

IN THE COURT OF APPEALS OF IOWA

No. 2-057 / 11-0462
Filed March 28, 2012

**IN THE INTEREST OF J.T.J. and J.A.J.,
Minor Children,**

**A.T.J., Father,
Appellant.**

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

In this private termination action, a father appeals a ruling terminating his
parental rights to two of his sons. **REVERSED.**

Sharon D. Hallstoos of Hallstoos Law Office, Cedar Rapids, for appellant
father.

Edward F. Crowell, Cedar Rapids, for appellee mother.

Anne Laverty of Mullin & Laverty, L.C., Cedar Rapids, for intervenor.

Lori L. Klockau and Daniel L. Bray of Bray & Klockau, P.L.C., Iowa City,
for minor children.

Richard F. Mitvalsky of Gray, Stefani & Mitvalsky, P.L.C., Cedar Rapids,
guardian ad litem for minor children.

Heard by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

VAITHESWARAN, P.J.

In this private termination action, a father appeals a ruling terminating his parental rights to two of his sons.

I. Background Facts and Proceedings

Anthony and Elizabeth had three children together. Only the couple's twins, born in 2009, are the subject of this appeal.

When the twins were sixteen months old, Elizabeth expressed an interest in having them adopted. She contacted an adoption agency in Utah but did not provide the agency with Anthony's contact information, asserting she did not have it. The agency put her in touch with a couple from that state, who visited Iowa to meet the twins. At that point, Elizabeth changed her mind about adoption.

A month later, Elizabeth changed her mind again. On July 8, 2010, she signed releases of custody for each of the twins and gave the releases to a local attorney who was to facilitate the interstate placement and adoption of the children. The Utah couple returned to Iowa and, on July 10, 2010, picked up the twins and took them to Utah.

Elizabeth followed up by filing petitions to terminate her own parental rights as well as Anthony's parental rights. In the petitions, she alleged Anthony's whereabouts were "unknown." In an attachment providing information about the birth father, she identified Anthony's permanent mailing address and telephone number as "unknown."

Anthony responded with an application to revoke the releases of custody. He asserted that he had lived with the children since their birth, "had regular,

consistent contact with his children since their birth,” and had “established and maintained a significant bond with the children from birth up until June 6, 2010, when [Elizabeth] was arrested for domestic assault on [him].”

After this document was filed, Elizabeth once again changed her mind about adoption and asserted that she wished to revoke the releases. The district court considered the issue and concluded that the children’s best interests would be served by allowing Elizabeth to revoke the releases of custody. The court reasoned that there did not appear to be sufficient evidence to terminate Anthony’s parental rights based on abandonment, and “it does a great disservice to these innocent children and to [the Utah couple] if the children are left in their care any longer when there is very little possibility the adoption will become a reality.” The court ordered the children returned to Iowa within forty days.

Meanwhile, the attorney charged with placing the children for adoption was designated the children’s custodian and, in that capacity, filed a request for a transition plan. She alleged there was domestic violence in the biological parents’ home and Anthony was selling drugs from the home. She asked the court “to fashion a plan to protect these children until the [Iowa] Department of Human Services can provide assistance to Elizabeth.” She subsequently filed a petition to terminate both parents’ rights to the twins. In response, the district court ordered a stay of its prior order requiring the return of the children, pending the outcome of the termination trial.

The matter proceeded to trial on the attorney’s termination petition. Additionally, the court stated it would reconsider its prior ruling on Elizabeth’s request to revoke the releases of custody and would consider evidence on that

issue at the termination trial.¹ Following trial, the district court terminated Anthony's parental rights to the twins, reversed its prior grant of Elizabeth's request to revoke her releases of custody, and terminated her parental rights to the twins. Only Anthony filed an appeal.

II. Analysis

The district court determined that Anthony abandoned the twins.² Anthony takes issue with this determination.

"To abandon a minor child"

means that a parent, putative father, custodian, or guardian rejects the duties imposed by the parent-child relationship, guardianship, or custodianship, which may be evinced by the person, 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.

Iowa Code § 600A.2(19) (2009). A parent is deemed to have abandoned a child who is six months 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 the person having lawful custody of the child.

