

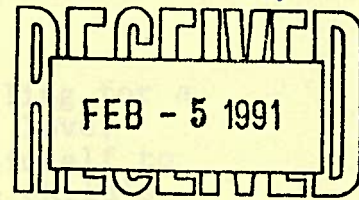
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February 5, 1991

MEMORANDUM TO: Michael C. Fastiggi  
Pennsylvania Catholic Conference

RE: Adoption Law Background

The General Assembly, through the Adoption Act, provides legal standards designed to balance all of the interests of those individuals touched by the process of adoption. At times these interests compete with one another, necessitating the making of difficult choices, and in those instances, the policy of the Commonwealth has been to "give primary consideration to the needs and welfare of the child." (Adoption Act, 23 Pa.C.S. §2511(b)).

The last major refinement of the Adoption Act coincided with its integration into the Consolidated Statutes in 1980. Changing circumstances since that time - some of which have encouraged practices detrimental to children involved (or potentially involved) in adoption - have given rise to the need for additional refinement of a number of the Act's provisions.

When a child is adopted, the legal rights and responsibilities of the child's adoptive parents are substituted for those ordinarily vested in the child's natural parents. In order to effect this transfer of rights and responsibilities, the law has traditionally required court termination of the natural parents' rights, most often with the consent of those parents. But where the child's welfare dictates, that termination may be ordered without the parent's consent.

Where involuntary termination must be pursued, courts have both demanded and exhibited a high degree of solicitude for the substantive and due process rights of natural parents. At the same time, these courts have recognized that the child's legitimate interests must also be protected.

"The performance of parental duties is an affirmative obligation to love, protect, support and maintain communication and association with the child. Consequently, being a parent is more than a passive

parental rights would best serve the needs and welfare of the child.

The United States Supreme Court, in Santosky v. Kramer, 455 U.S. 745 (1982), a decision endorsed by Pennsylvania's courts, has ruled that the burden of proof as to each and every element of a statutory ground for involuntary termination of parental rights is one of "clear and convincing evidence." This burden, to be borne affirmatively by the individual or agency seeking the termination order, is more onerous than that which is demanded in civil matters generally. As such, this standard of proof furnishes added protection to the natural parent's rights.

But even where all the statutory elements for involuntary termination have been established under this exacting evidentiary standard, the court's inquiry is not ended. Section 2511(b) of the Adoption Act requires the court to proceed to the additional step of determining whether, under all of the circumstances of the situation presented, the termination will best serve the needs and welfare of the child.

Moreover, under §2511(b):

"The rights of a parent shall not be terminated solely on the basis of environmental factors such as inadequate housing, furnishings, income, clothing and medical care if found to be beyond the control of the parent."

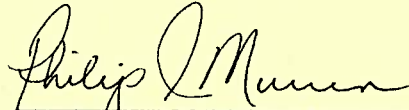
In addition to this statutory provision excusing parental neglect due to factors beyond the parent's control, the Supreme Court of Pennsylvania has held that courts, after statutory grounds for termination have been proven, must then proceed to examine the totality of the parent's individual circumstances to determine whether that parent's conduct or neglect should nonetheless be excused. In Re L.A.G., 490 Pa. 85, 89 (1980). For example, where a parent's lack of contact with a child is a result of another's conscious effort to deter that contact, parental rights will not be terminated. In Re Adoption of B.D.S., 494 Pa. 171 (1981).

Though the substantive, procedural, statutory, constitutional, decisional and evidentiary protections thus accorded the natural parent are legion, considerations of the needs and welfare of the child still predominate. For example, while military service (Adoption of B.D.S., supra) or incarceration (Adoption of S.H., 476 Pa. 608 (1978)) do not, in and of themselves, constitute failure to perform parental duties, neither do such circumstances excuse the parent from making an effort to use those means reasonably at

hand to maintain contact with the child, or to express interest in his or her welfare. Adoption of Baby Boy Allen, 337 Pa. Super. 133, 136 (1984), aff'd 512 Pa. 517 (1986).

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