The parties have stipulated that $650.00 is a reasonable sum for counsel fees and expenses. The plaintiff seeks a sum total of $1,500.00 for alimony pendente lite, counsel fees, and expenses.

The amount of the award is within the discretion of the trial court. *Tarbuck v. Tarbuck*, 204 Pa. Super. 569, 205 A. 2d 709 (1965). *Cox v. Cox*, 187 Pa. Super. 177, 144 A. 2d 458 (1958). We conclude $1,500.00, allocated $650.00 to counsel fees and expenses, and $850.00 to alimony pendente lite, since the commencement of this proceeding, is fair and reasonable to both the plaintiff and defendant.

ORDER

NOW, this 11th day of October, 1977, alimony pendente lite, counsel fees and expenses in the amount of $1,500.00 are awarded to the plaintiff.

Costs to be docketed and follow the final verdict in the case at bar.

Exceptions are granted the defendant.

IN RE: A, MINOR CHILD AND B, HER MOTHER, C. P., Orphans' Court Div., Franklin County Branch, Adoption Doc. No. 29, 1977, Vol. 2, Page 325

Orphans Court - Adoption Act - Involuntary Termination of Parental Rights - Impediment to Visitation

1. There is an affirmative duty on the part of a parent to assert his parental rights and a parent is not relieved of his liability for inaction because of a slight impediment to visitation.

2. The fact that a father is not allowed, under the terms of his parole, to see a child's mother, does not relieve him of the duty to make contact with his child who lives with the mother.

3. A request by the father to his parole officer to have arrangements made for the father to see his child, without further inquiry after no action was taken, is insufficient to establish the assertion of parental rights.

4. In order to defend against a petition for involuntary termination of parental rights which is based on lack of contact with child, a parent is

required to show he asserted himself to take a place of importance in the child's life and that he exercised reasonable firmness in declining to yield to obstacles to contact the child.

George S. Glen, Esq., Attorney for Petitioner

Ruby D. Weeks, Esq., Attorney for Respondent

OPINION AND DECREE NISI

EPPINGER, P.J., October 26, 1977:

For the purposes of this opinion A is the minor child of B the mother and C the father. The mother filed a petition with the Court for the involuntary termination of the father's parental rights.

The matter came before the Court for hearing and both the mother and the father were present and represented by counsel. From the evidence submitted, the Court makes the following:

FINDINGS OF FACT

1. The mother and father are the parents of the child who was born out of wedlock on November 21, 1974.

2. The mother and father were never married.

3. The mother married on September 11, 1976, and the mother and husband desire to adopt the child.

4. Prior to that time the father was committed to a State Correctional Institution.

5. On October 8, 1976, the father was paroled from the State Correctional Institution to an in-residence program for alcoholic treatment. The father resided at the center until October 23rd.

6. Upon leaving the treatment center, the father took up residence in a hotel in Carlisle, Cumberland County, where he lived until early 1977.

7. The father then moved to an apartment in Carlisle.

8. During the period from October 8, 1976, until June 7, 1977, the date when the mother filed her petition for

involuntary termination of father's parental rights, approximately eight months elapsed.

9. During this period, the father had no association with the child at all.

10. During the same period, the father had no communication with nor did he send letters, gifts, cards or remembrances of any sort to the child.

11. During the same period of time, the father never visited the child nor made any arrangements to visit the child.

12. During this same period, the father never offered to pay nor paid any support for the child.

13. During this same period, the father never indicated an interest to either the child or to the mother that he desired to see the child.

14. During his parole period, the father has been under the supervision of two parole agents.

15. One of the conditions of the father's parole was that he should have absolutely no contact with the mother.

16. The father contended at the hearing that his reason for not making any effort to see the child was because of this restriction.

17. A request was apparently made to the first parole officer to make arrangements for the father to see the child. Nothing was done to comply with this request. After the original request was made the father made no further inquiry about working out the details and there was no other follow up.

18. During this period, the child was under the supervision of a children's aid society and arrangements could have been made through the agency by the father to see the child. The father knew the child was under the supervision of the agency and that arrangements could have been made directly with the agency to see the child.

19. The father contended that he asked other people about the child's welfare. He did not go beyond asking questions, however.

DISCUSSION

The father acknowledged that at no time did he ever make contact with the child. He reasons thus: Because of the rules of his probation he was not allowed to be in contact with the mother and because the child lived with the mother, he could not see the child. This would not explain why he didn't communicate with the child in writing or by sending gifts or make a direct effort through the courts, through friends or through the children's aid society to secure visitation rights.

The question is whether a person of reasonable firmness really desiring to maintain a relationship with his child would be dissuaded from exercising parental rights and duties simply because he was not permitted to contact the child's mother. We hold that he had a duty to make such contact with the child and failing to do so, he forfeits his rights to the child. In almost every situation like this, one could find slight excuses for failing to act in a positive way where a duty to act exists. A person should not be relieved of his liability for inaction simply because of a slight impediment which may be thrown across the path.

There is an affirmative duty upon the part of the parent. This affirmative duty is expressed in a number of cases, including *In re Adoption of McCray*, 460 Pa. 210, 31 A.2d 652 (1975); *In re Adoption of JRF*, 27 Som. L.J. 298 (1972); *Owen Adoption*, 51 D. & C.2d 761 (Mercer 1971); *In re Cameron Adoption*, 47 North. 17 (1975); *In re Adoption of Orwick*, 464 Pa. 549, 342 A.2d 677 (1975); and *In re Smith Adoption*, 412 Pa. 501, 194 A.2d 919 (1963).

