

IN THE COURT OF APPEALS OF IOWA

No. 1-655 / 91-1384

FILED

FEB 25 1992

CLERK SUPREME COURT

IN THE INTEREST OF R.C.K., JR., A Child.

R.W.K., Father,

Appellant.

319

Appeal from the Iowa District Court for Clinton County,
Arlen J. Van Zee, District Associate Judge.

Father appeals the termination of his parental rights
to his son. **AFFIRMED.**

Gary D. McKenrick of Gomez, May, McKenrick & Kelly,
Davenport, for appellant father.

Bonnie J. Campbell, Attorney General, John M. Parmeter,
Special Assistant Attorney General, and Kathrine S.
Miller-Todd, Assistant Attorney General, for appellee
State.

T. Randy Current of Jurgemeyer, Frey & Haufe, Clinton,
guardian ad litem for the child (appellee).

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

SCHLEGEL, J.

R.C.K. is a boy born in November 1982. His parents lived together briefly before his birth but have never been married to each other. The father, R.W.K., was present at the hospital for the child's birth but has never seen him since. R.W.K. asserts he has always desired to have a relationship with the child but has been thwarted by his own imprisonment, the mother's frequent changes of residence, and the mother's refusal to bring the child to him.

The child lived with his mother, M.M., until 1988. In that year he was adjudicated to be a child in need of assistance. Since 1988 he has alternated between foster placement and placement in the mother's home. In the fall of 1990 the mother acknowledged she could no longer handle R.C.K.'s behavioral problems. She indicated she would agree to termination of her parental rights so the child could be adopted by the foster family with whom he had bonded.

In May 1991 the State filed a petition to terminate the parental rights of the mother and father. M.M. consented to the termination of her rights. After a hearing the juvenile court terminated R.W.K.'s rights on the ground of abandonment or desertion. The father has appealed the termination order, challenging the sufficiency of the evidence to prove abandonment or desertion.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984). 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. The primary concern in termination proceedings is the best interest of the child. Iowa R. App. P. 14(f)(15); In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

We look to the child's long-range, as well as immediate, interests. We consider what the future holds for the child if returned to his or her parents. 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 the parent is capable of providing. Our statutory termination provisions are preventative as well as remedial. They are designed to prevent probable harm to a child.

In re R.M., 431 N.W.2d 196, 199 (Iowa App. 1988) (citing Dameron, 306 N.W.2d at 745).

The trial court terminated R.W.K.'s parental rights pursuant to Iowa Code section 232.116(1)(b), which provides for termination based on abandonment or desertion. Clear and convincing evidence is required to establish abandonment. Iowa Code § 232.116(1)(b) (1991).

"Abandonment of a child" means the relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include 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.

Iowa Code § 232.2(1) (1991).

There are two elements necessary to establish abandonment: 1) the giving up of parental rights and responsibilities as exhibited by the party's conduct; and 2) an accompanying state of mind which shows an intent to forego these rights and responsibilities. In re Goettsche, 311 N.W.2d 104, 106 (Iowa 1981). Affirmative parenting to the extent practical and feasible in the circumstances is required. Id. It is not enough to subjectively maintain an interest in the child. Id.

R.W.K. contends the State has not proven the requisite intent. He claims M.M. and the states of Iowa and Illinois have frustrated his efforts to learn of his son's whereabouts. We disagree and affirm the termination of his parental rights.

R.W.K. was incarcerated in Illinois right after R.C.K.'s birth for child cruelty because he physically abused R.C.K.'s half sisters. In 1987 he was again incarcerated, this time for criminal sexual assault. R.W.K. was not incarcerated from 1984 to 1987. Evidence shows during that time he made only a token effort to locate R.C.K. He claims he contacted Peoria Children and Family Services in person to find M.M. and her children. In addition, he states the director of his release center tried for about a month to help R.W.K. locate M.M., but he was unsuccessful. R.W.K. made no further attempts to locate M.M. and R.C.K. We determine this one effort for a short period of time in 1984 does not indicate an

affirmative attempt. R.W.K. had called M.M.'s mother and asked her for money, but he never contacted her about M.M.'s location.

There is no convincing evidence in this case that R.W.K. maintained a continuing interest in the child and undertook a genuine effort to have communication and association with R.C.K. One contact by R.W.K. with an unnamed individual in the Illinois Department of Human Services does not indicate a continued interest in the child. R.W.K. has provided no care, financial support, nor emotional assistance for this child during R.C.K.'s ten years of life. R.W.K.'s conduct evidences a relinquishment of his parental rights and responsibilities. In addition, his lack of effort to locate or visit R.C.K. shows the requisite intent.

We find any possible effort by R.W.K. has not been frustrated by M.M. or the State. The department of human services attempted to make contact with R.W.K. before the child in need of assistance adjudication; the department was pursuing an "R.K." approximately one year after its first attempt. The assistant county attorney located an "R.K." at the Menard Illinois prison facility in August of 1989. Letters were sent to the Joliet prison and the Shawnee correctional facility in Illinois. There were three "R.K."s at the Menard prison. The name also caused confusion because the department assumed R.W.K. would be named as "senior" since his son had the same name. That

assumption was not correct. In addition, confidentiality requirements in the various prison systems also made correspondence and contact difficult. We agree with the trial court determination: "[R.W.K.] should have had notice of the child in need of assistance proceedings in Iowa. [However, based] on the facts as set forth earlier, the Court concludes that the Iowa Department of Human Services did make reasonable efforts and conduct a diligent search to locate [R.W.K.]"

We find it in R.C.K.'s best interest that his father's rights to him be terminated. Long-term stability is important to this child. R.W.K.'s ability to provide for the needs of his child is obviously affected by his imprisonment for a felony offense. He will not be released from prison for approximately two more years. To place this child's future in limbo for at least one and one-half years, while a man with whom he has no relationship finishes a prison sentence, is not in this child's best interest. See In re T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). R.C.K. is happy with his foster parents and hopes to be a part of their family.

R.C.K.'s best interests demand his father's parental rights be terminated.

AFFIRMED.