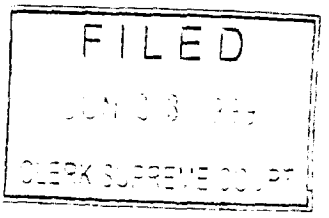
IN THE COURT OF APPEALS OF IOWA

No. 1999-162 (9-379) / 99-0132
Filed June 23, 1999



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

D.C. Father,
Appellant.

Appeal from the Iowa District Court for Scott County, Nancy S. Tabor, Associate Juvenile Judge.

A father appeals the termination of his parental rights. **AFFIRMED.**

Benjamin A. Yeggy of Gomez, May, Cartee & Schutte, Davenport, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Gerda Lane, Assistant County Attorney, for appellee-State.

James M. Stein of Wells & Wells, Davenport, guardian ad litem for minor child.

Considered by Sackett, C.J., and Mahan and Zimmer, JJ.

MAHAN, J.

A father appeals the termination of his parental rights to his son. He claims the court erred in finding there was clear and convincing evidence (1) he had abandoned or deserted the child, (2) he had not maintained contact with the child and had made no efforts to resume the care of his child, and (3) the child could not be placed in his custody. We affirm.

Devon, born in January 1996, is the son of Donald and Minette. Donald, married, with three sons, was the director of a drug and alcohol treatment program in California. Minette, a single parent of a daughter born in 1991, was a tenant in an apartment complex owned by Donald's family. Donald encouraged Minette to enter his substance abuse program to combat her addiction. Donald and Minette engaged in a sexual relationship to try to have a daughter because Donald only had sons with his wife. Because of difficulty in conceiving, Donald and Minette saw a fertility specialist and conceived by *in vitro* fertilization. During the pregnancy, Donald began serving a 41-month prison term for filing a fraudulent hazard claim on property owned by his family. He gave Minette baby supplies and money before he entered prison. Minette soon spent all the money on drugs and moved to Iowa.

In August 1996, a child in need of assistance petition was filed regarding Devon and his older sister because of their mother's use of drugs and her failure to care for and supervise them adequately. The petition also was sent to Donald in prison. The court removed the children from Minette's home and placed them in the

custody of DHS. The court adjudicated Devon and his sister in need of assistance in December 1996 under Iowa Code sections 232.2(6)(c)(2), (n), and (o) (1995) and placed them back with Minette subject to DHS supervision. The court removed them again in January 1997 and placed them in temporary foster care, finding they could not continue in Minette's custody because of her relapse into substance abuse and failure to cooperate with treatment. In early June 1997, after a May permanency hearing, the court transferred guardianship and custody of Devon to two members of Minette's family. Minette stipulated to that placement, and agreed she was giving up rights to reunification services and that all services would cease.

Donald kept in contact with Minette's mother throughout his imprisonment to see how Devon was doing. However, Donald did not contact the court until February 1998 when he sent a letter to the court expressing his interest in gaining custody of Devon after Donald's release from prison. Donald did not have any contact with Devon, provide any financial support for him, or contact DHS.

Donald was released from prison in March 1998. He wrote to the court again in May. The judge advised Donald by letter that it had fixed permanency for Devon in June 1997 and it was "intended to remain permanent, notwithstanding your release from prison." The court continued:

> That was a fact that I contemplated when I fixed permanency. In fact, the Court anticipated or hoped that you would be released from prison and would establish stability so that you could support your child financially and become a nurturing and emotionally supportive part of his life. However, the court intends the placement to be permanent and will not lightly set that aside just because of your availability.
>
> . . . .

> By virtue of your incarceration in California, you have no significant relationship with this child nor he with you. Your child needs love, nurturance, and financial, physical and emotional support. So far in his life you have provided none. You talk about him in your letter as if he were property to which you have right of possession. So far you are nothing more than his sperm donor. It will take work, effort, consistency and time to determine whether or not you can establish a loving, nurturing and supportive relationship with this child.
>
> Upon your release, the Court expects you to submit a financial affidavit to the Court and financially support your child. You should contact the Court and we will determine the degree and extent to which contact and visitation with your child will be allowed.

The court continued Devon's relative placement in June 1998 following an annual guardianship review. In July 1998, the State filed a petition to terminate Donald and Minette's parental rights to Devon under Iowa Code sections 232.116(1)(b), (d), (g), and (k). The petition alleged Donald "received all court orders and case plans but never responded until permanency had been established for nearly 1 year." In late July, Donald requested and was given court-appointed counsel. In early August, the termination hearing was set for October 1998. On the date set for hearing, the court determined notice to Donald was inadequate and rescheduled the termination hearing for December 1998.

Neither Donald nor Minette appeared in person at the termination hearing. Donald was represented by counsel and testified by telephone. He requested a continuance, claiming inadequate time to prepare and to arrange to participate in person. The court denied Donald's request. Following the hearing, the court terminated Donald's parental rights under Iowa Code sections 232.116(1)(b), (d), and (g).

