

IN THE COURT OF APPEALS OF IOWA

No. 0-020 / 09-1243
Filed March 24, 2010

**IN THE INTEREST OF C.J.T.,
Minor Child,**

T.A.T., Mother,
Petitioner,

J.A.L., Father,
Appellant.

Appeal from the Iowa District Court for Allamakee County, John C. Bauercamper, Judge.

A father appeals from the district court's order terminating his parental rights to his son. **AFFIRMED.**

Kevin Schoeberl, Cresco, for appellant father.

Jeffrey Swartz of Jacobson, Bristol, Garrett & Swartz, Waukon, for appellee mother.

W. Richard White of Morrow & White, Waukon, 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).

VOGEL, P.J.

Jonathan appeals the termination of his parental rights to his son, C.J.T. He asserts the court erred in finding he abandoned C.J.T. or failed to provide financial support. He also asserts termination was not in C.J.T.'s best interests. He also argues the court erred in denying his request to continue the trial. We affirm. Our review is de novo. *In Interest of M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993).

I. Background Facts and Proceedings.

C.J.T. was born in April 2000 to Tanya and Jonathan, who were never married. Paternity and child support were set during an administrative hearing before the Child Support Recovery Unit on June 12, 2000, after which Jonathan was ordered to pay \$305.00 per month to support C.J.T. Jonathan saw C.J.T. twice during the fall of 2000. After C.J.T. was born, Tanya lived with her parents for a period of time while she attended Luther College. She then went to Iowa State University for a semester, and then to LaCrosse, Wisconsin, where she obtained her B.S. degree in nuclear medicine in June 2003. She lived in Milwaukee with C.J.T. until August 2004. Jonathan had no contact with C.J.T. during 2001, 2002, or 2003, but he did pay some child support, through mandatory wage withholding.¹ In 2004, Tanya traveled to Iowa City and arranged for Jonathan to have a few visits with C.J.T. Tanya discontinued those visits, citing concerns that Jonathan was bringing other people to the visits, causing C.J.T. to be over-stimulated and frustrated. However, Tanya did not

¹ The Iowa Child Support Recovery Unit collected child support from Jonathan in the amounts of: \$2041.10 in 2000; \$3601.10 in 2001; \$1931.59 in 2002, \$1043.64 in 2003; \$567.67 in 2004; and \$317.94 in 2005.

prevent Jonathan from visiting C.J.T. at her home. Although C.J.T. had exhibited behavioral difficulties since infancy, it wasn't until 2005 that C.J.T. was diagnosed with a sensory integration dysfunction, and in 2008 diagnosed with a form of autism, both of which manifested as "meltdowns" that would take hours or days for C.J.T. to return to normal behavior.

In August 2004, Tanya and C.J.T. moved to Spokane, Washington, where she worked until April 2007. In October 2004, Tanya contacted the Iowa Child Support Recovery Unit and requested it discontinue seeking child support from Jonathan, explaining that "the amount that I have received in the past two years is not significant enough to continue with." Jonathan has made no voluntary child support payments since C.J.T.'s birth. In August 2005, believing Tanya and C.J.T. still resided in Wisconsin, Jonathan petitioned the Wisconsin state court for scheduled visitation with C.J.T. He asserted Tanya was obstructing his efforts to see C.J.T. Tanya, in turn, sought to establish a visitation schedule in Washington state court; Washington then assumed jurisdiction as C.J.T.'s home state.² In February 2006, a Washington state court order granted Tanya "residential placement," and provided Jonathan up to seven consecutive days of visitation, every other month.³ Jonathan did not utilize these visitation opportunities.

² Jonathan's legal counsel in Iowa corresponded with Tanya's attorney in Washington. His attorney then referred him to an attorney in Washington; however the record indicates neither Jonathan nor any legal counsel on his behalf appeared at the Washington hearing and the ruling was entered on Jonathan's default.

³ The Washington state court decision was based upon RCW 26.09.191 (2005), which defines a parenting plan, generally during a dissolution of marriage. The Washington Practice Series, section 33.10 (2009), explains that the term "parenting plan" encompasses what was formerly called "custody" and "visitation."

