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IN THE COURT OF APPEALS OF IOWA

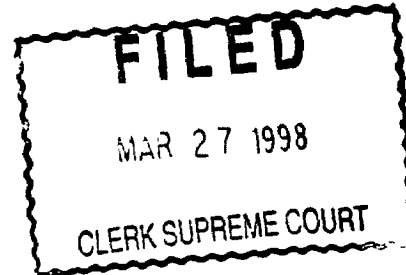
No. 8-054 / 97-1524

IN THE INTEREST OF R.A.A.,

Minor Child,

R.A., Jr., Father,

Appellant.



Appeal from the Iowa District Court for Polk County, Robert J. Blink, Judge.

Father appeals from court order terminating his parental rights. **AFFIRMED.**

Timothy A. Lynch, Des Moines, for appellant.

William A. Price, Des Moines, for minor child.

Larry M. Blumberg, Des Moines, guardian ad litem for minor child.

Considered by Cady, C.J., and Sackett and Vogel, JJ.

SACKETT, J.

Appellant Rozendo, the birth father of R.A.A., appeals the district court's order terminating his parental rights under Iowa Code chapter 600A. We affirm.

Stephanie, the birth mother of R.A.A., initiated termination proceedings in anticipation of R.A.A. being adopted by her current husband, James. The petition alleged Rozendo's parental rights should be terminated because he failed to pay court-ordered child support. The district court terminated Rozendo's parental rights for failure to pay ordered child support without good cause. *See Iowa Code § 600A.8(4).*

R.A.A. was born in California on January 14, 1993. Stephanie and Rozendo were divorced in January 1995. Stephanie was given physical custody of R.A.A. Rozendo was ordered to pay child support of \$200 per month. Stephanie and R.A.A. moved to Iowa in February 1995, where she married James. R.A.A. spent the summer and Christmas vacations of 1996 with Rozendo in California. Rozendo flew to Iowa to pick up R.A.A. for summer vacation and returned R.A.A. to Iowa by plane. Rozendo made one child support payment, in 1996, in the amount of \$500. At the time of the hearing he was delinquent in the amount of \$5300. Since R.A.A. has been in Iowa, Rozendo has not sent him birthday cards or presents. Rozendo calls R.A.A. only sporadically.

Rozendo is an illegal alien who was convicted of a felony in 1990. He is under a deportation order from the INS. He lives with his mother in California,

receives support from her, and since she has become a citizen, contends he is reapplying to remain in the United States. He claims his illegal status, felony conviction, and lack of driver's license prevent him from working steadily enough to pay child support. He asserts this is "good cause" for his failure to pay child support. Iowa Code section 600A.8(4) provides parental rights can be terminated if "[a] parent has been ordered to contribute to the support of the child . . . and has failed to do so *without good cause*." Stephanie testified Rozendo told her he would not pay her anything.

Review of a termination action is de novo, and if one of the grounds for termination is established by clear and convincing evidence, the termination will be upheld. *In re Voeltz*, 271 N.W.2d 719, 723 (Iowa 1978); *In re Kelley*, 262 N.W.2d 781, 782-85 (Iowa 1978).

Rozendo has not paid court-ordered support. The only question is whether Stephanie has shown by clear and convincing evidence he failed to do so without good cause. The key issue is Rozendo's ability to pay the ordered child support. See *In re B.L.A.*, 357 N.W.2d 20, 22 (Iowa 1984). The legislature intended termination for nonsupport to occur where a parent's failure to pay manifests indifference to a child and is therefore akin to abandonment. *Id.*; *Klobnack v. Abbott*, 303 N.W.2d 149, 152-53 (Iowa 1981). A substantial, and not merely sporadic or insignificant, failure to pay ordered support without good cause justifies termination of parental rights under section 600A.8(4).

Rozendo is in this country illegally. Under federal immigration statutes, he cannot legally work in the United States. *See, e.g.,* 8 U.S.C. 1101(a)(15)(H) (listing categories of aliens who are permitted to work under certain circumstances). We recognize he cannot legally obtain employment in the United States. There is no evidence Rozendo has any source of income but his own labor, which he is precluded from selling while he resides in the United States. To pay child support while he resides in the United States, Rozendo would have to work illegally. We cannot and would not ask Rozendo to violate the law to do so. Rozendo has chosen to stay in the United States. There is no showing he cannot work elsewhere. We affirm the trial court finding there is proof by clear and convincing evidence he failed to pay court-ordered child support without good cause.

AFFIRMED.