

IN THE COURT OF APPEALS OF IOWA

No. 7-040 / 06-1564
Filed March 28, 2007

IN THE INTEREST OF M.D., Minor Child,

K.D.J., Mother,
Petitioner,

R.A.D., Father,
Appellant.

Appeal from the Iowa District Court for Wapello County, William S. Owens,
Associate Juvenile Judge.

A father appeals from a chapter 600A juvenile court order terminating his
parental rights to one child. **AFFIRMED.**

Mary Baird Krafka of Krafka Law Office, Ottumwa, for appellant-father.

Cynthia D. Hucks of Box and Box Attorneys at Law, Ottumwa, for
appellee-mother.

Thomas F. Kintigh of Griffin, Dew & Kintigh, Ottumwa, for minor child.

Heard by Zimmer, P.J., and Miller and Baker, JJ.

MILLER, J.

Kristi is the mother, and Ron the father, of Megan. Ron appeals the juvenile court's grant of Kristi's petition for termination of Ron's parental rights pursuant to Iowa Code chapter 600A (2005). He contends the court erred in finding he had abandoned Megan, and in finding that termination of his parental rights was in her best interest. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

Kristi and Ron were married in February 1994, and Megan was born in December 1994. Ron was in prison when Megan was born. He was released and returned to the home when Megan was approximately three months old but was incarcerated again a few months later. Ron was incarcerated for Megan's first birthday and in fact has only been present for one of Megan's eleven birthdays, her second. He sent a card to her on her first birthday promising never to be away from her again and that he was "straightening" his life up so they could all be together. However, Ron was again in prison when the parties' marriage was dissolved in 1998. The decree gave Ron visitation every other weekend, every other holiday, and two weeks during the summer. Ron was released from prison in August 1999 but was incarcerated again in September 1999, this time for manufacturing methamphetamine. He did exercise two visits with Megan during the time he was out of prison in 1999.

Ron's next contact with Megan was in 2001 while he was at the Ottumwa Residential Correctional Facility. Ron had approximately four visits with Megan during the summer of 2001, all facilitated by Kristi and her husband Chris. At the

termination hearing Kristi testified she had a talk with Ron that summer about how it was confusing for Megan to have Ron in and out of her life all the time. Ron told Kristi, as he had before, he was not going to make the same mistakes as the past, he was "here to stay," and he would not "mess up" again. Approximately a month after this conversation Ron absconded from the residential facility and was eventually arrested again, this time in Missouri on drug-related charges. Ron remained incarcerated from approximately September 2001 until his release in May 2005. He has not had any physical contact with Megan since the summer of 2001.

Kristi is remarried, to Chris. She, Chris, their new daughter, and Megan, reside together and have lived in the same home for about three and one-half years. Kristi testified they heard nothing from Ron from the time he absconded in 2001 until approximately April 2005 when he telephoned and had a conversation with Megan. During that call Megan told Ron she wanted Chris to adopt her. It was at that point Kristi filed the present petition for termination of Ron's parental rights. She further testified that Ron is approximately \$22,000 in arrears on his child support obligation. Kristi did note he had paid some support in 2006.

Megan was eleven and one-half years old at the time of the termination hearing. She testified that the last time she saw Ron was when she was in first grade but did not remember the specifics. She further testified she wants Ron's parental rights terminated so Chris, her stepfather, can adopt her. Megan testified she told Ron on the phone in April 2005 she did not want him to be her father any more, and she wanted Chris to be her dad. Chris is whom she refers

to as her father. She acknowledged she has received a few cards from Ron each year over the years, but not very many, and that he had sent money once when she was four or five for a bike for her.

Ron testified he is currently employed at a manufacturing company and resides with his wife Kem, her two children from a previous relationship, and their young son. Ron married Kem in October 2001 over the telephone because they were both incarcerated at different facilities at the time. Ron conceded at the hearing that due to his habitual drug use and criminal behavior he has only had about six visits with Megan between the dissolution decree in 1998 and the time of the termination hearing in 2006. He recognized he has made bad choices in the past but contends that since being released from prison in 2005 he is a different person and wants to continue to be a part of Megan's life.

The juvenile court found Ron's own actions have resulted in him having little, if any, relationship or bond with Megan. The court also found Ron is \$22,000 in arrears on his child support obligation and noted that failure to pay child support is relevant evidence of indifference to the child and akin to abandonment. In addition, the court found that the guardian ad litem recommended Ron's parental rights be terminated. The court concluded Kristi had proved a statutory ground for termination, abandonment under section 600A.8(3). The court also concluded termination of Ron's parental rights would benefit Megan and be in her best interests.

On appeal Ron contends the court erred in finding he had abandoned Megan, and in finding that termination of his parental rights to Megan was in her best interests.

