

IN THE COURT OF APPEALS OF IOWA

No. 0-018 / 09-1188
Filed February 10, 2010

**IN THE INTEREST OF D.S.P.,
Minor Child,**

V.L.L., Mother,
Petitioner-Appellee,

M.A.P., Father,
Respondent-Appellant.

Appeal from the Iowa District Court for Linn County, Angeline M. Wilson,
District Associate Judge.

A father appeals the termination of his parental rights in a private
termination action. **AFFIRMED.**

Edward F. Crowell, Center Point, for appellant.

Amy L. Reasner of Lynch Dallas, P.C., Cedar Rapids, for appellee.

Caitlin Slessor of Nazette, Marner, Nathanson & Shea, L.L.P., Cedar
Rapids, guardian ad litem for minor child.

Considered by Vogel, P.J., Eisenhauer, J., and Zimmer, S.J.*

* Senior Judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

ZIMMER, S.J.

A father appeals from the termination of his parental rights in a private termination action. He contends there is insufficient evidence in the record to support the juvenile court's finding that he abandoned his daughter and claims that termination is not in the child's best interests. We affirm the juvenile court's decision.

I. Background Facts & Proceedings

Mark and Velvet are the parents of Destiny, who was born in April 2000. The parents lived together intermittently between 1995 and 1997. They attempted to resume a relationship after their daughter was born, but this did not work out. Mark participated in visitation with Destiny when she was a baby, but Velvet soon became concerned that Mark was not behaving responsibly while caring for their daughter. As a result, Velvet began to limit Mark's visitation.

In December 2000, Mark consulted with an attorney regarding custody of Destiny. The attorney sent a letter to Velvet, but she did not receive it because the letter was sent to the wrong address. Mark did not pursue legal action to establish a formal custody and visitation arrangement. The record reveals that Mark did not provide financial assistance for his daughter in the year following her birth.

In January 2001 the State sought and obtained a child support order through the Child Support Recovery Unit. Velvet lived in Iowa during all of 2001. She moved to Missouri in the summer of 2002, and then moved to California in

October where she lived in the Los Angeles area for five or six months. Mark had no contact with Destiny during this period of time.

Velvet returned to Iowa in 2003. In October of that year, Mark sought a downward adjustment of his child support obligation; however, he took no action to address any custody or visitation issues. When the parties went to court, Velvet informed Mark that her last name had been changed. After a court hearing in October 2003, which both parties attended, Mark asked to see Destiny, and Velvet allowed him to come to her parent's home to visit their child. This was Mark's last visit with the child.

In January 2004, Velvet and Mark entered into an agreement that called for Mark to be responsible for payment of fifty percent of Destiny's medical expenses not covered by insurance. Velvet moved back to Missouri in February 2004. She admits she did not give Mark any contact information when she moved, but she testified that she did not have Mark's address or phone number before she left Iowa. Mark called Velvet's parents soon after she moved, but they did not know her telephone number at that time. Velvet testified she always kept her contact information current with the Child Support Recovery Unit.

Velvet moved back to Iowa in 2006. She lived with her parents in Marion for about a year and then moved into an apartment in the same town where she lived for nearly two years. Mark's brother, Dan, testified he told Mark he had learned that Velvet was back in Iowa in 2006 after viewing information on a social networking site. In June 2006, the parties had another hearing on the issue of

child support.¹ Mark saw Velvet at the hearing, but did not seek any contact information from her, or ask to see Destiny. According to Mark, he did not request any visitation at the hearing because he intended to file a custody action and did not want to “tip his hand.” After the hearing, Mark met with an attorney to discuss the issue of custody. He claims he took no legal action because he had no way to find Velvet. Mark testified a representative of the Department of Veterans Affairs (VA) found Velvet’s telephone number in the telephone book for him in January 2009, while he was filling out some paperwork to increase his disability benefits because he had a dependent child.

On February 23, 2009, Velvet filed a petition for termination of Mark’s parental rights under Iowa Code section 600A.8(3)(b) (2009), on the grounds of abandonment. Velvet was then engaged to David, and he was interested in adopting Destiny.² On June 22, 2009, Mark filed a separate action seeking custody and visitation orders regarding Destiny.

Mark has been diagnosed with chronic hypersomnia, which causes him to sleep for long periods of time, as long as a day. He has difficulty waking, even with an alarm clock. He lives with his brother, Dan, and Dan’s wife. Mark is considered to be thirty percent disabled by the Veteran’s Administration (VA) and receives \$375 per month in disability benefits. This is his sole source of income. Mark’s disability benefits may not be garnished by the Child Support Recovery Unit, but he voluntarily pays fifty dollars per month in child support. As of May

¹ A district court judge denied Mark’s request to lower his child support obligation. The court believed Mark was capable of working and paying his full support obligation.

² Velvet and David were married on June 15, 2009.

2009, Mark was behind about \$14,500 on his child support obligation. He has not been employed since 2004.

A termination hearing was held on June 29, 2009. The juvenile court determined Mark had abandoned Destiny because he had not seen or talked with her since October 2003. The court found that Mark could have attempted to contact Destiny after he saw Velvet at the court hearing held in June 2006. The court concluded Velvet had not done anything to prohibit Mark from seeing Destiny within the last three years. The court determined termination of Mark's parental rights was in Destiny's best interests so that she could be adopted by her step-father, David. The court terminated Mark's parental rights under section 600A.8(3)(b).

After the termination hearing, Mark filed a motion to reopen the evidence to show that Velvet had been charged with theft. The court took judicial notice of the fact Velvet had been charged with a criminal offense. The court found the charge alone was not relevant on the issue of Velvet's ability to care for the child. The court also found that even if the criminal charge was relevant, it "does not change any finding made herein." The court then denied the motion to reopen the evidence. Mark now appeals.

