

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

J. C.,	:	
Plaintiff	:	
	:	
v.	:	No. 99-20,247
	:	
H.C.,	:	
Defendant	:	

Opinion Issued May 18, 2001

OPINION and ORDER

In this case the court must determine whether Father should be granted visitation with his child, C.C. For the reasons stated in this opinion, we find that this is one of those rare instances when we must deny a parent contact with his child.

Findings of Fact

Father was incarcerated in September 1998 for robbery, kidnapping, and associated crimes. He was initially held at the Lycoming County prison, but was moved to Camp Hill in July 1999, where he remained until September 2000. He then was moved to another state correctional institution until he landed at the State Correctional Institute at Somerset, where he is currently incarcerated. His minimum sentence expires in the year 2007; his maximum sentence expires in the year 2023.

Father's contact with his child has been minimal since her birth on July 30, 1997. Although testimony differed somewhat on the contact that occurred before his incarceration, the court finds that Father saw C.C. on a daily basis for

three or four months, while he was living with the child's mother. However, after that his involvement was intermittent and sporadic.

In February 1999, Father petitioned for visitation and on April 29, 1999 this court granted him prison visitation once a month for the months of April, May, and June of that year, noting that he would be moved to another institution in July. Father saw the child only in April, however, apparently because his mother was unable to provide transportation. Our order of April 29, 1999 specifically stated that if Father desired further visitation, he should file another petition after it became known to which institution he would be sent.

Since being removed to Camp Hill in July 1999, Father has written to C.C. once a month, but has not spoken to her by phone or seen her. Mother has read his letters to the child but refuses to take her to visit Father. C.C. knows she has a father but does not remember him. Father has a difficult time making the child understand that the letters are written by her father, who is in prison.

Father's family lives in the Williamsport area, but has not maintained contact with C.C. The child has no relationship of any significance to his mother or his two sisters. Although one of his sisters apparently saw C.C. a while ago, and so is not a total stranger to the child, C.C. did not understand or appreciate the familial connection with her aunt.

Discussion

A parent's right to have meaningful communication and visitation with

his or her child is a liberty interest protected by the United States Constitution. Santosky v. Kramer, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982).

However, that right can be curtailed under certain circumstances.

As in all custody cases, a court's job is to determine what is in the best interest of the child. That determination is made on a case-by-case basis, by weighing all of the factors which legitimately affect the child's physical, intellectual, moral, and spiritual well being. In Interest of C.F., 436 Pa. Super. 83, 647 A.2d 253 (1994).

When considering a request for visitation with an incarcerated parent, Pennsylvania appellate courts have imposed a presumption, to be rebutted by the prisoner parent, that such visitation is not in the best interest of the child. Etter v. Rose, 454 Pa. Super. 138, 684 A.2d 1092, 1093 (1996). All relevant factors must be considered by the court, including the following considerations. Id.

A. Father's Interest in and Past Involvement with the Child

We must first consider whether Father showed a genuine interest in C.C. in the past, whether he maintained reasonable contact with her, and whether he exhibits a genuine interest in her now.

Father's pre-incarceration contact with the child is not particularly impressive. Although he saw her every day for the four months when he lived with Mother, the court finds Mother credible in her testimony that once the parents had separated, he saw C.C. infrequently. At times, he would pick C.C.

up and then leave her with a babysitter for part of his custody period.

Father was incarcerated, in September 1998, and waited until February 1999 to petition for visitation. Although granted three visits, he exercised only one, albeit he claimed the missed visits were due to his mother's failure to provide transportation.

After he was moved to Camp Hill in July of 1999, Father did not petition for visitation again until February 2001. Unlike many imprisoned parents, Father cannot assert ignorance as an excuse, for he knew it was possible for a court to grant visitation in prison, and knew exactly how to go about requesting it. Moreover, our order of 29 April 1999 specifically advised him that if he wanted additional visitation he must petition again, once he knew which institution he would be residing in.

Father did, however, write to C.C. about once a month since September 1999, which shows that he has a genuine interest in her. Furthermore, his testimony at the hearing convinced this court that he now has a strong desire to have personal contact with her through visitation.

B. The Proposed Visitation

The court must next consider the visitation itself, including the kind of supervision that would be provided at the visit. We have no reason to doubt Father's testimony about the facilities available at the State Correctional Institution at Somerset. There is no question that like other facilities of this

type, a child would be safe and comfortable during the visit, and that the room does not contain bars, gates, or other things of that nature which might frighten a young child. Furthermore, the danger of the child being physically harmed during the visit is very minimal.

C. The Transportation Arrangements

Next, a court must consider the distance and hardship to the child in traveling to the visitation site and the proposed transportation arrangements. Mother refuses to make the trip, which takes three hours each way, because she is currently pregnant. Her parents are unwilling to take on this burden, and this court could not order them to do so.

Father testified that his mother or sisters could provide transportation. However, as the hearing progressed it became clear that his mother does not have a vehicle. That leaves one of his sisters.

This proposal might be reasonable, despite the long trip, if C.C. had a close relationship with either of these two aunts. Unfortunately, she does not. Although they apparently are not total strangers to her, neither sister is close enough to C.C. for the child to feel comfortable spending the entire day with, including six hours in the car.

Thus Father's proposal amounts to forcing C.C. to take a long trip, lasting all day, with a woman she does not know, to a prison to visit a father she does not know.

D. The Age of the Child

C.C. will be four years old on July 30th. This young age makes it difficult for her to understand the significance of contact with her father, which might otherwise mitigate the hardship of the trip. Her age also makes her more vulnerable to fears, and makes the proposed transportation arrangements with an unfamiliar person even less attractive. Moreover, C.C. has essentially no memory of her father, which is not surprising given the fact that she last saw him two years ago. There is no evidence that she is eager to see him, or curious about him.

E. Effect on the Child

Finally, the court must consider the effect on the child physically and emotionally. As discussed earlier, the transportation arrangements would impose a substantial physical and emotional hardship on C.C. The visit would be an all-day affair, consisting of a six hour car trip and a visit lasting several hours. Moreover, she would be in the care of people she hardly knew the entire time, and visiting a man who is a stranger to her. Such an experience would be would be daunting even to a teenager, let alone a four year old child.

It is true C.C. might benefit from physical contact with her father, but we are inclined to believe that such a benefit would be slight, compared to the drawbacks. Although all attempts are generally made for the visitation facilities in prisons to provide a somewhat normal environment, such visits are

unavoidably limited, and it is hard to envision a strong parent/child relationship flourishing under these circumstances, especially where no relationship currently exists.

Conclusion

After careful consideration, the court concludes that Father has not rebutted the presumption that prison visitation with him would be in C.C.'s best interest. It would be quite a different situation if C.C. had a close relationship with him, and he had recently been incarcerated. Then, we would be motivated to preserve the parent/child relationship and prevent C.C. from losing a father. But C.C. does not know her father and because he is incarcerated, she will not be able to develop a close relationship with him until he has been released, which will be at least five years from now and could be as many as 22 years from now. In light of the reality of the situation, we conclude that the drawbacks of the proposed visitation outweigh any benefit she might receive.

We deny Father's request for visitation mindful of the fundamental right of parents to develop a relationship with their children. However, that right, like most rights, can also be lost under certain circumstances. Father committed serious crimes, and received a lengthy sentence of incarceration. He must pay the consequences of his actions, and one of those consequences is the loss of contact with his daughter.

ORDER

AND NOW, this _____ day of May, 2001, for the reasons stated in the foregoing opinion, the court denies the request of J.C. for visitation with his daughter, C.C.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Clinton W. Smith
J.C.
H.C.