

FILED

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DEPT. SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

In the Matter of)

JAMI DEE ANDRUS,)

A Minor,)

In Re the Guardianship of)

JAMI DEE ANDRUS,)

A Minor.)

Filed February 5, 1980

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3-63435

Appeal from Polk District Court - Harry Perkins, Judge.

One of the guardians of Jami Dee Andrus, a minor child, appeals the dismissal of her petition to terminate the parental rights of the child's natural parents. **AFFIRMED.**

Virgil Moore of Des Moines, for appellant.

Earl Barrett of Krpan, Barrett & Krpan, Des Moines, for appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Leota Vandermark, one of the guardians¹ of Jami Dee Andrus, a minor child, appeals the dismissal of her petition to terminate the parental rights of James and Sheila Andrus, the child's natural parents. We affirm.

On April 15, 1977, Leota filed a petition in Polk District Court to terminate the parental rights of James and Sheila with regard to their youngest child, Jami. As grounds for termination, the petition alleged James and Sheila had (1) substantially and continuously neglected to comply with the duties imposed by their relationship with Jami, and (2) in truth and effect abandoned the child. On June 21, 1977, James and Sheila filed a petition for termination of the temporary guardianship of the Vandermarks. At the hearing on the matter held March 12, 1979, the trial court found Leota had not shown neglect or abandonment and denied her petition. The trial court also concluded James and Sheila had failed to show a substantial change of circumstances and denied their petition. The decree left custody of Jami with the Vandermarks but ordered the Polk County Juvenile Probation Department to supervise and assist James and Sheila in preparation for the return of Jami as soon as possible.

Our review in this matter is *de novo*. Iowa R. App. P. 4; see In Interest of Kelley, 262 N.W.2d 781, 782 (Iowa 1978). For a termination of the parent-child relationship, one of the statutory grounds must be proved by clear and convincing evidence. Section 600A.8, The Code 1977; In re Interest of Voeltz, 271 N.W.2d 719, 723 (Iowa 1978). In reviewing the evidence we give weight to the trial court's findings of fact but we will not abdicate our function as a trier *de novo* on appeal. Iowa R. App. P. 14(f)(7).

In July of 1975 Sheila left James and their three children and went to Omaha with another man. James placed the three children with his cousin Leota and her husband, Ralph. The two eldest children were returned to James a short time later but Jami remained with the Vandermarks. At the time she was initially placed with the Vandermarks, Jami was approximately 4 months of age. With the exception of a period of about two weeks in November of 1975, she has remained in the care and control of the Vandermarks. Visitation by James and Sheila has been somewhat irregular, but for the last two years has been on the average of once, sometimes twice a month with periods of as long as six months without visitation. There is some evidence, however,

¹ Leota's husband, Ralph Vandermark, is also a guardian of Jami. Ralph, although named as an appellant in the notice of appeal, was not named as a petitioner in this action and is therefore not properly a party to this appeal.

the Vandermarks have been uncooperative with visitation. The evidence indicates James contributed roughly \$70 to the Vandermarks for the care of the three Andrus children shortly after Sheila left in 1975. No further contributions to the Vandermarks for Jami's care have been made by either James or Sheila. They have, however, presented gifts to Jami on her birthday and at Christmas.

After Sheila left James in 1975, she and James were separated for approximately two years. There is evidence indicating Sheila suffered from emotional and mental problems, which required medical treatment. Evidence was introduced showing James had an alcohol problem. He also has a criminal record and, at the time of trial, was on probation for carrying a concealed weapon, which, according to his testimony, occurred at a time when he was intoxicated. There is evidence the family has been plagued with financial problems and has gone through bankruptcy proceedings.

At the time of trial, however, James and Sheila seemed to have their problems under control. The parties had reconciled their marital difficulties and had been living together since December of 1976. Sheila had been advised she need not continue treatments at the Polk County Mental Health Center. She seems to have adjusted well to the role of a homemaker and mother and has been caring for her two eldest children in that capacity. James testified that he has abstained from the use of alcohol since December of 1977 and no longer has an alcohol problem. He has steady employment and was earning approximately \$13,000 per year.

I. The Vandermarks contend James and Sheila have substantially and continuously neglected to comply with the duties imposed upon them by their parent-child relationship and, as a result, their parental rights should be terminated with respect to Jami pursuant to section 600A.8(4). Although presenting a close question, we find the evidence fails to sustain a showing that the parent-child relationship should be terminated on this ground. In reaching this result, we recognize the best interests of the child is of paramount but not overriding importance. In Intere. of Lewis, 257 N.W.2d 505, 510 (Iowa 1977). It is also understood there exists a parental right to integrity of the familial relationship, unless by conduct it is forfeited. Id.

The evidence indicates neither James nor Sheila have made any support payments to the Vandermarks for the care of Jami. Their visitation with Jami has been somewhat sporadic, but during the last two years has become more regular. Although we do not

approve of some conduct on the part of the natural parents, we do not find their overall conduct so aggrievous as to necessitate terminating the parent-child relationship.

The financial and emotional problems suffered by this family have been well documented. It was under circumstances of severe personal stress that James placed custody of Jami with the Vandermarks. This action does not manifest a neglect of his parental duty; parents are to be encouraged, in times of need, to seek help in caring for their children. In Matter of Guardianship of Sams, 256 N.W.2d 570, 573 (Iowa 1977); In Matter of Burney, 259 N.W.2d 322, 324 (Iowa 1977). Furthermore, in light of the strides taken by James and Sheila in improving their marital and familial relationships, it would seem they may be able to prospectively assume their parental duties with respect to Jami responsibly. In light of these circumstances, we find the evidence falls short of that needed to establish a substantial and continuing neglect of parental duties by James and Sheila such that their parental rights should be terminated.

II. The Vandermarks also contend James and Sheila have abandoned Jami and, as a result, their parental rights should be terminated with respect to Jami pursuant to section 600A.8(3). Section 600A.2(16) defines "to abandon a minor child" as follows:

[T]o 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.

Abandonment therefore can be said to involve the giving up of parental responsibilities accompanied by an intent to forego them. In Matter of Burney, 259 N.W.2d 322, 324 (Iowa 1977); Doan Thi Hoang Anh v. Nelson, 245 N.W.2d 511, 515 (Iowa 1976).

Although James placed Jami with the Vandermarks, this action alone does not indicate intent to abandon. As discussed above, in times of difficulty, this action is to be encouraged. Burney, 259 N.W.2d at 324. During the period of almost four years while Jami has been with the Vandermarks, James has, as previously indicated, kept in contact with her. Sheila, although failing to keep in contact with Jami for a period of time, recently has also been exercising her visitation rights. James and Sheila have provided Christmas and birthday gifts to Jami on a regular basis. These efforts by James and Sheila, especially during the last two years, indicate not an intention to give up or abandon their parental rights with respect to Jami, but rather an intention to continue and strengthen these rights. On the basis of the record before us, we are

unable to find the requisite intent by James and Sheila to abandon their parental rights and responsibilities with respect to Jami.

AFFIRMED.