

IN THE COURT OF APPEALS OF IOWA

No. 2-348 / 11-1938
Filed June 13, 2012

**IN THE INTEREST OF V.A.H.,
Minor Child,**

J.M.P., Mother,
Petitioner,

T.L.H. III, Father,
Appellant.

Appeal from the Iowa District Court for Lee (North) County, Gary R. Noneman, District Associate Judge.

A father appeals from the order terminating his parental rights in a private termination action. **AFFIRMED.**

Curtis Dial of Law Office of Curtis Dial, Keokuk, for appellant.

Carl A. Saunders of Saunders Law Firm, Fort Madison, for mother.

Thomas Skewes of Johnson & Skewes, Fort Madison, for minor child.

Considered by Vaitheswaran, P.J., Doyle, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

HUITINK, S.J.**I. Background Facts & Proceedings.**

Thomas and Jennifer are the parents of a child born in March 2008. The parents were never married, but they lived together until April 2009, when the child was just over one year old. After the parties separated, when Thomas did visit the child, it was at the instigation of Jennifer. The last time Thomas had a scheduled visit was at a birthday party for the child's second birthday in March 2010.¹ He gave the child a present of five dollars at that time. Thomas had not paid any other child support.²

On June 3, 2011, Jennifer filed a petition seeking to terminate Thomas's parental rights under Iowa Code chapter 600A (2011), on the ground of abandonment. At a deposition taken on August 16, 2011, Thomas learned Jennifer's address and telephone number. He still did not make any effort to contact her to arrange visitation with the child.

A hearing was held on October 21, 2011. Jennifer testified she had worked at the same employer since the time she and Thomas lived together. She stated Thomas would be able to locate her if he wanted to have visitation with his child. Jennifer married Austin in June 2011. Austin is interested in adopting the child. He stated he and the child have a father-daughter relationship.

¹ There was evidence Thomas accidentally saw the child recently when Jennifer and the child were going to a cousin's house and Thomas drove by. He stopped and watched the child play.

² Thomas's grandparents had paid a total of \$290 for the support of the child.

Thomas testified he wanted to have visitation with the child. He stated Jennifer moved, and he no longer knew her address. He also stated that she changed her telephone number in July 2010. He admitted he knew Jennifer was still working for the same employer. Thomas testified Jennifer was not interested in letting him have visitation with the child.

The juvenile court entered an order on November 18, 2011, terminating Thomas's parental rights under section 600A.8(3) (abandonment). The court noted that the last time Thomas had a visit of any substance with the child was in March 2010. The court also noted that Thomas had not financially supported the child. The court found:

It is in the best interest of [the child] that [Thomas's] parental rights be terminated. He has abandoned her. He has failed to maintain any objectively observable interest in her since March 2010. [The child] does not even recognize him as her father or as a person known to her. She has bonded with her step-father as her father figure and is fully integrated into the [step-father's] home.

Thomas appeals the juvenile court order terminating his parental rights.

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. Iowa Code § 600A.1; *R.K.B.*, 572 N.W.2d at 601.

III. Abandonment.

Thomas contends the reason he did not regularly visit the child was because he was prevented from doing so by Jennifer. He claims Jennifer interfered with his attempts to have regular contact with the child. He also claims there is insufficient evidence that he intended to abandon the child.

Iowa Code section 600A.8(3)(b) provides:

If the child is six months of age or older when the termination hearing is held, a parent is deemed to have abandoned the 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, 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.

(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.

The phrase "to abandon a minor child," has been defined to mean:

that a parent . . . rejects the duties imposed by the parent-child relationship, . . . 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).

There are two elements necessary to show abandonment, the giving up of parental rights and responsibilities accompanied by an intent to forego these rights. *In re Burney*, 259 N.W.2d 322, 324 (Iowa 1977); *In re C.A.V.*, 787 N.W.2d 96, 101 (Iowa Ct. App. 2010). "[P]arental responsibilities include more than

subjectively maintaining an interest in a child. The concept requires affirmative parenting to the extent it is practical and feasible in the circumstances.” *In re Goettsche*, 311 N.W.2d 104, 106 (Iowa 1981). A party is not required to show total desertion in order to prove abandonment. *In re M.M.S.*, 502 N.W.2d 4, 8 (Iowa 1993).

The juvenile court specifically found there was nothing in the record to suggest Jennifer had in any way impeded Thomas from participating in parenting the child. Thomas admitted that prior to March 2010, when he did have visits with the child, all of the visits had been arranged by Jennifer. The court also specifically found Jennifer had never denied Thomas access to the child. We note that Thomas admitted he knew all along where Jennifer was working, even when he did not know her address or telephone number. It is clear Thomas could have contacted Jennifer in an effort to have visitation with the child if he had wanted to do so. Even after August 2011, when Thomas was aware of Jennifer’s address and telephone number, he did not make any effort to contact her or the child.

We determine there is clear and convincing evidence in the record to support termination of Thomas’s parental rights on the ground of abandonment under section 600A.8(3).

IV. Best Interests.

Thomas asserts the termination of his parental rights is not in the child’s best interests. He states that he would like to maintain a relationship with the child. He also points out that his grandparents had a relationship with the child.

“Once the court has found a statutory ground for termination under a chapter 600A termination, the court must further determine whether the termination is in the best interest of the child.” *In re A.H.B.*, 791 N.W.2d 687, 690 (Iowa 2010). In considering chapter 600A, the Iowa Supreme Court has determined the best-interest statutory framework found in section 232.116(2) and (3) is a useful point of analysis. *Id.* In this statutory framework, we consider the child’s emotional and psychological health, the physical, mental, and emotional condition and needs of the child, and the closeness of the parent-child bond. *Id.* at 690-91.

We concur in the juvenile court’s conclusion that termination of Thomas’s parental rights is in the child’s best interests. Thomas has not maintained regular and meaningful contact with the child. He has not paid anything more than an extremely limited amount for the support of the child. Thomas has not acted to maintain a place of importance in the child’s life. Jennifer’s husband, Austin, has acted as the child’s father and he is willing to adopt the child.

We affirm the decision of the juvenile court terminating Thomas’s parental rights.

AFFIRMED.