

# Adoptions

## Termination and Notice to Parents Issues

Hon. Donald Bernardi

### Termination of Parental Rights

- ▶ Adoptions are achieved by either consent or surrender of the parents or by termination of parental rights.
- ▶ Illinois law recognizes two ways to terminate parental rights.
- ▶ First by filing a petition for adjudication of wardship under the Juvenile Court Act 705 ILCS 405/2-1 et. sec. and
- ▶ Second by filing a petition to Adopt alleging either consent, surrender, or unfitness of one or both of the parents. 750 ILCS 50/1 et. sec.

## Termination Hearing

- ▶ The grounds for termination are numerous and set forth at 750 ILCS 50/1 D, this section details the grounds for declaring a parent unfit which is the first phase of the termination hearing. This phase requires clear and convincing proof of the unfitness.
- ▶ If the Court finds the parents unfit, then the second phase begins where the Court must decide if it is in the best interests of the child that parental rights be terminated, this phase must be established by a preponderance of the evidence.

## Grounds for Unfitness

- ▶ The most common grounds are:  
750 ILCS 50/1 D
  - (a) Abandonment of the child.
    - (a-1) Abandonment of a newborn infant in a hospital.
    - (a-2) Abandonment of a newborn infant in any setting where the evidence suggests that the parent intended to relinquish his or her parental rights.
  - ▶ (b) Failure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare.
  - ▶ (l) Failure to demonstrate a reasonable degree of interest, concern or responsibility as to the welfare of a newborn child during the first 30 days after its birth.

In re A.S.B. 293 Ill.App.3d 836 Second District Appellate Court.

- ▶ This case noted that to effectuate the termination of parental rights, the State need only prove one statutory factor of unfitness (*In re J.T.C.*, 273 Ill.App.3d 193, 198, 209 Ill.Dec. 881, 652 N.E.2d 421 (1995)) by clear and convincing evidence (*In re V.O.*, 284 Ill.App.3d 686, 690, 220 Ill.Dec. 527, 673 N.E.2d 439 (1996))
- ▶ Even extreme circumstances that impede the parent's ability to develop a relationship with the child do not excuse a complete lack of communication or interest in the child. *A.S.V.*, 268 Ill.App.3d at 558, 205 Ill.Dec. 944, 642 N.E.2d 500

- ▶ As noted, we found no error in the determination of unfitness pursuant to section 1(D)(l) of the Adoption Act (750 ILCS 50/1(D)(l) (West 1994)). This section imposes a substantial burden on natural parents to demonstrate a reasonable degree of interest, concern, or responsibility for a child during the first 30 days after its birth. *In re Adoption of J.R.G.*, 247 Ill.App.3d 104, 110, 187 Ill.Dec. 169, 617 N.E.2d 377 (1993).
- ▶ The burden is “unequivocal and requires that a parent affirmatively show a commitment to his child within 30 days of birth.” *J.R.G.*, 247 Ill.App.3d at 110, 187 Ill.Dec. 169, 617 N.E.2d 377.

## 750 ILCS 50/12.1 Putative Father Registry

- ▶ One of the statutory grounds of unfitness is abandonment set forth under 50/1 D (a)
- ▶ The Putative Father Registry also provides a basis for unfitness at paragraph (h) that is not included in the grounds for unfitness section in the Adoption Act at 750 ILCS 50/1 D, it provides:
  - ▶ (h) Except as provided in subsection (b) or (c) (consents or surrenders to adoption) of Section 8 of this Act, failure to timely register with the Putative Father Registry (i) shall be deemed to be a waiver and surrender of any right to notice of any hearing in any judicial proceeding for the adoption of the child, and the consent or surrender of that person to the adoption of the child is not required, and (ii) **shall constitute an abandonment of the child and shall be prima facie evidence of sufficient grounds to support termination of such father's parental rights under this Act.**

Note: This abandonment ground establishing unfitness is available only in Adoption cases not those proceeding under the Juvenile Court Act. In re Tinya W, 328 Ill. App. 3d 405. 2002.

