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COURTS

Juvenile Court: Termination of Parental Rights

CODE SECTIONS:	O.C.G.A. §§ 15-11-1 (amended), 15-11-41 (amended), 15-11-51—15-11-54 (repealed), 15-11-80—15-11-92 (new)
BILL NUMBER:	HB 175
ACT NUMBER:	1535
SUMMARY:	The Act revises the law governing juvenile court proceedings for the termination of parental rights and provides standards and procedures under which parental rights may be terminated.

History

O.C.G.A. § 15-11-51 provided basic criteria for making a determination in a proceeding for terminating parental rights.¹ Although the criteria included “abandonment of the child,” the statutory provision failed to define the term or to give guidelines for determining what circumstances would constitute abandonment.

Furthermore, although the juvenile court was vested with broad discretion in determining whether to terminate parental rights,² there were limits on its dispositional power once the determination had been made and custody given to the Department of Human Resources or to a licensed child-placing agency. For example, if the child was not adopted after the termination of parental rights, the appropriate agency was required to return the child to court every two years for entry of further orders.³ There was no mandate, as is provided in the new Act, to investigate the efforts made to place the child.

Additionally, prior law failed to articulate pre-hearing procedures which would require a diligent search for the putative father before proceeding with termination of his rights. Once an order terminating his rights was issued, there was no statutory requirement to locate extended family members in order to determine if a placement was possible. If a natural parent was not able to take the child, the child would be committed to the custody of the Department of Human Resources or to an adop-

1. 1985 Ga. Laws 181, § 2.

2. *In re* HB, 174 Ga. App. 435, 435, 330 S.E.2d 173, 174 (1985).

3. 1984 Ga. Laws 794, § 2.

tion agency.⁴

Prior to the 1986 revision, there was no statutory burden placed on the court to explore what contacts, if any, had been made by the father or what evidence might exist of a familial bond between the parent and child. For example, in *Wilkins v. Department of Human Resources*,⁵ the putative father's parental rights were terminated because he failed to offer sufficient proof of paternity, offering only evidence of his continued involvement with the child.⁶ HB 175 comprehensively revises the law governing termination of parental rights, providing specific guidelines and procedures.

HB 175

The Act amends the Code by striking O.C.G.A. § 15-11-41(a), which provided that a court order for the termination of parental rights was "without limit as to duration."⁷ The provision for unlimited duration of such an order reappeared in the new O.C.G.A. § 15-11-80 which provides that an order terminating parental rights is *permanent* and extinguishes all rights and obligations between the child and parent, including inheritance rights. It also denies a parent's right to have notice of a subsequent adoption of the child after the parental rights have been terminated.⁸

The Act repeals O.C.G.A. § 15-11-54, relating to requirements for terminating parental rights. This section allowed the court to terminate parental rights under the following circumstances: 1) if a parent gives written consent; 2) if a parent fails to provide court-ordered child support for at least twelve months; 3) if a parent abandons the child; or 4) if the court determines that the child is deprived.⁹ The repealed sections specified procedures for the juvenile court's use when making determinations relating to termination of parental rights.¹⁰

The new O.C.G.A. § 15-11-81 sets forth the criteria for the termination of the rights. The court requires a showing of "clear and convincing" evi-

4. *Id.*

5. 174 Ga. App. 105, 105, 329 S.E.2d 266, 267 (1985).

6. *Id.* Because the mother was married to another man at the time of the child's birth, the putative father would have had to offer evidence of paternity sufficient to overcome the strong presumption of legitimacy. *Id.* at 107, 329 S.E.2d at 268 (citing O.C.G.A. § 19-7-20(a),(b)). The failure of the putative father to initiate legitimation procedures or attempt to gain custody of the child or to provide support for the child was considered sufficient to constitute abandonment. *Id.* at 105, 107, 329 S.E.2d at 267, 268.

7. HB 175 (AP) 1986 Ga. Gen. Assem. § 3.

8. *But see* O.C.G.A. § 19-8-8(f) (Supp. 1986). A grandparent who has been awarded visitation rights must be served with a petition for adoption and may file objections to the adoption of a grandchild if neither parent has any rights to the child and the petition for adoption has been filed by a blood relative of the child.

9. O.C.G.A. § 15-11-51(a) (1982).

10. O.C.G.A. §§ 15-11-51—15-11-54 (1982).

dence of parental misconduct or failure to provide for the child. If such evidence is found, the court assesses the "physical, mental, emotional, and moral conditions" of the child and applies the "best interest" standard.¹¹ The court then determines whether termination of a parent's rights is appropriate.

