

Termination of Parental Rights. Required Prior to an Adoption

1. In most adoptions, there must be a termination of the parental rights of one or both of the living natural parents of the child to be adopted. Thus, ascertaining the names and addresses of the natural parents, and their legal status to the child to be adopted is an essential preliminary step to the adoption process.

2. Some authors have described termination of the parent-child relationship as the “death penalty” for the rights of parent and for that matter, the rights of the child with that particular parent. Thus, the law has strict requirements which must be met in order to terminate this relationship between a living natural parent and his or her child.

3. No termination may be granted unless the petitioner establishes by clear and convincing evidence that the respondent parent has failed to conform to one or more of the provisions of the applicable family code provision. Thus, in the initial interview of the person seeking termination of a natural parent’s relationship with his child, the attorney should find facts which support a statutory ground which can be proven by clear and convincing evidence.

4. The test for termination is two fold. First, the petitioner must establish a statutory ground to terminate, and then second, the petitioner must prove that termination is in the best interest of the child. Both prongs of the termination proof must be established by clear and convincing evidence.

5. The rights between a parent and a child are of Constitutional dimension. The Texas Supreme Court has stated that litigation “which break the ties between a parent and child ‘can never be justified without the most solid and substantial reasons.’” *Wiley v. Spratlan*, 543 S.W.2d 349 (Tex.1976). Additionally, the Court stated: “The natural right

which exists between parents and their children is one of constitutional dimensions.”

Wiley v. Spratlan, supra. Some authors have described termination of the parent-child relationship as the “death penalty” for the rights of a parent and for that matter, the rights of the child with that particular parent. Thus, the law has strict requirements which must be met in order to terminate this relationship between a living natural parent and his or her child.

6. No termination may be granted unless the petitioner establishes by clear and convincing evidence that the respondent parent has failed to conform to one or more of the provisions of §161.001, Texas Family Code. Thus, in the initial interview of the person seeking termination of a natural parent’s relationship with his child, the attorney should find facts which support a statutory ground which can be proven by clear and convincing evidence, that the natural parent has:

“(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return;

(B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months;

(C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months;

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;

(F) failed to support the child in accordance with the parent's ability during a period of one year ending within six months of the date of the filing of the petition;

(G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence;

(H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth;

(I) contumaciously refused to submit to a reasonable and lawful order of a court under Subchapter D, Chapter 261 [Investigation of Report of Child Abuse or Neglect];

(J) been the major cause of:

(i) the failure of the child to be enrolled in school as required by the Education Code; or

(ii) the child's absence from the child's home without the consent of the parents or guardian for a substantial length of time or without the intent to return;

(K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by this chapter;

(L) been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code or adjudicated under Title 3 for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following Penal Code sections:

- (i) § 19.02 (murder);
- (ii) § 19.03 (capital murder);
- (iii) § 19.04 (manslaughter);
- (iv) § 21.11 (indecent with a child);
- (v) § 22.01 (assault);
- (vi) § 22.011 (sexual assault);
- (vii) § 22.02 (aggravated assault);
- (viii) § 22.021 (aggravated sexual assault);
- (ix) § 22.04 (injury to a child, elderly individual, or disabled individual);
- (x) § 22.041 (abandoning or endangering a child);
- (xi) § 25.02 (prohibited sexual contact);
- (xii) § 43.25 (sexual performance by a child); and
- (xiii) § 43.26 (possession or promotion of child pornography);

(M) had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Paragraph (D) or (E) or substantially equivalent provisions of the law of another state;

(N) constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Protective and Regulatory Services or an authorized agency for not less than six months, and:

(i) the department or authorized agency has made reasonable efforts to return the child to the parent;

(ii) the parent has not regularly visited or maintained significant contact with the child; and

(iii) the parent has demonstrated an inability to provide the child with a safe environment;

(O) failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Protective and Regulatory Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 [Procedures in Suit by Governmental Entity] for the abuse or neglect of the child;

(P) used a controlled substance, as defined by Chapter 481, Health and Safety Code, in a manner that endangered the health and safety of the child, and:

(i) failed to complete a court-ordered substance abuse treatment program; or

(ii) after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance;

(Q) knowingly engaged in criminal conduct that has resulted in the parent's:

(i) conviction of an offense; and

(ii) confinement or imprisonment and inability to care for the child for not less than two years from the date of filing the petition; or

(R) been the cause of the child being born addicted to alcohol or a controlled substance, other than a controlled substance legally obtained by prescription, as defined by § 261.001; or

(S) voluntarily delivered the child to a designated emergency infant care provider under §262.302 without expressing an intent to return for the child; and

2. that termination is in the best interest of the child.”

Note that the test for termination is two fold. First, the petitioner must establish a statutory ground to terminate, and then second, the petitioner must prove that termination is in the best interest of the child. Both prongs of the termination proof must be established by clear and convincing evidence.

Note also that §161.002, Texas Family Code, sets forth the requirements of the law regarding an alleged biological father. An “alleged father” is “a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined.” “An alleged father is not a presumed father, a man whose parental rights has been terminated or declared not to exist, or a male donor.” (Texas Family Code, §101.0015) “Parent means the mother, a man presumed to be the father, a man legally determined to be the father, a man who has been adjudicated to the father by a court of competent jurisdiction, a man who has acknowledged his paternity under applicable law, or an adoptive mother or father.” (Texas Family Code, §101.024) §161.002 places an affirmative duty on the alleged father, who has been served with citation, to file either an admission of paternity or a counterclaim for

paternity under Chapter 160 prior to the final hearing in the suit. Otherwise, the alleged father can be terminated. If the alleged father has not registered with the paternity registry under Chapter 160, and after the exercise of due diligence by petitioner, his identity and location are unknown, his parental rights can be terminated. The statute specifically states that service by publication on an alleged father is not required to terminate his parental rights. A careful reading of this §161.002, Texas Family Code, if the facts of in the case before you involves an alleged father is suggested.

Some authors have expressed concern about the Constitutionality of the provisions of the family code which deal with the Registry established by Sections 160.401 through 160.423, Texas Family Code. The underlying purpose of the Paternity Registry created by the Legislature is to facilitate the adoption of children. This is not the stated purpose of the law in the States which have adopted this procedure, which includes Texas, which is that it is created to aid fathers in establishing paternity. The problem with the provisions of such statutes is that the code only gives a father 30 days from the birth of the child to file his claim of paternity. Furthermore, the law appears to attempt to put all men who engage in sexual intercourse on notice that they have fathered a child, by requiring them to register with the Paternity Registry if they want to avoid termination of their rights to the child. §160.404 states that the parental rights of a man alleged to be the father of a child may be terminated without notice if the man did not timely register with the bureau of vital statistics, and he is not entitled to notice under §160.402 or §161.002, Texas Family Code. One could argue, however, that this Paternity Registry concept is as effective as that of giving notice to the alleged father or unknown father by publication. Neither method effectively gives notice to fathers, and

expecting fathers to register in every instance of sexual intercourse, is extremely unrealistic, unreasonable, and highly unlikely.

Note that §160.421, Texas Family Code, requires that if a father-child relationship has not been established under this chapter, a petitioner for the adoption of or termination of parental rights regarding the child must obtain a certificate of the results of a search of the registry. The section goes on to require that if a Petitioner believes that the child may have been conceived in another State, they must also obtain a certificate from the Paternity Registry of that State.