## Failure to Register and Notice to Putative Father

- ▶ A putative father who fails to register within the time allotted “is barred from thereafter bringing or maintaining any action to assert any interest in the child.” [750 ILCS 50/12.1\(g\)](#) (West 1994). However, if the putative father can prove by clear and convincing evidence that it was not possible for him to register within the allotted time ([750 ILCS 50/12.1\(g\)\(1\)](#) (West 1994)), that his failure to register was not his fault ([750 ILCS 50/12.1\(g\)\(2\)](#) (West 1994)), and that he registered within 10 days after it became possible for him to do so ([750 ILCS 50/12.1\(g\)\(3\)](#) (West 1994)), then he is allowed to assert his interest in the child.
- ▶ Notice to the putative father is contained in section 12.1 (h) as well it states:
  - ▶ (h) Except as provided in subsection (b) or (c) (consents or surrenders to adoption) of Section 8 of this Act, failure to timely register with the Putative Father Registry (i) shall be deemed to be a waiver and surrender of any right to notice of any hearing in any judicial proceeding for the adoption of the child, and the consent or surrender of that person to the adoption of the child is not required, and
  - ▶ The issue of notice to the parents, including whether to notice a putative father remains.

## 750 ILCS 50/7 Process Adoption Act

- ▶ This section identifies the parents who are to be named defendants and the process of notice. If you rely on this section and there is a putative father who had notice he could assert a defense to the registration provisions (12.1g1,2,3), therefore, it is best to notice the missing parents.
- ▶ 750 ILCS 50/7 provides the notice requirement:
- ▶ In all such actions petitioner or his attorney shall file, at the office of the clerk of the court in which the action is pending, an affidavit showing that the defendant resides or has gone out of this State, or on **due inquiry cannot be found**, or is concealed within this State, so that process cannot be served upon him, and stating the place of residence of the defendant, if known, or that upon **diligent inquiry** his place of residence cannot be ascertained, the clerk shall cause publication to be made in some newspaper published in the county in which the action is pending.
- ▶ A similar requirement for a Respondent in a Juvenile petition requiring a diligent inquiry is found at 705 ILCS 405/2-16.

## How do you establish the Diligent Inquiry?

- ▶ The issue of due diligence in attempting to notice a defendant is discussed in the case of In re A.S.B. 293 Ill. App. 3d. 836 (1997), there the Second District appellate Court noted:
- ▶ The parties do not cite any authority, and our research has not revealed any, which defines “due diligence” in the context of section 2–16(2) of the Act (see [705 ILCS 405/2–16\(2\)](#) (West 1994)).
- ▶ However, we believe that “due diligence” is a universal concept and one which may reasonably include “that kind of search or investigation which a diligent person, intent on ascertaining a fact, would usually and ordinarily make.” In re Application of the County Collector for Judgment & Order of Sale Against the Lands & Lots Returned Delinquent for Nonpayment of General Taxes for the Year 1987 & Prior Years, 278 Ill.App.3d 168, 172, 214 Ill.Dec. 969, 662 N.E.2d 535 (1996).
- ▶ What will the Court find is in fact due diligence? Like...
- ▶ Checking the postal service and
- ▶ Drivers license records and
- ▶ Property records and ...and...

## Diligent Search

- ▶ DCFS routinely notices absent parents throughout the state. How do they comply with the “due diligence” requirement?
- ▶ They hire a service to provide the search.
- ▶ It is called: Diligent Search Services, and they are located in Springfield, IL.

This service searches 20 different databases and either provides potential addresses, or if none, reports that result in a ‘Certification of Comprehensive Diligent Search’ This certification is used every day in Juvenile courts across Illinois.

It is now available to Private Attorneys doing Adoption work. You may contact Micah King at:

Diligent Search Services Address: 3 North Old State Capitol Plaza,  
Springfield Illinois, 62701 Phone: 217-522-6700 Fax: 217-522-6800  
[www.diligentsearchservices.com](http://www.diligentsearchservices.com)