Tanya moved back to Allamakee County, Iowa, during the summer of 2007 in order to be closer to her family. She built a home, and at the time of trial, was working in Winona, Minnesota. Tanya did not notify Jonathan of her various moves, nor keep him current as to her changes of address and phone number. On March 4, 2009, Tanya filed a petition for termination of Jonathan's parental rights. Jonathan was served with notice and the petition on March 11. The matter was set for hearing on May 15. On April 21, Jonathan filed his answer and requested the court continue the hearing date, which the court later denied. Just prior to the start of the hearing on May 15, Jonathan filed a petition seeking sole legal custody of C.J.T. After hearing the evidence presented, including the testimony of both Tanya and Jonathan, the court terminated Jonathan's parental rights on July 30, 2009, under Iowa Code sections 600A.8(3)(b) (2009) (abandonment) and (4) (failure to provide financial support). Jonathan appeals.

II. Abandonment.

Jonathan first asserts the court erred in finding he abandoned C.J.T. A parent is deemed to have abandoned the child unless the parent maintains substantial contact with the child as demonstrated by financially contributing to the support of the child; visiting the child at least monthly when physically and financially able; communicating regularly with the child or the child's custodian; or living with the child for six months within the one-year period immediately preceding the termination of parental rights hearing. Iowa Code § 600A.8(3)(b). A showing of abandonment does not require total desertion; feeble contacts can also demonstrate abandonment. *In Interest of M.M.S.*, 502 N.W.2d 4, 7 (Iowa 1993).

Jonathan asserts he made numerous efforts to communicate with C.J.T., but claimed “[Tanya] wouldn’t return any of my phone calls.” From the record, it appears that Jonathan saw C.J.T. during only two periods of his life: a few visits in the fall of 2000, and again in the spring of 2004. He has not seen C.J.T. since 2004, nor contacted Tanya since 2006. The district court found,

[Jonathan] attributes his lack of contact with [C.J.T.] due to his low income and not being able to afford travel in the earlier years, then lack of cooperation from Tanya in 2004, and lack of knowledge about how to contact [C.J.T.] in subsequent years.

“An abandoned child is no less abandoned because the parent can rationalize a reason for the abandonment.” *M.M.S.*, 502 N.W.2d at 7.

C.J.T. is nearly ten years old, and Jonathan has not made a significant effort to be a part of his life; choosing not to utilize visitation after being granted such in the February 2006 order. By failing to maintain meaningful communication and association with C.J.T., Jonathan relinquished his parental rights and privileges. *Interest of Goettsche*, 311 N.W.2d 104, 107 (Iowa 1981). The district court terminated Jonathan’s parental rights on the grounds of abandonment, and we agree with its finding that having had no contact for about five years, “[C.J.T.] has no relationship at this time with his father or his father’s family. . . . The evidence of abandonment is overwhelming.”

III. Child Support.

Jonathan next asserts the court did not have good cause in terminating his parental rights for failure to contribute financially to C.J.T.’s support. The court shall have grounds for termination of parental rights when “a parent has been ordered to contribute to the support of the child or financially aid in the child’s

birth and has failed to do so without good cause.” Iowa Code § 600A.8(4). The key factual issue of “without good cause” concerns the father’s ability to pay the ordered child support. *In re R.K.B.*, 572 N.W.2d 600, 602 (Iowa 1998). While Jonathan argued he did not have the financial ability to visit or support C.J.T., the district court examined Jonathan’s earnings and found they have “been negligible in recent years compared with his earnings when child support was first calculated, due to his decision to voluntarily discontinue full-time employment and attend school with only nominal work hours. He has accumulated no assets or investments.”⁴

Jonathan did not make an effort to voluntarily pay child support for C.J.T., and he did not put C.J.T.’s need for support above his own needs. As the district court found, “Jonathan made no voluntary monetary child support payments as ordered by any court prior to the filing of this suit. All support payments that were received were the result of wage garnishment by the CSRU.” Abnegation of court-ordered financial responsibility is relevant evidence of indifference to the child involved; it is “the equivalent of abandonment.” *Goettsche*, 311 N.W.2d at 10. Jonathan failed to pay court-ordered child support for C.J.T., without good cause, or in any way voluntarily contribute to his care.

