IN THE COURT OF APPEALS OF IOWA

No. 2-143 / 92-15

FILED
JUN 25 1992
CLERK SUPREME COURT

IN THE INTEREST OF S.L.W. AND E.J.W., Minor Children,

D.W., Mother,

Appellant.

1048

Appeal from the Iowa District Court for Winnebago County, Gilbert K. Bovard, Judge.

Mother appeals a district court decision dismissing her petition to terminate the parental rights of the father. **AFFIRMED.**

Mark A. Young of Pappajohn, Shriver, Eide & Nicholas, P.C., Mason City, for appellant.

David J. Siegrist, Britt, for appellee father.

Kyndra Walton of Brown, Kinsey & Funkhouser, Mason City, guardian ad litem for the children.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ.

OXBERGER, C.J.

D.L.W., the mother, and E.J.W., the father, were married May 23, 1981. Two minor children were born to the marriage, S.L.W. (hereinafter Stephanie), born on November 7, 1981, and E.J.W. (hereinafter Elizabeth), born on August 5, 1985.

The marriage of D.L.W. and E.J.W. was dissolved in January of 1988. While the record does not show what financial obligation was imposed against the father by the Decree of Dissolution, the father admits he has made only one payment for child support.

On April 12, 1988, the mother filed an application for restraining order. The mother alleged in her application that the father had sexually abused the girls and threatened physical violence if they revealed the sexual abuse. On the same day the district court entered an order restraining the father from intentionally coming into contact with the mother and the children. After an investigation, DHS filed a finding of child abuse by the father involving the children.

Following a jury criminal trial in May 1989, the father was convicted of sexual abuse, second-degree, as to Stephanie but was acquitted of like charges involving Elizabeth. The father is currently incarcerated. The father appealed his conviction but the verdict was sustained by the court of appeals. The father has filed a postconviction relief action.

On July 20, 1989, the mother filed a petition to terminate the parental rights of the father pursuant to Iowa Code sections 600A.8(3) and 600A.8(4).

On December 6, 1991, the district court entered a decree dismissing the mother's petition. While the district court found the relationship between the father and the children had been destroyed and that even an anticipated contact with the father created a detrimental emotional response in the children, it concluded the mother failed to prove grounds for a termination.

SCOPE OF REVIEW: Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984), cert. denied, 469 U.S. 1222, 105 S. Ct. 1212, 84 L. Ed. 2d 353 (1985). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. Id. at 491-92.

FAILURE TO PAY SUPPORT: We first consider whether the trial court erred in concluding the father's failure to pay child support was with "good cause". Concerning one ground for termination of parental rights, Iowa Code section 600A.8(4) provides:

> A parent has been ordered to contribute to the support of the child or financially aid in the child's birth and has failed to do so without good cause.

The trial court found, under the circumstances of this case, there was substantial evidence to establish economic

impossibility and good cause for the father's failure to pay child support. We agree.

The father made one child support payment of $700 and failed to make any other payments. The father left his management position with an insurance company due to marital problems and the subsequent child abuse investigation. The father obtained other employment but he was earning substantially less than at his insurance position. The father was arrested on the sexual abuse charges and held without bail. He was then taken to the Iowa Medical and Classification Center and subsequently assigned into the state penal system. We find, under these circumstances, the father's compliance with payments for support was an economic impossibility. We affirm the trial court on this issue.

ABANDONMENT: We next consider whether the trial court erred in concluding the father's sexual abuse of the children did not show abandonment pursuant to Iowa Code section 600A.8(3). Iowa Code section 600A.2(16) provides:

> "To abandon a minor child" means to permanently relinquish or surrender, without reference to any particular person, the 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 evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.

In the present case, a "no contact" order was directed upon the father. In addition, the father's incarceration

prevented him from seeing the children. There is no dispute the mother refused to allow gifts, calls or communications between the father and the children. Under this record, the district court concluded abandonment as required under section 600A.8(3) could not be established, and we agree.

We find the trial court was correct in concluding the mother failed to prove by clear and convincing evidence the statutory grounds for termination under Iowa Code sections 600A.8(3) and 600A.8(4).

Each party will pay his or her own attorney's fees. Costs are taxed to the appellant.

AFFIRMED.