

IN THE COURT OF APPEALS OF IOWA

No. 9-308 / 08-2026
Filed May 29, 2009

**IN THE INTEREST OF J.J.,
Minor Child,**

S.D., Mother,
Petitioner-Appellant,

L.J., Father,
Respondent-Appellee.

Appeal from the Iowa District Court for Winneshiek County, Alan D. Allbee, Associate Juvenile Judge.

A mother appeals the juvenile court order denying her petition to terminate the father's parental rights under Iowa Code chapter 600A (2007). **AFFIRMED.**

Dale L. Putnam, Decorah, for appellant.

Andrew P. Nelson of Meyer, Lorentzen & Nelson, Decorah, for appellee.

Raymond Rinkol, Decorah, guardian ad litem for minor child.

Considered by Eisenhauer, P.J., and Mansfield, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

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

Luke and Stacia are the parents of Jordan, born in 2002. The parents lived together in Emmetsburg, Iowa, at the time of the child's birth, and cohabited off and on until September 2004. Luke contributed to the care of the child during the time the parties lived together. Stacia received public assistance at times and through the action of the Child Support Recovery Unit, Luke was ordered to pay child support. Luke has a child, Preston, from an earlier marriage, and Preston and Jordan considered themselves to be brother and sister.

In August 2005, Stacia and Jordan moved to Iowa City while Stacia continued her education. Up until this time Luke had regular contact with Jordan, although Stacia would not permit Luke to visit the child outside her presence. After the move, Luke's contact with Jordan was limited.¹ Due to previous convictions for operating while intoxicated, Luke has not had a driver's license since before Jordan was born. He stated that even if he could get someone to take him on the four-hour trip to Iowa City, he did not have sufficient money to stay in a hotel, and Stacia would not permit him to stay at her apartment. Luke had in-person contact with Jordan only when Stacia came to Emmetsburg to visit.² Luke also had contact with his child through telephone calls and the mail.

In August 2007, Stacia and Jordan moved to Decorah, a city three hours away from Emmetsburg. Stacia did not inform Luke of the move, and he learned of it only by speaking to Jordan on the telephone. Again, due to transportation

¹ There is no district court order establishing paternity, custody, or visitation, so there was no set visitation schedule.

² Both parents have extended families that live in the Emmetsburg area.

and financial difficulties, Luke did not visit Jordan in Decorah. He continued to telephone and send cards. Luke testified that Stacia did not always return his calls, and he was not always able to visit Jordan even when she came to Emmetsburg. He stated he wanted more contact with Jordan, but felt Stacia was avoiding him.

By August 2008, Luke's child support arrearage was \$12,392. He testified he had limited employment opportunities because he did not have a driver's license. Luke was employed as an independent contractor at Christensen Farms, a hog operation, where he earned between \$1000 to \$1500 per month. Luke has very limited assets and lives with his parents. In addition to his child support obligation for Jordan, he is required to pay child support for Preston.

On July 1, 2008, Stacia filed a petition seeking to terminate Luke's parental rights on the ground of abandonment under Iowa Code section 600A.8(3) (2007). The district court denied the request to terminate Luke's parental rights. The court found, "While Luke has not been a model father, the court is unable to conclude that he has made no provision or only a marginal effort to provide for the support of Jordan or to communicate with her." The court noted Luke intended to seek a court order to set up regular visitation with Jordan. The court concluded Luke had not abandoned his child and that termination of his parental rights was not in the child's best interests. Stacia appeals the juvenile court's decision.

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. *R.K.B.*, 572 N.W.2d at 601.

III. Abandonment

Stacia sought to terminate Luke's parental rights under section 600A.8(3)(b), which provides that if a child is six months of age or older, 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." The parent is also required to visit the child at least monthly, or regularly communicate with the child, or live openly with the child for a period of six months within the last year. Iowa Code § 600A.8(3)(b)(1)-(3).

The phrase "to abandon a minor child" is defined in section 600A.2(19) to mean that a parent "rejects the duties imposed by the parent-child relationship" by the parent "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." Abandonment is characterized as the giving up of parental rights and responsibilities accompanied by an intent to forego them. *In re Burney*, 259 N.W.2d 322, 324 (Iowa 1977). Thus, there are two elements necessary for

abandonment—the conduct of the parent in giving up parental rights and responsibilities and the parent’s intent. *In re Goettsche*, 311 N.W.2d 104, 106 (Iowa 1981); *In re N.D.D.*, 434 N.W.2d 919, 920 (Iowa Ct. App. 1988).