O.C.G.A. § 15-11-81(b)(4)(A) clarifies conditions which are indications to the court of parental misconduct for purposes of making a judicial determination. If the child is found to be a deprived child, lacking "proper parental care or control" and there is a likelihood that the deprivation will continue or cannot be remedied and that the deprivation will cause serious harm to the child, the court may terminate the rights of the parent.¹²

O.C.G.A. § 15-11-81(b)(4)(B) further defines what the court shall consider when determining whether the child is without proper parental care. Pursuant to this provision, the court may examine whether there exists a "medically verifiable deficiency" that is serious enough to have a detrimental effect on the child. The court considers whether the parents have a history of drug or alcohol abuse, felony convictions, abusive conduct toward the child, or injury or death of a sibling resulting from parental neglect.

O.C.G.A. § 15-11-81(b) further provides that parental rights may be terminated when the parent has given written consent or when the parent has willfully failed to pay child support as ordered by the court for a period of twelve months or longer.¹³

O.C.G.A. § 15-11-81(b)(3) expands the statutory provision relating to the abandonment of the child. Abandonment is extended to include circumstances where the parent's identity is unknown or where the parent has not claimed the child within three months.

The new O.C.G.A. § 15-11-82 sets forth the requirements for pleading a petition for the termination of rights. Although the initial petition is to be entitled "In the matter of _____, a child," an appeal of the petition must use only the child's initials. In addition, the petition must be in writing, must be made, verified, and endorsed by the court, and must state the facts that warrant a termination.

O.C.G.A. § 15-11-83 specifies the process for serving the petition. O.C.G.A. § 15-11-83(d) discusses the rights of putative fathers and the rights of fathers whose paternity has been established in a judicial pro-

11. O.C.G.A. § 15-11-81(a) (Supp. 1986). The presumption of the statute is consistent with Georgia domestic relations law in that the court determines what is in the "best interest of the child" after considering all the factors and conditions which affect his or her environment.

12. O.C.G.A. § 15-11-81(b)(4)(A) (Supp. 1986). A similar deprivation standard was set forth previously in O.C.G.A. § 15-11-51(a)(2) (Supp. 1985).

13. O.C.G.A. § 15-11-81(b)(1), (2) (Supp. 1986). These two sections are identical to O.C.G.A. § 15-11-51 (a)(3), (4) (Supp. 1985) which are repealed by the Act.

ceeding. If the identity of the parent is known and is affirmed in a judicial proceeding prior to the termination, the father must be served with a summons and petition. The father has an absolute right to be heard unless he has relinquished his right. A putative father who has not established paternity may still appear and be heard at the termination hearing if he has proof of paternity.

The putative father must be notified of the hearing.¹⁴ Reasonable efforts must be made to locate the father before the termination proceedings. In the absence of a diligent effort to locate the father, the court must direct either the Department of Human Resources or another licensed child-placing agency to expend such effort. The results of any investigation must be reported to the court. The hearing will be postponed pending such reports.¹⁵ If the identity of the father is unknown, the court may require the mother to execute an affidavit identifying the putative father.¹⁶

If the putative father cannot be found, the court may enter an order terminating his rights if the father has not lived with the child nor contributed to its support.¹⁷ Moreover, the father must not have attempted to legitimize the child nor have contributed any support to the mother. The court must consider what contact, if any, the father has had with the child and if a bond has been established with the child.¹⁸

If the putative father appears at the hearing and proves his paternity, the court must afford him the opportunity of petitioning for custody.¹⁹ The court then applies the "best interest of the child" standard. The new O.C.G.A. § 15-11-85 requires that the court appoint an attorney for the child to represent the child's interest at the termination hearing.

O.C.G.A. §§ 15-11-86—15-11-89 provide the standard of proof to be met in the termination hearings and the procedure for protection of the record. The standard of proof shall be by "clear and convincing evidence." The court may require a physical or mental examination of the parent or child. The record of the testimony may not be used in any other trial involving the child unless it pertains to the termination of parental rights.

O.C.G.A. § 15-11-90 is concerned with the placement of the child once the parental rights have been terminated. The Act requires the court and the Department of Human Resources to make an exhaustive search to locate a family member for the purpose of making an appropriate placement within the extended family if possible. If a family member is awarded custody of the child, he or she must abide by the terms of the

14. O.C.G.A. § 15-11-83(d) (Supp. 1986).

15. O.C.G.A. § 15-11-83(d) (Supp. 1986).

16. O.C.G.A. § 15-11-83(d)(3) (Supp. 1986).

17. O.C.G.A. § 15-11-83(d)(4) (Supp. 1986).

18. O.C.G.A. § 15-11-83(d)(4) (Supp. 1986).

19. O.C.G.A. § 15-11-83(d)(5)(D) (Supp. 1986).

court order relating to the child's well-being.

If the child cannot be placed with a family member, the court has several options.²⁰ It may place the child with the Department of Human Resources or a child-placing agency which will seek an adoptive home for the child. If the child is not adopted, the court may take other measures for the benefit of the child, including finding a foster placement. If the child is not adopted, an annual review of an agency's efforts to place the child is required. The court retains the authority to enter an appropriate order to further the adoption of the child or to make an alternative placement.

20. O.C.G.A. § 15-11-90 (Supp. 1986).