On appeal, Donald first claims the evidence does not support a finding of clear and convincing evidence he deserted or abandoned Devon. He argues he provided financially before entering prison. He followed Devon's progress through Minette's mother. He now feels his life is back in order and he is ready to provide for all Devon's needs. He claims his opportunities to parent Devon were limited by his circumstances.

The Iowa Supreme Court has recognized there exists a parental interest in the integrity of the family unit, but that 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. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996). The concept requires affirmative parenting to the extent it is practical and feasible in the circumstances. *Id.* Our determination Donald abandoned Devon is guided by *In re M.M.S.*, 502 N.W.2d 4, 7 (Iowa 1993):

> We are unpersuaded by appellant's claim of limited opportunities. In the first place it is appellant who is most responsible for the limited opportunities. Appellant's own actions resulted in incarceration. We think a showing of abandonment does not require a multitude of spurned opportunities. An abandoned child is no less abandoned because the parent can rationalize a reason for the abandonment. When opportunities for association with a child are few, they become more precious, and spurning them more egregious. If few opportunities for association are available, spurning all of them will suffice for a showing of abandonment.

Id. Donald has never had any contact with Devon or provided for him emotionally. Even after the court directed Donald to file a financial affidavit and to begin

providing financial support after his release from prison, Donald did not provide any support for Devon. Although he was on parole after his release from prison, Donald could travel outside California with permission after two-weeks' notice. Donald never arranged to come to Iowa to visit Devon. Donald never contacted Devon's guardians. Donald spurned the opportunities he had. The district court correctly terminated Donald's parental rights based on abandonment.

Next, Donald claims the court erred in finding he had not maintained significant contacts with Devon during the previous six months and had made no reasonable efforts to resume care despite being given the opportunity to do so. *See* Iowa Code § 232.116(1)(d)(3). He also argues DHS did not place any requirements on him in the case permanency plan. As we discussed above, Donald has never had *any* contact with Devon. Even though directed to start providing financial support, Donald did not. We find clear and convincing evidence supporting termination under Iowa Code section 232.116(1)(d).

Finally, Donald claims the court erred in finding Devon could not be placed in his custody. *See* Iowa Code § 232.116(1)(g)(4). He argues no home study was done and no evidence was offered that his home is unsuitable for Devon. By the time Donald wrote to the court in February 1998, Devon had been in permanency placement for over eight months. Donald indicated in that letter he would be incarcerated for another three to seven months. When he was released on parole, Donald did not notify the court or DHS or take any steps to have Devon placed in his

care and custody. At the time of the termination hearing, Devon had been in relative placement for nearly eighteen months. He had never been in Donald's care and custody. The guardian ad litem argued at the termination hearing Donald repeatedly demonstrated poor judgment. We agree, finding Devon could not be placed in Donald's care at the time of the termination hearing.

For the reasons set forth above, we find termination of Donald's parental rights to Devon to be in Devon's best interest and affirm the juvenile court's order terminating Donald's parental rights.

AFFIRMED.

No. 99-0132. [1999-162 (9-379)] IN RE D.C.

Appeal from the Iowa District Court for Scott County, Nancy S. Tabor, Associate Juvenile Judge. **AFFIRMED.** Considered by Sackett, C.J., and Mahan and Zimmer, JJ. Opinion by Mahan, J. (7 pages $2.80)

Devon, born in January 1996, is the son of Donald and Minette. Donald, married, with three sons, was the director of a drug and alcohol treatment program in California. Minette, a single parent of a daughter born in 1991, was a tenant in an apartment complex owned by Donald's family. Donald and Minette engaged in a sexual relationship to try to have a daughter because Donald only had sons with his wife. During the pregnancy, Donald began serving a 41-month prison term. He gave Minette baby supplies and money before he entered prison. Minette soon spent all the money on drugs and moved to Iowa. In August 1996, the court removed the children from Minette's home and placed them in the custody of DHS. In early June 1997, after a May permanency hearing, the court transferred guardianship and custody of Devon to two members of Minette's family. Donald did not contact the court until February 1998. Donald did not have any contact with Devon, provide any financial support for him, or contact DHS. In July 1998, the State filed a petition to terminate Donald and Minette's parental rights to Devon. Neither Donald nor Minette appeared in person at the termination hearing. Donald was represented by counsel and testified by telephone. The court terminated Donald's parental rights under Iowa Code sections 232.116(1)(b), (d), and (g). On appeal, Donald first claims he did not desert or abandon Devon. Donald has never had any contact with Devon or provided for him emotionally. Even after the court directed Donald to file a financial affidavit and to begin providing financial support after his release from prison, Donald did not provide any support for Devon. Donald never arranged to come to Iowa to visit Devon. Donald never contacted Devon's guardians. Donald spurned the opportunities he had. Next, Donald claims the court erred in finding he had not maintained significant contacts with Devon during the previous six months. Donald has never had *any* contact with Devon. Finally, Donald claims the court erred in finding Devon could not be placed in his custody. At the time of the termination hearing, Devon had been in relative placement for nearly eighteen months. He had never been in Donald's care and custody. We find Devon could not be placed in Donald's care at the time of the termination hearing.