



Petitioner, Jayne M. Kintz, natural mother of three minor children, appeals trial court order dismissing her petitions, consolidated for trial, to terminate parental rights of children's natural father, David Lorton. On appeal, petitioner asserts there is sufficient evidence to terminate father's parental rights under section 600A.8(3), The Code 1979 (abandonment), or section 600A.8(4), The Code 1979 (failure to pay ordered child support without good cause), and David had a child support delinquency of \$7590, not \$2910 as found by the trial court. We affirm the trial court order as modified.

#### I.

Jayne Kintz and David Lorton are the natural parents of the three minor children involved in this action. The marriage between Jayne and David was dissolved on June 29, 1972, with custody of the three children granted to Jayne. David was ordered to pay child support of \$30 per week.

On February 16, 1979, Jayne filed petitions on behalf of the three children for termination of David's parental rights. The petitions alleged as grounds for termination abandonment and failure to pay without good cause child support ordered by the dissolution decree. A guardian ad litem was appointed to represent the children. The cases were consolidated for hearing, which was held on March 30, 1979. David did not file an answer, but appeared pro se at the hearing.

On April 2, 1979, trial court filed its ruling on the petitions. The trial court found David was delinquent \$2910 in his support payments, the last payment being made in 1975, but that he had "stated that he would start payments again if ordered to do so." The court also found "there is no evidence to indicate David B. Lorton intended to nor has he, in fact, abandoned the children other than the time he was living in Arkansas," and "[h]e does not want his parental rights terminated and truly appears to want whatever is in the best interest of his children." The trial court then dismissed the termination petitions and ordered David to commence paying child support as ordered in the dissolution decree. Subsequently, Jayne filed a motion for new trial raising the issues she raises here on appeal; the court denied the motion.

#### II.

In parental termination cases the primary but not exclusive consideration is the welfare and best interests of the child. In re Griffin, 210 N.W.2d 665, 667 (Iowa 1973) (quoting In re Wardle, 207 N.W.2d 554, 556 (Iowa 1973)). Balanced against this interest

is the parent's right to maintain the integrity of the family relationship, unless forfeited by conduct. In re Lewis, 257 N.W.2d 505, 510 (Iowa 1977). While there is a presumption the best interests of the child will be served by maintaining the parental relationship, this is not conclusive. Id. The state, as *parens patriae*, has the duty to see every child within its borders receives proper care and treatment. Id. The grounds relied on for termination, set forth in section 600A.8, The Code, must be established by clear and convincing evidence. In re Voeltz, 271 N.W.2d 719, 723 (1978).

Our review is de novo. Id.; In re Kelly, 262 N.W.2d 781, 782 (Iowa 1978); Iowa R. App. P. 4. We are required to review the facts as well as the law and adjudicate rights anew on properly presented positions, provided the issue has been raised and error, if any, preserved in the course of the trial court proceedings. Voeltz, 271 N.W.2d at 722 (quoting In re McDonald, 201 N.W.2d 447, 453 (Iowa 1972)). When considering credibility of witnesses we accord weight to the trial court's fact-findings, but are not bound by them. Iowa R. App. P. 14(f)(7). Moreover, in cases of this type such matters as the witnesses' demeanor, candor, attitudes, and apparent motives require we give special consideration to the trial court's findings because of its vantage point at trial in assessing such matters. Long v. Long, 255 N.W.2d 140, 143 (Iowa 1977).

### III.

Initially, we find the trial court incorrectly found David was delinquent \$2910 in his support payments. Jayne introduced at trial evidence clearly showing David had paid \$2910 for support. The dissolution decree, entered June 29, 1972, provided for \$30 per week in child support. On March 30, 1979, the total support obligation was \$10,500 ( $\$30 \times 350 \text{ weeks} = \$10,500$ ). Reducing this figure by the amount paid results in a delinquency of \$7590. In our de novo review, we will use this figure in our consideration of the merits of the termination issue. We modify the trial court's findings to reflect the correct amount.

### IV.

Evidence presented at trial indicated David has rarely seen the children since the dissolution and frequently failed to pay child support even though employed almost the entire time. In 1975, shortly after Jayne brought an action to enforce his child support requirements, David moved to Arkansas and stopped paying any support. David has returned to Iowa, but has not resumed his support payments. He did indicate, however, his willingness to commence the payments again if ordered to do so. David also

testified he would give up his visitation rights, but did not want his parental rights terminated. Jayne has remarried and the children view her husband as a father figure.

One ground for termination advanced by Jayne is David's failure to contribute without good cause to the support of his children. § 600A.8(7), The Code. It is uncontroverted David did not pay support for more than three years prior to the commencement of this action. David contends he did not feel obligated to provide support after he relinquished his visitation rights and moved to Arkansas. While we do not agree with this conclusion as a matter of law, we think David's intent is relevant to the issue of the existence of good cause excusing the failure to pay. Like the trial court, we find important David's expressed intent to resume the support payments. Considering the evidence as a whole, we hold David's failure to support his children without good cause is not shown by clear and convincing evidence. David's actions do not manifest complete indifference to his children. See Kelley, 262 N.W.2d at 785. We note there was no showing the children have suffered in any material way from this lack of support.

The other ground for termination advanced by Jayne is abandonment. § 600A.8(3), The Code. Abandonment involves a relinquishment of parental rights and responsibilities accompanied by an intent to forego them. In re Burney, 259 N.W.2d 322, 324 (Iowa 1977). There must be both the intention to abandon and the act of abandonment. Doan Thi Hoang Anh v. Nelson, 245 N.W.2d 511, 515-16 (Iowa 1976) (quoting 2 Am. Jur. 2d Adoption § 33, at 887-88 (1962)). Silence and inaction of the parent must be prolonged to such an extent that intention to abandon the child may be inferred as a matter of law. Id.

While David has limited contact with his children, he apparently does not intend to abandon them. David testified he has failed to exercise his right to visitation to avoid causing disciplinary problems with the children. He also testified he did not want his parental rights terminated. We do not find clear and convincing evidence of any intent by David to abandon his children. Burney, 259 N.W.2d at 324.

While we affirm the trial court's order as modified, we think it is appropriate to note that a further failure by David to fulfill his support obligation may very well tip the balance against him in a subsequent termination proceeding. We also point out his responsibility to satisfy the delinquent payments.

Jayne shall pay the costs of this appeal.

AFFIRMED AS MODIFIED.