

Lack of Citizenship and Potential to Be Deported Not Sufficient for Termination
Alizota v. Stanfield, 2014 WL 5859563, 765 S.E.2d 707, November 13, 2014 (Ga. Ct. App.).

Where father completed his case plan, termination of his parental rights was improper due to his lack of citizenship and a driver's license, and reliance on his wife to pay the rent. Enhanced stability, convenience, and possible great opportunities if the child remained in the U.S. did not meet the standard of deprivation for termination of parental rights.

This case first came to court in 2009 when the child was six months old. The mother was arrested for driving under the influence while the child was in the car. The child was placed in foster care with a couple the mother had been living with before the child's removal.

The father initially entered into a reunification plan, which required that he obtain steady income and housing, test negative for drugs, and pay child support. However, after several months, the parents agreed for the foster family to have custody while the father would have continued supervised visitation with the possibility of unsupervised visitation in time.

Immediately after custody was transferred to the foster parents, they stopped visitation with the father until he provided a clean drug test. They went to court to resolve this, and the father was ordered to provide drug tests. Thereafter he provided clean drug tests, continued to visit, and provided child support payments to the couple.

The agency caseworkers found that the father was bonding with the child and encouraged more frequent visits. The foster parents opposed this.

When the child was approximately 18 months old, the custodians filed for adoption. They contended parental rights should be terminated because the father had not bonded with the child, was unfit as defined by statute, had never lived with the child, was not a U.S. citizen and thus faced potential deportation, and failed to provide support for her.

The father counterclaimed for custody. At the hearing in superior court, the father called several witnesses from the child welfare agency.

One of the child's former agency caseworkers testified that the father had been very engaged in parenting classes and seemed to take the advice to heart. She also said the father had been very cooperative in meeting the terms of his case plan. She reported he had had one positive drug screen, but had since completed drug treatment. As to child support, she stated the father had met as instructed with the child support enforcement office, but could not process payments that way because the custodians would not release the child's social security number to him. When the father reported this to the caseworker, she instructed him to pay directly via money orders to create a record.

The caseworker further testified that the custodians had cancelled numerous visits and had failed to notify the father of medical and other appointments.

Another caseworker, an agency supervisor, and a CASA who had observed visits testified that they had no concerns about the father's understanding or ability to parent.

A psychologist the custodians had contracted with to observe visits testified there was a lack of a

strong bond with the father.

The trial court found the father's rights should be terminated due to several factors. The court cited his failure to support the child, lack of citizenship, lack of a driver's license, housing instability evidenced by his two moves during the case and relying on his wife to pay rent, and his failure to bond with the child.

The father appealed. The Georgia Court of Appeals overturned the termination order.

The court of appeals first noted the two relevant termination grounds —constructive or actual abandonment or failure to “exercise proper care or control due to misconduct or inability.” As to lack of support, the court stated the trial court relied on inappropriate factors, including the father's lack of U.S. citizenship and that it could not verify his income. He had, however, paid child support for several months and had attempted to pay earlier. Further, he provided evidence showing he had wired money to the birth mother previously.

As to potential deportation, while the child may have certain positive opportunities in the U.S., the fact that the father might be forced to return to his home country with the child did not qualify as deprivation under state law.

Regarding his driver's license, there was never any evidence that the father put the child in danger or was convicted of a vehicle-related crime. While using other forms of transportation might be less convenient, this also did not constitute legal deprivation.

Regarding substance abuse, there was a single positive drug test, but evidence showed the father was drug free for at least eight months thereafter.

Regarding a failure to bond, the weight of the evidence was contrary to the court's finding. The sole testimony of a lack of bonding was from the custodians' witness, who observed the father and child for two hours. The three child welfare staff and CASA, who had contact with the family over many months, all testified to evidence of a bond.