II. SCOPE AND STANDARDS OF REVIEW.

A termination proceeding pursuant to chapter 600A is reviewed de novo. *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998). The statutory grounds for termination under chapter 600A must be proven by clear and convincing evidence. Iowa Code § 600A.8. Although not bound by them, we give weight to the district court's findings of fact, especially when considering the credibility of witnesses. Iowa R. App. P. 6.14(6)(g). Our primary interest is the best interest of the child. Iowa R. App. P. 6.14(6)(o); *R.K.B.*, 572 N.W.2d at 601. The petitioner has the burden to prove a statutory ground for termination under Chapter 600A. See *R.K.B.*, 572 N.W.2d at 601-602. Proof of a statutory ground, however, is not dispositive. We must also determine whether it is in the children's best interests to terminate parental rights. *In re J.L.W.*, 523 N.W.2d 622, 625 (Iowa Ct. App. 1994).

III. MERITS.

Termination of parental rights is appropriate under chapter 600A where a parent has abandoned a child. Iowa Code § 600A.8(3). To establish abandonment it must be shown that the parent has rejected the duties imposed by the parent-child relationship. *Id.* § 600A.2(18). Abandonment under section 600A.8(3) is characterized by the action of giving up parental rights and

responsibilities, accompanied by a corresponding intent.¹ *In re D.M.*, 516 N.W.2d 888, 891 (Iowa 1994). Intent can be shown by conduct. *J.L.W.*, 523 N.W.2d at 624. Abandonment is deemed to have occurred for children six months or older when the parent fails to maintain

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.

(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.

Iowa Code § 600A.8(3)(b). A parent's subjective intent, whether expressed or otherwise, unaccompanied by evidence of the actions outlined above, does not preclude a finding of abandonment. *Id.* § 600A.8(3)(c).

Ron has been almost completely absent from Megan's life from the beginning. He was in prison when she was born, has been present for only one of her eleven birthdays, only lived with her for three months of her life, only had six visits with her from 1998 to the present, and sent her only a limited number of cards and letters over the years. During 2001 when he was living in the

¹ It is unclear whether intent is still a required element following the change in the statute in 1997, which removed the intent language. However, for the reasons that follow we find Kristi has established intent through Ron's conduct and thus proved abandonment regardless of whether intent to abandon is required under the current statute.

residential correctional facility and just beginning to establish some regular contact with Megan, and had again promised he was going to turn his life around, he made the choice to abscond from the facility instead of using the opportunity to establish a real relationship with Megan. Ron's choice resulted in his spending another four years in prison, and another four years without any contact with Megan.

"[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 under the circumstances." *D.M.*, 516 N.W.2d at 891. Incarceration does not excuse a parent's unavailability or conduct when abandonment is claimed. *J.L.W.*, 523 N.W.2d at 624. Nor does it qualify as a justification for a parent's lack of a relationship with a child. *In re M.M.S.*, 502 N.W.2d 4, 8 (Iowa 1993). We, like the juvenile court, conclude that Ron's almost total absence from Megan's life and failure to establish a bond with her is almost solely due to his own bad choices, criminal actions, and resultant imprisonments.

Furthermore, Ron is approximately \$22,000 in arrears on his support obligation to Megan. Failure to pay child support is relevant evidence of indifference to the child involved and is akin to abandonment. See *In re Kelley*, 262 N.W.2d 781, 785 (Iowa 1978); *In re C.M.W.*, 503 N.W.2d 874, 876 (Iowa Ct. App. 1993). Ron has been employed for at least part of the time since the entry of the support order in 1998 and thus at times has had the ability to pay support yet failed to do so. Although the record shows Ron had paid support in 2006,

those payments were made only after the petition for termination of his parental rights was filed.

Unfortunately this is but one more case where a parent has put his or her needs before the needs of the child for so long that by the time he or she is ready to try to make a change and do the right thing it is simply too little too late. We conclude, as the juvenile court did, that Kristi has met her burden to prove, by clear and convincing evidence, that Ron abandoned Megan under section 600A.8(3). Proof of a statutory ground, however, is not dispositive. We must also determine whether it is in the child's best interests to terminate parental rights. *J.L.W.*, 523 N.W.2d at 625.

We agree with the juvenile court that termination of Ron's parental rights is in Megan's best interests. Megan is in a stable and loving home with her mother and step-father. She testified in the strongest terms of her desire to have Ron's parental rights terminated so her stepfather, with whom she clearly has a strong bond and whom she considers to be her father, can adopt her. Megan simply does not have any relationship or bond with Ron. We conclude termination of Ron's parental rights is in Megan's best interests.

IV. CONCLUSION.

Based on our de novo review we conclude Kristi proved by clear and convincing evidence that Ron abandoned Megan. We further conclude termination of Ron's parental rights is in Megan's best interest. We therefore affirm the juvenile court order terminating Ron's parental rights.

AFFIRMED.