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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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IN THE INTEREST OF J.I.B., A Child;
J.E B., Natural Father,
Appellant.

Filed March 26, 1985

6-101
84-953

Appeal from the Iowa District Court for Webster County - Mark S. Cady, Judge

Natural father of a four-year-old boy appeals from the juvenile court order granting the natural mother's petition to terminate his parental rights pursuant to Iowa Code section 600A.8(4) (1983), for failure to pay child support without good cause, and that he had manifested an indifference to the child akin to abandonment. AFFIRMED.

William H. Habhab, Fort Dodge, Iowa, for appellant.

Don T. McGrevey, Fort Dodge, Iowa, for appellee, R.L.J., the natural mother

Steven W. Hendricks, Fort Dodge, Iowa, guardian ad litem, for the child.

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

Rebecca and James were married June 16, 1979, and were divorced in January, 1982. One child, a son, J.I.B., was born on August 29, 1980. James was ordered to pay child support in the sum of $50 per month from February, 1982, through May, 1982, and $150 per month thereafter. Rebecca was granted custody of J.I.B. and James was to have visitation every other weekend. James has paid a sum total of $60 child support since the dissolution. Rebecca remarried July 8, 1983, and she filed a petition to terminate James's parental rights on the grounds he had failed to support the child or visit him. Rebecca's new husband desires to adopt J.I.B. The juvenile court, after trial was held, terminated James's parental rights with J.I.B. James appealed. We affirm.

Our review of this equity appeal is de novo. Iowa R. App. P. 4. When considering the credibility of witnesses, this court gives weight to the fact findings of the trial court, but is not bound by them. Iowa R. App. P. 14(f)(7).

Attorney for James filed a brief with this court, however, Rebecca has failed to favor us with a brief. We have thoroughly reviewed the record, transcript, and appendix before us and conclude the trial court's findings and conclusions are supported by clear and convincing proof.

A parent's parental right may be terminated when it is shown, based on clear and convincing proof, that a parent has been ordered to contribute to the support of a child and fails to do so without good cause. See Iowa Code § 600A.8(4) (1983).

Pertinent portions of the trial court's findings are set forth as follows:

> James exercised regular visitation immediately following the dissolution. However, it abruptly stopped in March 1982 after James failed to show for an expected visit. Except for a letter, there was no contact from James until August 1982. James explained that he moved to Texas in May 1982 and returned to Des Moines in August 1982.
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> In August 1982, James contacted a lawyer who assisted him in arranging a visit with his son. James also contacted the county mediation center for assistance, but was informed that Rebecca did not want to mediate the visitation. There

was no contact after the August visit until December 1982. At that time, James again contacted a lawyer in an effort to arrange visitation. Little was accomplished.

Friction developed between James and Rebecca after the dissolution which contributed in some respects to the lack of visitation. On one occasion, Rebecca's father told James to stay away. On another occasion, James was told to contact Rebecca's attorney. This reluctance on the part of Rebecca and her parents to freely allow visitation resulted in part from the failure of James to pay support. An incident prior to the dissolution when James failed to return the child also contributed to this attitude. Visitation was generally instituted through Rebecca's parents. For a period of time, Rebecca's parents would not tell James where Rebecca was living.

James paid virtually no support after the dissolution. He made the first support payment in February 1982 and sent $10.00 in August 1982. He sent few letters or cards. He did not send birthday or Christmas gifts to Jamie.

James was sporadically employed following the dissolution. He was commonly without a job. No job lasted more than two months. Most were of a much less duration. He . . . is trained as a medical orderly. A medical condition restricted him from working on his feet for prolonged periods and lifting heavy objects. He applied for and was denied social security benefits. He generally lived with his parents or relatives. He received food stamps. He did not own a motor vehicle. He testified he earned approximately $700.00 in 1982 and $700.00 in 1983. He gave some money to his parents while living with them. He indicated that he obtained full-time employment a few weeks prior to the hearing, but has not received a paycheck.

James' medical condition consisted of ulcers, back problems and a heart ailment. He was hospitalized on some occasions. He was capable of working but had some periodic restrictions.

Rebecca remarried in July, 1983. Jamie refers to Rebecca's husband as father. He has supported Jamie since the marriage and now wants to adopt him.

Termination of parental rights is authorized when there has been a failure to pay child support without good cause. Iowa Code § 600A.8(4) (1983); Klobnock v Abbott, 303 N.W.2d 149 (Iowa 1981). This ground involves conduct which manifests an indifference to the child and is very similar to abandonment. Id. at 152.

The initial inquiry is whether there has been a failure to pay support. A substantial, not sporadic or insufficient, failure is required. If it is found, the question is whether that failure was without good cause. Id.

There is no question that James failed to pay his child support as directed by the dissolution decree. He paid $50 in February 1982 and $10.00 since that time. We agree with the trial court's conclusion that the deficiency is substantial. The fighting issue then becomes whether James's failure to pay the support was without good cause.

James claims that Rebecca and her parents refused visitation and otherwise inhibited his ability to exercise his parental rights. Regardless of the accuracy of this argument, his failure to exercise visitation is not good cause for his failure to provide support. Klobnock at 152-53. The right of a parent to support his child is independent of visitation.

The crux of James's argument is that he was financially unable to meet his obligation to support Jamie.

James has had a history of unstable employment. Even during the marriage, Rebecca appeared to be the breadwinner. At the time of the dissolution, he was unemployed. He held numerous short-term jobs at a movie theater, florist, service station, convenience store and restaurant after the divorce. He was also employed as an orderly on numerous occasions. He tried beautician school. He terminated most of his employment for health reasons. His medical condition played a role in his inability to sustain employment, but did not prohibit him from earning money. His various forms of employment generally lasted a month. Other than the $10.00 he sent to the clerk of court in August 1982, he paid no support during the times he was employed. James argued that the money he earned was needed for his own support.

Unemployment, whether related to a medical condition or not, may, under some circumstances, be good cause for the failure to pay child support. Termination results results when a parent "unjustifiably refuses to meet a support obligation." In Interest of Kelly, 262 N.W.2d 781, 785 (Iowa 1978).

Under the facts of this case, we, as did the trial court, decline to find good cause due to the reduced earning ability of James. The amount of child support James was obligated to pay was minimal. Even with his various medical problems, payment of his support obligation was attainable. He generally lived with his parents and assisted in their support. Yet he totally and continually ignored his obligation to his son. A parent's disadvantaged economic and personal circumstances may justify a reduction of his child support obligation, but does not justify total neglect. A parent has a basic obligation to support a minor child. Klobnock at 152. It cannot be totally ignored for a prolonged period of time absent the most compelling circumstances. No such circumstances exist in this case. The failure of James to pay his support was not justified. There is no good cause for him to completely ignore his obligation. It shows indifference to his son. James cannot use his dubious medical condition as a crutch to avoid his parental responsibilities.

We hold there has been a showing here, by clear and convincing proof, of a substantial failure to pay child support as ordered without good cause by James. We therefore do not disturb the trial court's conclusion that there is uncertainty whether James manifested an intent to abandon his child. It is not necessary to address Rebecca's claim of James's abandonment in view of our holding.

James's indifference has gone on too long. It is doubtful whether he will ever change. He is immature and lacks responsibility. He is capable of supporting his son, but he lacks a true desire to do so. The child deserves a father who will maintain importance in his life. Rebecca has now remarried and her husband wants to assume that role. The child's best interests support termination of the parental rights of James.

AFFIRMED.