IV. Best Interests.

Jonathan argues that termination is not in C.J.T.’s best interests as it cuts off his future right of financial support and future inheritance from Jonathan and

⁴ Jonathan’s support payments were initially set at \$305.00 in June 2000, but reduced to \$82 per month in April 2002. In October 2004, the Child Support Recovery Unit discontinued active enforcement of this obligation, per Tanya’s request.

there is no “potential step-parent adoption waiting in the wings.”⁵ Once we determine a ground for termination under Iowa Code section 600A.8 has been established by clear and convincing evidence, we must next determine whether it is in the child’s best interests to order termination of parental rights. *In re J.L.W.*, 523 N.W.2d 622, 625 (Iowa Ct. App. 1994). *Compare In re P.L.*, 778 N.W.2d 33, 37, 40 (Iowa 2010) (“In considering whether to terminate [under Iowa Code section 232.116(2)], ‘the court shall give primary consideration to the child’s safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child,’” *with* Iowa Code § 600A.1 (stating that the best interests requires a parent affirmatively to assume parental duties, including “the fulfillment of financial obligations,” “continued interest,” “effort to maintain communication,” and “establishment and maintenance of a place of importance in the child’s life.”)⁶ Section 600A.1 also states the best interests of the child “shall be the paramount consideration” while also “giving due consideration” to “the interests of the parents.” There is a “golden thread running through both chapter 600A and chapter 232, [which] is the best interests of the child.” *In re F.E.Z.*, 434 N.W.2d 912, 914 (Iowa Ct. App. 1988).

⁵Jonathan correctly points out the district court failed to make specific best interest findings. On our de novo review of the record and district court ruling, we are able to clearly rule on the issue.

⁶ Iowa Code section 600A.1 provides:

The best interest of a child requires that each biological parent affirmatively assume the duties encompassed by the role of being a parent. In determining whether a parent has affirmatively assumed the duties of a parent, the court shall consider, but is not limited to consideration of, the fulfillment of financial obligations, demonstration of continued interest in the child, demonstration of a genuine effort to maintain communication with the child, and demonstration of the establishment and maintenance of a place of importance in the child’s life.

Jonathan has been an absent parent, shirking both his financial and emotional support obligations to be a responsible parent to his son. He has not in any fashion “affirmatively assumed the duties encompassed by the role of being a parent.” Iowa Code § 600A.1.

In addition, the record demonstrates that C.J.T. suffers from a form of autism and needs a very structured and stable environment.⁷ Any change in his daily routine provokes behavioral outbursts and long periods of instability. Tanya has provided C.J.T. a loving, secure, and stable life, as well as closely monitoring and providing for his special medical needs. Introducing substantial parenting changes at this point would not be in C.J.T.’s best interests.

V. Motion to Continue.

Finally, Jonathan argues the court erred in denying his April 27, 2009 motion to continue trial, which had been set for May 15. He cited his need to attend a “once in a lifetime internship” program in London, England beginning May 31, 2009, and need to “engage in crucial discovery” prior to the hearing. The grant or denial of a motion for continuance is in the discretion of the trial court and will be interfered with on appeal only when there has been a clear abuse of that discretion, and injustice has been done to the party seeking continuance. *In re J.L.L.*, 414 N.W.2d 133, 135 (Iowa 1987). The district court took judicial notice of prior litigation regarding C.J.T., and stated,

The court notes that the father has had ample opportunity to litigate custody, visitation and related issues in the past and has failed to act. His last minute motion to continue this case is not persuasive.

⁷ C.J.T. suffers from “pervasive developmental disorder, not otherwise specified, with associated anxieties, Attention Deficit Hyperactivity Disorder-combined subtype traits, oppositional defiant disorder” and “sensory sensitivities;” (Autism spectrum disorders).

The factual issues relevant to the legal issues in this case all focus on Jonathan's own past conduct, for which he should not need discovery from his opponent.

We agree with the district court, and therefore find no abuse of discretion in denying Jonathan's motion to continue.

VI. Conclusion.

We affirm the termination of Jonathan's parental rights under Iowa Code sections 600A.8(3)(b) and (4), and find termination is in C.J.T.'s best interests.

AFFIRMED.