IN THE COURT OF APPEALS OF IOWA

No. 0-411 / 10-0164
Filed June 30, 2010

IN THE INTEREST OF A.K.,
Minor Child,

G.P.K., Mother,
Petitioner,

E.T.K., Father,
Appellant.

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A father appeals the termination of his parental rights to his daughter. **AFFIRMED.**

Matthew L. Noel of Blair & Fitzsimmons, P.C., Dubuque, for appellant father.

Sarah E. Stork Meyer of Clemens, Walters, Conlon & Meyer, L.L.P., Dubuque, for appellee mother.

Emilie Roth-Richardson, Dubuque, for minor child.

Considered by Vaitheswaran, P.J., and Doyle and Tabor, JJ.

VAITHESWARAN, P.J.

Edward appeals the termination of his parental rights to his daughter.

I. Background Facts and Proceedings

Edward physically and emotionally abused Gail, the mother of his daughter. On one occasion, he also physically abused his daughter. As a result, a domestic abuse protective order was entered, which precluded any contact between Edward and his family. *See* Iowa Code ch. 236 (2009).

Edward violated federal law by possessing firearms while subject to a domestic violence protective order. He was imprisoned for the violation. On his release, he consumed alcohol in violation of the supervised release terms. This violation led to his re-incarceration. While he was incarcerated, Gail sought extensions of the protective order, which were granted following notice to Edward and hearings in which he participated. Eventually Gail petitioned to terminate Edward's parental rights to his daughter. After an evidentiary hearing at which Edward testified, the juvenile court granted the petition.

On appeal, Edward contends (A) Gail failed to establish that he abandoned the child pursuant to Iowa Code section 600A.8(3)(b), and (B) the juvenile court admitted irrelevant evidence.

II. Analysis

A. Abandonment

A parent is deemed to have abandoned a child who is six months of age or older unless the parent

> maintains substantial and continuous or repeated contact with the child as demonstrated by contribution toward support of the child of

> a reasonable amount, according to the parent's means, and as demonstrated by any of the following:
>
> (1) Visiting 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.
>
> (2) Regular communication with the child or with the person having the care or custody of the child, when physically and financially unable to visit the child or when prevented from visiting the child by a person having lawful custody of the child.
>
> (3) Openly living with a child for a period of six months within the one-year period immediately preceding the termination of parental rights hearing and during that period openly holding himself or herself out to be the parent of the child.

Iowa Code § 600A.8(3)(b). Our review of the record is de novo. *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998).

Edward acknowledges that he did not contribute to the support of his daughter but maintains this omission was based on his fear that contributions would be viewed as a violation of the domestic abuse protective order. The juvenile court rejected this assertion, stating the existence of the protective order did not justify his "lack of parental responsibilities." The court noted that Edward took "no legal steps to establish any type of contact or support with [his daughter] since the protective order was entered in 2006." The court observed that "it was Edward's behaviors which necessitated the imposition of the protective order."

We fully concur in the juvenile court's analysis. As detailed above, Edward's separation from his daughter was of his own making: he abused Gail, he abused his daughter, he violated the protective order, and he violated the terms of his release. The fact that Gail sought and obtained extensions of the protective order, as was her right, did not prevent Edward from seeking court permission to provide monetary support or have written or supervised contact

with his daughter. He did not seek this permission even after a district court judge and one of his attorneys informed him of his options.

We are convinced that the evidence supports the juvenile court's finding of abandonment.

B. Challenged Evidence

Edward next challenges the admission of two sets of evidence on grounds that they were not relevant. Evidence is relevant where it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Iowa R. Civ. P. 5.401.

The first piece of evidence that Edward challenges is a recording of an episode during which Edward severely berated his young son from another relationship. Edward objected to this recording on relevancy grounds. The district court overruled the objection, stating the evidence bore on Edward's "parenting abilities."

We believe the evidence is at best only marginally relevant to the question of whether Edward abandoned his daughter. However, the admission of the recording is not prejudicial because it is cumulative of uncontested evidence concerning Edward's belligerent and abusive behaviors. *See Vasconez v. Mills*, 651 N.W.2d 48, 57 (Iowa 2002).

The second set of evidence relates to Edward's apparent assault of his brother. Specifically, Gail's attorney elicited testimony from Edward and introduced exhibits concerning a melee at which Edward's brother received a black eye. Edward's attorney objected to this evidence on relevancy grounds,

stating the incident was a family matter. Again, we believe the evidence is only marginally relevant to the issue of abandonment. However, its admission was not prejudicial, because the evidence was cumulative of unchallenged evidence. *See id.* The juvenile court acknowledged as much, stating "there's been quite a bit of testimony back and forth regarding anger issues for [Edward] so it would be relevant on that level."

We conclude the admission of this evidence does not require reversal of the termination decision.

III. Appellate Attorney Fees

Remaining is the question of who should be responsible for Edward's appellate attorney fees. The juvenile court appointed counsel for Edward pursuant to Iowa Code section 600A.6A. Section 600A.6B(1) states in part that the person filing the termination petition under chapter 600A "shall be responsible for the payment of reasonable attorney fees for counsel appointed pursuant to section 600A.6A." The only exception is for indigency of the individual filing the termination petition. *Id.*

The juvenile court found that Gail was not indigent and, accordingly, denied her request to shift Edward's trial attorney fees to him. On appeal, Gail contends that, because Edward filed the notice of appeal, he should pay his own appellate attorney fees.

Iowa Code section 600A.6B(1) does not limit the petitioner's obligation for payment of the respondent's attorney fees to those fees incurred during the trial proceedings. For that reason, we decline Gail's request to shift the obligation to Edward.

We affirm the termination of Edward's parental rights to his daughter. Appellate attorney fees shall be borne by Gail.

AFFIRMED.