FILED
JUN 28 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF)
H.J.C., A child.)
D.M.C.,)
Petitioner-Appellant.)

Filed June 28, 1983

3-118
3-69326

Appeal from Des Moines District Court - Gary J. Snyder, Judge.

Petitioner-stepmother appeals the juvenile court's denial of her petition to terminate the parental rights of the minor child's natural mother, pursuant to Iowa Code chapter 600A. AFFIRMED.

Gene R. Krekel of Hirsch, Link, Adams, Hoth & Krekel, Burlington, Iowa, for petitioner-appellant.

Michael J. Schilling of Ford Law Offices, Burlington, Iowa, for the natural mother appellee.

Michael G. Dieterich of Cahill & Dieterich, Burlington, Iowa, guardian ad litem for the child.

Heard en banc.

PER CURIAM

Petitioner-stepmother appeals the juvenile court's denial of her petition to terminate the parental rights of the minor child's natural mother pursuant to Iowa Code chapter 600A. We affirm.

William Campbell and Dawn Michele Campbell (now Howerton) were married in December 1973. At that time William was eighteen and Dawn was fifteen. Their only child, Heather Jo Campbell, was born on April 6, 1974. William and Dawn were separated in 1975 and their marriage was dissolved in December 1976. The dissolution decree awarded William custody of Heather subject to Dawn's specified visitation rights.

William married Danna, petitioner herein, in May 1977. Heather has been in their primary custody since that time. A daughter was born to William and Danna in October 1979. Danna wishes to adopt Heather, and, as a prerequisite to doing so, she filed a petition to terminate Dawn's parental rights on grounds of abandonment. (Iowa Code section 600A.8(3)).

Testimony and evidence at a hearing indicated the following additional facts: Dawn exercised regular visitation with Heather prior to William's remarriage; however, she experienced difficulties in doing so afterward. The parties dispute who was at fault in this regard, but, at the very least, it appeared that William and Danna were not overly cooperative regarding Dawn's visitation. Dawn had Heather for summer visitation in June of 1980, but returned her early when the visitation did not go well, apparently because Heather was homesick. Dawn married David Howerton in November 1980. They moved to Wyoming early in 1981. Dawn gave birth to a son in November 1981, after a prolonged and difficult pregnancy. Dawn visited in Iowa in December 1981, but did not attempt to exercise visitation with Heather. In fact, it is undisputed that Dawn had no contact whatsoever with Heather between December 1980 and April 1982, although testimony indicates that Dawn attempted to contact Heather on at least six

occasions during that period. Dawn attributed this to her move to Wyoming and the distance involved, her difficult pregnancy and the subsequent care of her newborn child, and William's and Danna's reluctance to allow her to exercise visitation. Dawn claims she never intended to abandon Heather.

The juvenile court denied Danna's petition to terminate Dawn's parental rights, concluding that there was insufficient clear and convincing evidence that Dawn had abandoned the child. The court was critical of Dawn's extended lack of contact with Heather, but noted that William's and Danna's resistance to visitation was a significant factor influencing Dawn's conduct. On appeal, petitioner asserts that she presented sufficient clear and convincing evidence to support termination of Dawn's parental rights on grounds of abandonment, and that such termination is in the best interests of the child.

I. Scope of Review. Our scope of review in proceedings involving the termination of parental rights is **de novo.** In Interest of Goettsche, 311 N.W.2d 104, 106 (Iowa 1981). While we accord weight to the fact findings of the juvenile court, particularly where the credibility of witnesses is at issue, we are not bound by those findings. In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

II. Termination of Parental Rights for Abandonment. Iowa Code section 600A.8(3) provides for termination of parental rights on the ground that a parent has abandoned the child. Abandonment, for purposes of this provision, is defined by Code section 600A.2(16) as follows:

> "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. [emphasis in original]

Abandonment involves the surrender of parental rights and parental responsibilities, accompanied by an intent to surrender them. Matter of Burney,

259 N.W.2d 322, 324 (Iowa 1977). Total desertion is not a requisite of abandonment, since parental responsibilities involve more than subjectively maintaining an interest in the child. Parental responsibility requires affirmative parenting to the extent it is feasible under the circumstances. See Goettsche, at 106. Affirmative parenting "encompasses more than a financial obligation; it requires continuing interest in the child and a genuine effort to maintain communication and association with the child." In re Burns, 379 A.2d 535, 540 (Penn. 1977).

Petitioner argues that no such effort was made by Dawn during the sixteen-month period in question, and that abandonment has therefore been proven by clear and convincing evidence. We do not agree. Because a finding of abandonment is one of the most severe steps this court can take, we will not predicate such a finding upon conduct which either can be reasonably explained, or which was the result of circumstances beyond respondent-parent's control.

During the sixteen-month period in which there was no contact between Dawn and Heather, Dawn had several problems which made such contact difficult. Her primary problem was presented by petitioner and Bill Campbell. The record is quite clear that the Campbells were uncooperative in carrying out visitation, and used every means they could to hinder Dawn in her attempts to see Heather. We agree with the juvenile court that "the resistance exerted by Bill and Danna Campbell was a significant factor influencing Dawn's conduct." Compounding this difficulty were the Howerton's move to Wyoming, their difficulty in obtaining housing, and Dawn's difficult pregnancy.

We note that during this period, Dawn frequently contacted her mother and a friend to inquire about Heather. We also note that Dawn resumed contact with Heather in April of 1982.

While it is our opinion this is a close case, we find petitioner has failed to establish by clear and convincing evidence that Dawn had the requisite intent to abandon Heather.

AFFIRMED.