IN THE COURT OF APPEALS OF IOWA

No. 8-989 / 08-0810
Filed March 26, 2009

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

J.C.M., Father,
Petitioner-Appellant,

C.K.V., Mother,
Appellee.

Appeal from the Iowa District Court for Cerro Gordo County, Bryan H. McKinley, Judge.

A father appeals a district court's dismissal of his petition to terminate the parental rights of his child's mother, contending that the mother abandoned the child. **AFFIRMED.**

Jacqueline Conway of Heiny, McManigal, Duffy, Stambaugh & Anderson, P.L.C., Mason City, for appellant father.

Richard Tompkins, Mason City, for appellee mother.

Kristen Ollenberg, Mason City, for minor child.

Heard by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

VAITHESWARAN, J.

John, the father of Morgan, appeals the district court's dismissal of his petition to terminate the parental rights of Morgan's mother, Carrie. He contends Carrie abandoned the child and termination of her parental rights was in Morgan's best interests.

I. Background Facts and Proceedings

Morgan was born in 1996. Shortly thereafter, her parents split up. In 2001, John petitioned for sole custody of Morgan. The parties stipulated that John would have sole legal custody and physical care of Morgan and Carrie would be entitled to "reasonable visitation with the minor child at reasonable times and places upon reasonable notice to [John]." The district court approved the stipulation.

Before and after the stipulation, Carrie struggled with an addiction to illegal drugs. In an effort to protect Morgan, John limited the child's contacts with Carrie. In 2001, he took Morgan to visit Carrie at a drug treatment facility, but after that point, he curtailed communication and visits between the two. Over the next few years, Carrie made several requests for visits with Morgan. John denied these requests. As a result, the only contacts Carrie had with her daughter were surreptitious.

In 2007, Carrie petitioned to modify visitation. John countered with a petition to terminate Carrie's parental rights to Morgan. Following a hearing, the district court rejected John's claim that Carrie abandoned the child and dismissed his petition. This appeal followed.

II. Analysis

"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) (2007).

The parties stipulated that Carrie would not have to "provide for the support of" Morgan. The key question was whether Carrie made an effort "to communicate" with the child. On this question, the district court detailed Carrie's limited, unapproved contacts with Morgan over the years and intimated that, in a vacuum, these limited contacts would support John's claim of abandonment. The countervailing consideration, however, was John's refusal to permit reasonable visitation between Morgan and her mother, even after it became apparent that Carrie had changed her lifestyle. With respect to this consideration, the court found as follows:

> [R]egardless of Carrie's efforts to conquer her drug addiction, John's response was constant in his refusal in an effort to protect his daughter from a natural mother who had a substance abuse problem. It would not have made any difference the number of times that Carrie would have asked to see her daughter, John would have refused each and every request.

The court continued,

> While this Court can be sympathetic to John's motivation in attempting to protect Morgan from a natural mother who is flawed due to her substance abuse issues, there is no indication that John remained updated as to the progress Carrie has made in the most recent years to overcome her profound drug addiction.

Based on these findings, the court concluded John failed to prove that Carrie abandoned Morgan.

On our de novo review of the record, we concur with the district court's findings. In 2001, John blocked all collect calls from the drug treatment facility that housed Carrie. Although he did not formally block calls after that year, he and his wife refused to accept phone calls from Carrie and did not reply to written requests for visits. When asked why, John responded, "Because I didn't want to grant Carrie any visitation." John also stated he would not have authorized the surreptitious contacts Carrie had with Morgan. He candidly admitted that he did his best to keep Morgan away from Carrie, did not keep Carrie apprised of Morgan's extracurricular activities, and thought it was "never a good idea" to have Carrie see her daughter. John also refused Carrie's gifts for the child.

Meanwhile, as the district court found, Carrie made significant strides in addressing her drug addiction. A professional who performed multiple assessments of Carrie testified she was "a wonderful example of how people can recover and do recover." She described Carrie's circumstances as follows:

> And now she's held a job for quite a period of time, she is enrolled in a college program. She has custody of her two-and-a-half-year old and has maintained that custody for a long period of time. She's obviously well integrated in the community and has a lot of people that are very respectful of her and her position and the accomplishments she's made. She really—like I said, she really is a role model.

We recognize that the child's guardian ad litem was not as positive about Carrie's recovery efforts, noting that "history has shown that she may not stay that way." She opined that these efforts were "too little, too late" and she recommended termination of Carrie's parental rights. While there is much to

commend in the guardian ad litem's opinions, we are nonetheless convinced that John's categorical refusal to allow any contact between Carrie and Morgan precludes a determination that she abandoned the child. As we have found that Carrie did not abandon Morgan, it is unnecessary to determine whether termination of Carrie's parental rights is in Morgan's best interests. *See In re J.L.W.*, 523 N.W.2d 622, 625 (Iowa Ct. App. 1994) (stating that once a ground for termination has been found, the court must then determine whether termination would be in the child's best interests). Accordingly, we affirm the district court's dismissal of John's petition to terminate Carrie's parental rights to Morgan.

We find it unnecessary to address John's claim for appellate attorney fees.

AFFIRMED.