¹ The record contains the mother's termination petitions and the Utah couple's termination petitions in addition to the custodian's termination petition. The mother's petitions were withdrawn by her. The Utah couple's termination petitions were dismissed.

² The district court made reference to factors other than abandonment, such as failure to pay ordered child support and domestic violence. These factors implicate other grounds for termination found in Iowa Code section 600A.8. See Iowa Code § 600A.8(4), (8). Those provisions were not pleaded as grounds for termination.

(3) Openly living with the 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.

Id. § 600A.8(3)(b). This statute states that abandonment will be found *unless* it is established that the parent contributed to the support of the children *and* had any of the enumerated types of contact with the children.

The district court began by noting that Anthony was never ordered to pay Elizabeth child support for the twins. The court found that Anthony nonetheless “did provide some support for the twins” but his “level of support [was] derelict based on his self-reported income.” We find it unnecessary to address the question of Anthony’s monetary support of the twins because the children’s custodian also had to establish that Anthony did not have any of the contacts with the children enumerated in section 600A.8(3)(b)(1), (2), and (3). On our *de novo* review, we are convinced Anthony did have sufficient contacts under at least one of those provisions. *See In re C.A.V.*, 787 N.W.2d 96, 99 (Iowa Ct. App. 2010) (setting forth scope of our review).

After the twins were born, Anthony and Elizabeth lived together for between three and six months. At that point, Elizabeth lost her residence and was forced to move in with her mother, who refused to allow Anthony into the home. Despite this refusal, Anthony stopped by to see the twins approximately twice during the one-month period that the children were with their grandmother. At some point during the late summer of 2009, Anthony also took the twins to Chicago to visit his family. He testified he was there for between two weeks and a month.

In the fall of 2009, Elizabeth's mother moved out, and, in October 2009, Anthony moved in. Anthony lived in the home with Elizabeth and the twins from October 2009 through part of February 2010. In February, he moved out for two weeks based on a dispute with Elizabeth. He returned to the home in March 2010 but left again in late March or April, when Elizabeth began a relationship with another man.

After Anthony moved out, he returned to the home during the days to care for the children while Elizabeth was at work. At some point in May 2010, Elizabeth and her new boyfriend moved to a trailer home. Elizabeth's mother returned to the home in which they had been living and cared for the twins for two weeks. Anthony did not visit the twins during this two-week time frame.

On June 6, 2010, Anthony and Elizabeth had an altercation and Anthony obtained a no-contact order against her. He did not see the children after this date. As noted, the children were transferred to the Utah couple a month later.

While the children were in Iowa, Anthony attended six of seven well-baby check-ups. The appointments he attended spanned one year, taking place in March 2009, April 2009, June 2009, October 2009, and March 2010.

From this record, we are convinced Anthony visited the children at least monthly until June 6, 2010. While different witnesses had different recollections of the precise dates on which Anthony came and went, the overall picture is one of an engaged parent who made significant efforts to spend time with his children except when precluded from doing so. Notably, after July 10, 2010, Anthony was not in a position to have personal, telephone, or written contact with the children because, according to the pre-adoptive mother, Elizabeth "never mentioned"

affording him the same type of open adoption she had negotiated for herself. Additionally, in mid-July 2010, Elizabeth was encouraging people via Facebook not to tell Anthony anything about his children. We conclude Anthony's contacts satisfied Iowa Code section 600A.8(3)(b)(1) and precluded a finding that he abandoned the twins.

As there is insufficient evidence of abandonment, we reverse the termination of Anthony's parental rights. In light of our conclusion that the ground for termination cited by the district court was not satisfied, we need not address the second argument raised by Anthony, whether termination was in the twins' best interests.³

REVERSED.

³ As noted in our opinion, we are cognizant of the domestic violence allegations. We are also cognizant of the allegation of drug sales by Anthony, an allegation that was investigated once by the Iowa Department of Human Services and determined to be unfounded. Because this case was pleaded and tried exclusively on an abandonment theory, we have no authority to address these issues. We also have no authority to address issues relating to the transition of the children from beneficent caretakers in Utah to Anthony's loving, but untested full-time care. While we recognize the potential ramifications of our opinion, the opinion is necessarily based on the record before us and the single ground for termination presented to us.