In these cases it is clear that if a parent does nothing to assert parental rights for a period in excess of six months, his rights shall be terminated on application of a party in interest. Furthermore, if the evidence shows that the father's conduct indicated a settled purpose of relinquishing a child, then the hearing court is justified in concluding that the burden has been met and that the parental rights of the father should be terminated.

In *Adoption of Croissette*, Pa. , 364 A.2d 263 (1976), the mother of the two children remarried five years after divorcing the father, having been separated three years before that. During the period of separation and until the mother's remarriage, the father actively sought to exercise visitation rights. After the mother remarried, the father, who was living in the same vicinity as his children, did not arrange to see them. All he did during the 33 months of non-contact with

the children, was to supply bi-weekly support checks and Christmas and birthday remembrances.

Our Supreme Court said that the central issue was whether the father refused or failed to perform his parental duties and the way to determine that was by examining his action during the period of alleged abandonment to discover whether he used all available resources to preserve his parental relationship. In that case, too, the father claimed that he was denied an opportunity to improve the parent-child relationship.

Since the lower court had not addressed the central issue, the Supreme Court vacated the decree denying the mother's petition to terminate her former husband's parental rights and remanded it for the trial court to determine whether the father failed or refused to perform parental duties as required under the adoption act.

As we have approached the central issue, we are persuaded that the father in this case both refused and failed to perform his parental duties. Everything that he claims to have done to express an interest in the child was far less than would have been done by a parent who really wanted to maintain a relationship with his child. He is required to assert himself and take and maintain a place of importance in the child's life and must exercise reasonable firmness in declining to yield to obstacles. *In re Adoption of JRF*, supra. All that is positively shown by way of his making an effort to visit with the child is his statement that he would like to visit the child or have arrangements made by a probation officer to do so. This shows nothing more than a desire and to have the desire but not to act affirmatively on the desire, does not satisfy the requirements of the adoption act. *Lohr's Adoption*, 56 D. & C.2d 618, 623 (Mercer 1972).

As stated in *In re Reese Children*, 19 Adams L. J. 6 (1977), parenthood is not a mere legal status providing parents ownership of their children which cannot be disturbed or challenged. Rather parenthood is an active occupation for constant affirmative demonstration of parental love, protection and concern requiring parents to do things for themselves. A bona fide good-faith effort is all that is required, but that is required.

It is true that for a time the father was prevented from visiting his child because of his incarceration. If a person is incarcerated, he obviously cannot perform the parental duties to the same extent that he could if not incarcerated. But once he is released, if it is his ambition to renew his relations with his

At approximately 3:15 P.M. following the preceding meetings, the Franklin County Legal Journal (corporation) will hold its annual meeting to receive reports, elect directors, and take such other action as may properly come before the meeting.

KENNETH E. HANKINS, JR.,
Secretary

Members of the Franklin County Bar Association, Please Note:

We would like to have a good attendance at the annual meeting of Franklin County Legal Journal on December 9, 1977.

This is your journal, your chance for input into policy matters, and your chance to voice criticisms and elect directors. Let us keep Bar interest in this publication high!

— *Managing Editor*

"Nothing sharpens the wits for the presentation of every possible view like the interest of opposing parties dealing with known facts in a genuine contest for victory."

— James T. Mitchell, J., "Tyson's Appeal," 191 Pa. 218 (1899), p. 224

"The laws of a country are made for the protection of those who owe a permanent or a temporary allegiance to it; and where it interposes for the protection of strangers within the jurisdiction of its Courts, it is by the courtesy of nations, and not of right: for protection and allegiance are correlative duties."

— John Bannister Gibson, C.J., Bollin v. Shiner 12 Pa. 205(1849)

child, a firm and positive effort is required to re-establish that relationship. He will neglect to do so at the risk of the termination of parental relationships.

DECREE NISI

NOW, October 26, 1977, the Court finds that the averments of the Petition for Involuntary Relinquishment of Parental Rights are true, that the respondent has forfeited such rights to his child;

IT IS THEREFORE ORDERED AND DECREED that all parental rights to A, minor child, C's daughter, are being terminated forever.

The custody of the said child shall remain with B her mother, who together with her husband, shall have the right to proceed with the adoption of the child without further notice to or consent of C.

This decree nisi shall become absolute unless exceptions are filed thereto within twenty (20) days from this date.

JOHNSON v. JOHNSON, C.P. Fulton County Branch, No. 32 September Term, 1976

Divorce - Jurisdictional Requirement - Bona Fide Resident

1. The requirement that a plaintiff in a divorce action be a bona fide resident of the Commonwealth one whole year immediately prior to the filing of his Complaint is a jurisdictional requirement and may not be waived.

2. The bona fide residency requirement must be established by a preponderance of the evidence.

3. The term bona fide resident for purposes of the divorce law means residence with domiciliary intent.

Albert Foster, Esq., Master

Lawrence C. Zeger, Esq., Counsel for the Plaintiff

OPINION AND ORDER

Keller, J., October 6, 1977: