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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-400 / 00-1687
Filed November 16, 2001

IN THE INTEREST OF A.A.L.,
Minor Child,

A.L., Mother,
Appellant.

Appeal from the Iowa District Court for Marion County, J.W. Jordan, Juvenile Court Judge.

Mother appeals the juvenile court's termination of her parental rights pursuant to a private petition filed by the child's maternal grandfather under Iowa Code Chapter 600A. **AFFIRMED.**

Pamela A. Vandel, Des Moines, for appellant.

Michael D. Maxwell, Des Moines, for appellee-maternal grandfather.

Michael Bandstra, Des Moines, for minor child.

Heard by Huitink, P.J., and Zimmer, and Vaitheswaran, JJ.

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ZIMMER, J.

Mother (Abigail) appeals the termination of her parental rights pursuant to a private petition filed by her child's maternal grandfather (Robert) under Iowa Code Chapter 600A (1999). She contends the court erred in terminating her relationship with her daughter (Lexie) because there was not sufficient evidence to show abandonment. She also argues the trial court's termination order should be reversed because multiple procedural errors occurred before and during trial. We affirm.

I. Background Facts and Proceedings

Abigail gave birth to Lexie on November 28, 1998. When Lexie was born, her mother was 18, had not completed high school, and was living with her mother, Deborah, in Des Moines. Thomas, Lexie's father, has had no meaningful involvement in her life.

In June 1998, when Lexie was approximately seven months old, Abigail moved to Dallas, Iowa, to be closer to her father, Robert, and her stepmother, Angie. Abigail rented a duplex and began looking for work. Soon after she moved to the Dallas area, Abigail began leaving Lexie with Robert and Angie for weeks at a time. By the fall of 1999, Abigail had begun telling Robert and Angie she wanted them to raise Lexie, in part because she had lost her own childhood. Abigail transferred most of Lexie's clothes and toys from her duplex to Robert's home. She visited her daughter only sporadically. Abigail did not keep in contact with her father and stepmother and they were often unsure of her whereabouts.

Robert and Angie became increasingly troubled by Abigail's apparent disinterest in maintaining a relationship with Lexie. In early 2000, Robert strongly encouraged Abigail to increase her participation in Lexie's life. While short-term advances were made, Abigail's enthusiasm for parenting soon began to dissipate. Abigail declined invitations to stay at her father's home so she could spend time with Lexie.

In June of 2000, Robert petitioned the juvenile court to terminate both Abigail's and Thomas's parental rights asserting abandonment. He also obtained a court order appointing him as custodian of Lexie. Lexie's father was located in jail shortly after the petition to terminate was filed. He consented to the termination of his parental rights. Abigail objected to termination and a hearing was held on September 14, 2000. Lexie's court-appointed guardian ad litem filed a written report with the court which recommended termination of Abigail's parental rights. On September 25, 2000 the district court found that Abigail had abandoned her daughter and terminated her parental rights.

Abigail appeals, contending there was insufficient evidence of abandonment to warrant the termination of her rights. She also raises several procedural claims, criticizes the involvement of the guardian ad litem, and questions the credibility of his report. Finally, she claims the court used the wrong definition of abandonment.

II. Scope of Review

We review proceedings to terminate a parent-child relationship de novo. *In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa Ct. App. 1998). Our primary concern is the best interests of the child. *Id.* We look at both the child's long-range and

immediate interests in making this determination. *Id.* We necessarily consider what the future likely holds for the child if returned to his or her parent. *In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1989) (citation omitted). "Insight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that parent is capable of providing." *Id.* (citations omitted). The grounds for termination must be shown by clear and convincing evidence. *Id.*

III. Procedural Defects and Guardian ad Litem Claim

On appeal, Abigail alleges various procedural defects and criticizes the conduct of the guardian ad litem involved in the case. The errors asserted include: (1) the trial court's entry of a temporary ex parte custodial order; (2) Robert's failure to follow the procedural dictates of Iowa Code Chapter 598B; (3) the guardian ad litem's mis-captioning of his report to the court; (4) the guardian ad litem's failure to be present in court; (5) the guardian ad litem's failure to call witnesses; and (6) the trial court's consideration of the guardian ad litem's written report to the court. Because Abigail raises these issues for the first time on appeal, Robert contends error was not properly preserved for appellate review. We agree.

Issues not presented in the juvenile court may not be raised for the first time on appeal. *In re C.D.*, 508 N.W.2d 97, 100 (Iowa Ct. App. 1993). The purpose of such an error preservation rule is to give notice to the court and opposing counsel at a time when corrective action is still possible. *State v. Johnson*, 476 N.W.2d 330, 334 (Iowa 1991). Without this opportunity, we have no decision or action to review. *See State v. Wages*, 483 N.W.2d 325, 326 (Iowa

1992). The record reveals Abigail did not raise any of the above mentioned issues at the trial court level. Because these issues were not properly preserved in the underlying proceedings, we are unable to address their merits on appeal.

IV. Sufficiency of the Evidence

Abigail contends there is insufficient evidence in the record to support the trial court's finding that she abandoned Lexie. She argues that when she initially placed her daughter in the care of Robert and Angie, it was for temporary purposes. Abigail claims her conduct does not reflect an intention to reject her child. We find the state has provided clear and convincing evidence that Abigail abandoned Lexie under the terms of Iowa Code Chapter 600A.

Chapter 600A provides a means for termination of parental rights upon the petition of a private individual, as opposed to an action initiated by the State. *Compare* Iowa Code § 600A.5, *and* Iowa Code § 232.111. Under the provisions of Chapter 600A, a parent, custodian, or guardian may petition a juvenile court for termination of parental rights. Iowa Code § 600A.5(1). Termination of parental rights is appropriate under this chapter 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. Iowa Code § 600A.2(18). The definition explains that such rejection may be evidenced by "the person, while being able to do so, making no provisions or making only marginal effort to provide for the support of the child or to communicate with the child." *Id.*

Our supreme court has recognized the existence of a parental interest in maintaining the integrity of the parental unit, but such interest is not absolute and

may be forfeited by certain conduct. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). Parental responsibilities include more than subjectively maintaining an interest in a child. The concept requires affirmative parenting to the extent it is practical and feasible in the circumstances. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa Ct. App. 1996).

Upon de novo review of the record, we conclude Abigail has voluntarily abandoned Lexie within the meaning of Iowa Code section 600A.8(3).[1] Abigail has abdicated the responsibility of raising Lexie to Robert and Angie. She has maintained only sporadic contact with her daughter since June of 1999. Abigail has provided no meaningful financial support for Lexie while the child has been in the care of Abigail's father and stepmother. She has been unresponsive to the efforts of others to increase her participation in Lexie's life. The record demonstrates she is both unprepared and unwilling to be a parent. Abigail has not bonded with Lexie who views Robert and Angie as her mother and father. By choosing to reject the responsibilities of parenthood, Abigail has now forfeited her right to reap the accompanying rewards.

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[1] Abigail asserts the juvenile court erred by citing and applying an outdated definition of "abandonment." Prior to 1997, Iowa Code § 600A.2(16) defined abandonment as: "to permanently relinquish or surrender, without reference to any particular person, parental rights, duties, or privileges inherent in the parent-child relationship. The term includes both the intention to abandon and the acts by which the intention is evinced. The term does not require that the relinquishment or surrender be over any particular period of time." Effective May 23, 1997, the legislature revised the definition of abandonment to read: "To abandon a 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(18). Based on our de novo review we find that the State has established abandonment under both the old and revised definitions.

Once we determine a ground for termination under section 600A.8 has been established by clear and convincing evidence, we must next determine whether it is in Lexie's best interest to order termination of parental rights.

Fortunately for Lexie, her mother's lack of commitment to parenting has not resulted in the trauma normally associated with abandonment. For the last two years, Lexie has lived in a stable environment, with caring relatives she calls "mom" and "dad." When this case is considered from Lexi's point of view, taking into account both her immediate and long-term best interests, the weight of the evidence favors keeping Lexie permanently in the home she has known for the past two years. The legal ties between Lexie and Abigail should be severed at this time so she can be adopted by the two people she has known as her mother and father. No sound reason exists for delaying this matter any further. The judgment of the trial court terminating Abigail's parental rights to her daughter, Lexie, is affirmed.

AFFIRMED.