We first look to the requirement of a “contribution toward support of the child of a reasonable amount, according to the parent’s means.” Iowa Code § 600A.8(3)(b). A parent’s failure to pay child support pertains to the issue of abandonment because it may show indifference toward the child. *Goettsche*, 311 N.W.2d at 106. The parent seeking termination of parental rights has the burden to show the other parent’s failure to pay support was without good cause. *In re D.E.E.*, 472 N.W.2d 628, 630 (Iowa Ct. App. 1991).

We adopt the juvenile court findings on this issue:

While Luke is substantially in arrears in his child support payments for Jordan, payment has been made for approximately 45% of the obligation. Much of the arrearage occurred for the period prior to the entry of the child support order and while Luke was residing with the child and providing some financial assistance to the household through employment. Much more substantial and regular child support payments were afforded the child when a mandatory wage assignment was in place.

Furthermore, we conclude there is no evidence in the record to support Stacia’s contention that Luke changed jobs in order to avoid being subject to a mandatory income withholding order. Luke denied this allegation and testified that his employment was dependent upon transportation. We conclude Stacia has failed to show Luke did not make even a marginal effort to provide for the support of his child. See Iowa Code § 600A.2(19).

The evidence shows Luke did not visit Jordan at least monthly or live with her for a period of six months within the last year before the petition to terminate

his parental rights was filed. See Iowa Code § 600A.8(3)(b)(1), (3). We consider whether he had “[r]egular communication with the child or with the person having the care or custody of the child,” since he was financially unable to visit the child. See Iowa Code § 600A.8(3)(b)(2). This is not a case where the father failed to have any contact with the child whatsoever. See *In re J.L.W.*, 523 N.W.2d 622, 624 (Iowa Ct. App. 1994). Luke talked to Jordan by telephone several times, and attempted to telephone on other occasions, but was unable to contact her.

We note there was tension or strain between Luke and Stacia’s parents, and Luke felt he was not welcome at their home when Stacia visited them in Emmetsburg. At the same time, however, Stacia would not permit Luke to visit Jordan when she was not present, so his opportunities to interact with his child were severely limited. Also, Stacia did not inform Luke she had moved to Decorah. Moreover, she did not always inform Luke ahead of time when she would be in Emmetsburg, so that he would be able to request a visit. Under these circumstances, we conclude Stacia failed to show Luke made only a marginal effort to communicate with the child.

Luke’s conduct does not show that he gave up his parental rights and responsibilities. See *Goettsche*, 311 N.W.2d at 106. We also conclude that he did not have the intent to abandon his child. See *id.* Luke testified he would love to have more in-person contact and more communication with her. He stated he planned to initiate proceedings in the district court to establish a set visitation schedule, and his mother stated she would help finance this effort. We affirm the

district court's conclusion that Luke did not abandon the child within the scope and meaning of section 600A.8(3).

IV. Best Interests

In addition to finding that the statutory grounds for termination of parental rights had not been met, the juvenile court found termination of Luke's parental rights was not in Jordan's best interests. We look to a child's long-range, as well as immediate, interests. *R.K.B.*, 572 N.W.2d at 601.

On our de novo review of the record, we cannot find that termination of Luke's parental rights would be in Jordan's best interests. There was no evidence that contact with Luke was detrimental to the child. When the parties lived together Luke enjoyed a close relationship with his child. Although Luke was behind in his child support obligation, he was still contributing to her support, and had not totally abnegated this responsibility. Furthermore, termination of Luke's parental rights would separate Jordan from her extended family on the paternal side, including her half-brother Preston.

We affirm the decision of the juvenile court denying Stacia's petition to terminate Luke's parental rights under chapter 600A.

AFFIRMED.

Eisenhauer, P.J. concurs; Mansfield, J., concurs specially.

MANSFIELD, J. (concurring specially)

I believe that Stacia makes a fairly compelling case that Luke has not been meeting his parental responsibilities toward Jordan. Since January 2007, Luke has spent only two hours and ten minutes with his daughter. He has made no effort to communicate with her at all since January 2008. Since he became an independent contractor in November 2007, Luke has voluntarily made only three child support payments of \$100 each. One of them coincided with a petition to reduce child support. The other two occurred after Stacia filed her petition. Somewhat disturbingly, Luke seems to be taking a much greater interest in financially supporting and seeing his son, who also does not live with him. In addition, the guardian ad litem in this case supported termination of Luke's parental rights to Jordan.

Having said this, I agree that the juvenile court's ruling should be affirmed because there is no clear and convincing evidence at this time that termination of parental rights would be in Jordan's best interests. As the juvenile court pointed out, "There exists no person ready to stand in place of Luke to provide financial and emotional support to Jordan as her father and no prospects for a step-father have been identified."