

IN THE COURT OF APPEALS OF IOWA

No. 3-1180 / 13-0897
Filed January 9, 2014

**IN THE INTEREST OF H.N.M.,
Minor Child,**

**R.N.L., Mother,
Appellant,**

**M.M., Father,
Appellee.**

Appeal from the Iowa District Court for Wright County, Paul B. Ahlers,
District Associate Judge.

A mother appeals the juvenile court's denial of her application to terminate
the father's parental rights. **AFFIRMED.**

Dani L. Eisentrager of Eisentrager Law, Eagle Grove, for appellant
petitioner.

Justin T. Deppe of Deppe Law Office, Jewell, for appellee.

Lynn Collins Seaba of Malloy Law Firm, Goldfield, attorney and guardian
ad litem for minor child.

Considered by Vogel, P.J., and Mullins and McDonald, JJ.

VOGEL, P.J.

A mother appeals the juvenile court's denial of her application to terminate the parental rights of the father, claiming she proved by clear and convincing evidence grounds to terminate because the father abandoned the child and did not pay child support. Because we conclude the juvenile court correctly found the father's lack of contact with the child was due to the mother's actions, and the father was contributing child support within his means, we affirm.

I. Factual and Procedural Background

The child was born in November 2006 in Pomona, California. The parents, Michael and Rochelle, cohabited for a brief time in the residence of Michael's mother (Ronda). The parents had an amicable relationship at this point and shared the duties of caring for and supporting the child, even after Rochelle moved out of Ronda's home in March or April of 2007.

On March 23, 2007, Michael filed an action in the California courts seeking a legal determination of custody and child support. A court order was issued prohibiting Rochelle or Michael from removing the child from California without the express written consent of the other parent or a court order. However, at Rochelle's request, neither parent attended the scheduled hearing. The two reached an oral agreement where Michael would continue to have contact and a relationship with the child, and because the relationship between Rochelle and Michael was still amicable, Michael agreed to this arrangement.

In late 2007, Rochelle began dating Francisco. Ronda testified Francisco was uncomfortable with the relationship between Rochelle and Michael, and insisted that Michael not be involved in the child's life. Rochelle began to

exclude Michael from the child's life. For example, when Michael would call, Rochelle either would not answer the phone or inform Michael to leave her and the child alone. Rochelle also moved within the state of California without notifying the father of her changed residence.

In July of 2009, Rochelle, Francisco, and the child moved to Iowa without notifying Michael or obtaining a court order allowing Rochelle to move out of California with the child. As the district court found, this was in violation of the order filed in the California court. Rochelle and Francisco also changed their phone numbers, and Rochelle enrolled the child in school under Francisco's last name. Rochelle and Francisco told the child that Francisco is her father and have made no mention of Michael to the child. At one point, Rochelle called Michael and asked if he would consent to the termination of his parental rights, which he refused. Rochelle then would not tell him where she or the child were located.

Rochelle filed a petition to terminate Michael's parental rights in Wright County on the grounds of abandonment and nonpayment of child support. Rejecting Rochelle's claim of diligent attempts to serve Michael with notice of the hearing, the court rescheduled the hearing, requiring proof of notice to Michael. When finally served, Michael received the first solid information as to where Rochelle and the child were residing. He and Ronda then drove to Iowa from California to participate in the hearing. The juvenile court, while noting Michael had not put forth great efforts in locating the child, concluded Rochelle failed to prove either ground for termination. It specifically found Michael's lack of involvement in the child's life was primarily due to Rochelle's obstructive actions.

It also found Michael paid child support within his means, and thus, Rochelle failed to prove the lack of payment was without good cause. Rochelle appeals.

II. Standard of Review

We review termination proceedings de novo. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The grounds for termination must be proven by clear and convincing evidence. *Id.* Our primary concern is the child's best interest. *Id.*

III. Abandonment

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.” Iowa Code § 600A.8(3)(b) (2013).

The parent can show he did not abandon the child by any of the following means:

(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.

Id. § 600A.8(3)(b)(1)–(3).

The juvenile court noted that Michael was not a “model father” but made strong credibility determinations that undermined Rochelle's version of the actions of the parties. Though Michael has not visited the child monthly, maintained consistent communication, or lived with the child for a period of six months, he was “prevented from doing so by the person having lawful custody of

the child.” *Id.* § 600A.8(3)(b)(1). Rochelle’s systematic attempt to exclude Michael from the child’s life began when they lived in California, such as when she refused to allow him to visit the child, refused to answer his phone calls, and moved within the state without informing Michael as to her and the child’s whereabouts. Rochelle claims she tried reaching out to Michael, but with little response from him, Rochelle simply gave up her attempts. Nonetheless, the primary reason Michael has not been able to see the child since July 2009 was because Rochelle moved to Iowa without notifying Michael or obtaining his consent. Michael testified he did the best he could with his resources to locate Rochelle and the child. Rochelle, however, made substantial efforts to ensure Michael could not find her or the child by changing her phone number and enrolling the child in school under a different last name. As the juvenile court noted: “Besides being unfair, it defies logic to allow a mother to engage in the conduct engaged in in this case to systematically exclude a father from a child’s life and then claim abandonment.” Consequently, given the regrettable conduct of the parties, we agree with the juvenile court Rochelle failed to prove abandonment by clear and convincing evidence.

IV. Failure to Pay Child Support

To succeed on the claim Michael’s rights should be terminated based on a lack of child support, Rochelle must show Michael “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.” *Id.* § 600A.8(4). While Rochelle demonstrated Michael’s spotty payment of support, she failed to show by clear and convincing evidence the lack of payment was without good cause.

Michael is clearly in arrears regarding his child support payments. However, he has never contested the garnishment of his wages when he has been employed nor has he ever actively avoided paying the child support, which would satisfy Rochelle's burden to show the nonpayment was without good cause. See *In re B.L.A.*, 357 N.W.2d 20, 22 (Iowa 1984) (terminating a father's parental rights when he intentionally quit his job to avoid child support payments). Furthermore, while not excusing Michael's arrearage in child support, the court found Michael's erratic work history was not an attempt to avoid paying child support such that it would warrant termination of his parental rights.

Therefore, Rochelle has failed to prove either ground for termination of Michael's parental rights, and we affirm the ruling of the juvenile court.

AFFIRMED.