II. Standard of Review

Termination proceedings under chapter 600A are reviewed de novo. *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998). A petition for termination of parental rights under this chapter must be established by clear and convincing proof. Iowa Code § 600A.8; *In re Kelley*, 262 N.W.2d 781, 784 (Iowa 1978). Our

primary interest in termination proceedings is the best interests of the child. *R.K.B.*, 572 N.W.2d at 601.

III. Factual Issue

Mark first contends the juvenile court erred by finding that Mark found Velvet's telephone number in the telephone book in January 2009. Mark states that a VA representative was helping him fill out some paperwork, and the representative looked in the telephone book to find Velvet's address. On our de novo review, we determine that whether Mark or someone helping him found Velvet's telephone number and address, the evidence shows that this information was easily accessed by looking in a local telephone book.

IV. Abandonment

Mark claims there is insufficient evidence in the record to support the juvenile court's finding that he abandoned Destiny. Mark states he contacted Destiny as he was able. He asserts that he was prevented from contacting his child because Velvet did not provide him with sufficient contact information. He contends he made sincere, but unsuccessful attempts to contact his daughter. He states he called Velvet's parents several times and searched the internet. He points out that he sought legal assistance in 2000, 2006, and 2009 regarding the issue of custody.

Velvet sought to terminate Mark's parental rights under section 600A.8(3)(b), which provides that if a child is six months of age or older, a parent is deemed to have abandoned a child "unless the parent maintains substantial and continuous or repeated contact with the child as demonstrated by

contribution toward the support of the child of a reasonable amount, according to the parent's means." The parent should visit the child at least monthly "when physically and financially able to do so and when not prevented from doing so by the person having lawful custody of the child." Iowa Code § 600A.8(3)(b)(1). If the parent is unable to visit the child, the parent should have regular communication with the child or the person having the care or custody of the child. Iowa Code § 600A.8(3)(b)(2).

The phrase "to abandon a minor child" is defined in section 600A.2(19) to mean that a parent "rejects the duties imposed by the parent-child relationship" by the parent "while being able to do so, making no provision or making only a marginal effort to provide for the support of the child or to communicate with the child." Abandonment is characterized as the giving up of parental rights and responsibilities accompanied by an intent to forego them. *In re Burney*, 259 N.W.2d 322, 324 (Iowa 1977). Thus, there are two elements necessary for abandonment—the conduct of the parent in giving up parental rights and responsibilities and the parent's intent. *In re Goettsche*, 311 N.W.2d 104, 106 (Iowa 1981); *In re N.D.D.*, 434 N.W.2d 919, 920 (Iowa Ct. App. 1988).

We determine Velvet has shown by clear and convincing evidence that Mark has abandoned his child within the meaning of section 600A.8(3)(b). He has not maintained "substantial and continuous or repeated contact with the child." See Iowa Code § 600A.8(3)(b). The evidence shows Mark has made only half-hearted efforts to communicate with his child. When Mark's first efforts to keep in contact with Destiny were unsuccessful, he largely gave up. The

evidence supports the juvenile court's determination that after Velvet moved back to Iowa in 2006, she did not do anything to prohibit Mark from contacting Destiny. In 2006, Mark knew the telephone number for Velvet's parents. His brother also provided him with information that Velvet was back in Iowa. Mark saw Velvet at a court hearing in June 2006, but he did not make any effort to see Destiny. At the time the termination hearing was held, Mark had not seen his daughter for more than six years. Mark's conduct shows his intent to forego his parental rights. We affirm the finding of abandonment under section 600A.8(3)(b).

V. Best Interests

Mark claims termination of his parental rights is not in Destiny's best interests. He points out that there are resources for which Destiny is eligible through the VA. He also states that he has a large and loving family, which could be a benefit to the child.

The juvenile court considered these matters, and found termination of Mark's parental rights was in Destiny's best interests. We look to a child's long-range, as well as immediate, interests. *R.K.B.*, 572 N.W.2d at 601. Mark has not shown much interest in acting as a parent to Destiny. He has been content to let others raise her. Destiny recognizes that Mark is her biological father, but she does not really know Mark. Destiny's step-father has acted as a father to Destiny for the past two years. Destiny has a close relationship with her stepfather and she calls him "Dad." We conclude termination of Mark's parental rights is in the child's best interests. See *In re P.L.*, ___ N.W.2d ___, ___ (Iowa 2010).

VI. Motion to Reopen

Finally, Mark claims the district court should have reopened the evidence and delayed adjudication of the termination action until the criminal charge against Velvet was resolved. He asserts the evidence was relevant to the issue of Velvet's character for truth and honesty. A juvenile court "has broad discretion to reopen the evidence;" this discretion "is to be liberally exercised." *In re J.R.H.*, 358 N.W.2d 311, 318 (Iowa 1984) (citation omitted).

The juvenile court took judicial notice of the criminal charge against Velvet. The court found the charge, standing alone, was not relevant to the issue of Velvet's truth and veracity, and was not relevant to the issue of her ability to care for the child. The court found Velvet was presumed innocent, as are all people. The court then found that even if the charge were relevant, it would not change the court's findings.

We find no abuse of discretion in the court's refusal to reopen the evidence. The issue before the court was whether Mark had abandoned the child within the meaning of section 600A.8(3)(b). We have already determined the record contains ample evidence of abandonment. The possibility that Velvet may be convicted of a crime at some point in the future does not change that assessment.

We affirm the decision of the juvenile court finding Mark's parental rights should be terminated under section 600A.8(3)(b).

AFFIRMED.