involuntarily terminate the parental rights of T.H.B. pursuant to the following statutory authority:
 - i. 23 Pa. C.S.A. §2511 (a)(1) – 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;
 - ii. 23 Pa. C.S.A. §2511 (a)(6) – In the case of a newborn child, the parent knows or has reason to know of the child's birth, does not reside with the child, has not married the child's other parent, has failed for a period of four months immediately preceding the filing of the petition to make reasonable efforts to maintain substantial and continuing contact with the child and has failed during the same four-month period to provide substantial financial support for the child; and
 - iii. 23 Pa. C.S.A. §2511(b) – the best interest of the Child will be served by the

termination of parental rights.

NOW, THEREFORE, IT IS ORDERED AND DECREED THAT:

1. The parental rights and duties of L.A.S., Natural Mother of E.M.T., are hereby terminated, based upon L.A.S.'s voluntary relinquishment of those rights after consultation with her legal counsel; and
2. The parental rights and duties of T.H.B., Natural Father of E.M.T., are hereby terminated; and
3. Custody of E.M.T. is awarded to Petitioners, A.M.S. and K.P.S., under the provisions of Section 2521 of the Adoption Act; and
4. L.A.S. and T.H.B. are hereby advised pursuant to 23 Pa. C.S.A. §2511(c) of their continuing right to place and update personal and medical history information, whether or not the medical condition is in existence or discoverable at the time of the adoption, on file with the Court and with the Department of Public Welfare pursuant to 23 Pa. C.S.A. §2905(d) and further L.A.S. and T.H.B. are advised that they may, at the time of the termination of their parental rights or at any time thereafter, place on file with the Court or the Department of Health, a consent form asking for the Court or the Department to disclose the information contained in the child's original Certificate of Birth, or any other identifying or non-identifying information pertaining to her at any time after the child attains the age of 18, or if less than 18, to the child's adoptive parent or legal guardian pursuant to 23 Pa. C.S.A. §2905(d).