

IN THE COURT OF APPEALS OF IOWA

FILED

IN THE INTEREST OF N.J.B.,
 M.J.C., AND T.D.C., Children;
 M.C., Natural Father of M.J.C.,
 Appellant.

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 CLERK SUPREME COURT
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 86-1786

Appeal from the Iowa District Court for Polk County (No. J5712-12) -
 Vincent M. Hanrahan, Judge.

The natural father of M.J.C., a four-year-old girl, appeals from the juvenile
 court order terminating his parental rights. **AFFIRMED**

Dennis J. Kirkwood, Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Valencia Voyd McGown, Assistant
 Attorney General, and Rebecca A. Belcher, Assistant County Attorney, for
 appellee, the State of Iowa.

David Backstrom, Des Moines, for appellee D.C., the natural mother of
 M.J.C.

Considered by Snell, P.J., and Schlegel, and Sackett, JJ.

SACKETT, J.

The natural father of M.J.C. appeals from the juvenile court order terminating his parental rights pursuant to Iowa Code § 232.116(2). We affirm.

M.C. and D.J.C. were the natural parents of M.J.C. M.J.C. was one of three daughters of the mother, D.J.C. Each child had a different father. A petition was filed to terminate parental rights of the three children. The mother consented to termination of her rights to all three children. The state contended the parental rights of father M.C., this appellant, should be terminated because there was clear and convincing evidence he abandoned the children. The court ordered termination of the father's parental rights to all three children. Appeal has been taken only from that part of the order terminating the father's parental rights to M.J.C.

I.

Our review is de novo. Iowa R. App. P. 14(f)(7); In Interest of C.W., 342 N.W.2d 885, 886 (Iowa App. 1983).

Iowa Code § 232.116(2) (1985) provides the court may order the termination of parental rights where:

2. The court finds there is clear and convincing evidence the child has been abandoned.

The father's sole issue on appeal is that there was no showing by clear and convincing evidence he abandoned M.J.C.

II.

M.J.C. was born in October, 1981. At the time of M.J.C.'s birth this father was married to the mother. They were not living together, however, because the father was incarcerated. While incarcerated he was served with dissolution papers. He contended he kept in contact with the mother about a month following

M.J.C.'s birth, but later was unable to do so because she frequently changed addresses.

The father was released from jail on bond in June, 1983. According to his testimony, from late June to mid-August, 1983, he saw M.J.C. each day. In August, 1983, he was again incarcerated and remained as such through the time of the hearing on termination. In the same month a petition was filed to have M.J.C. and her two half-sisters adjudicated children in need of assistance. This father accepted service. The children were adjudicated to be in need of assistance in November, 1983.

There was no contact from this father until April, 1984, when he wrote from prison to the Department of Human Services requesting visitation and custody of M.J.C. upon his release. He was encouraged by the department to write to M.J.C. through the department and to send a picture of himself. In May, 1984, he sent a photo and again requested visitation. Thereafter the father made no further effort to communicate with M.J.C. He claims to have lost the address of the department worker in a transfer between prison facilities. At the termination hearing the father claimed he would care for M.J.C. upon his release in four months.

The thrust of the father's argument is his absence was the result of his incarceration and he was in daily contact with M.J.C. when he was not incarcerated. He contends this supports his position he did not abandon M.J.C. He points to Iowa Code § 232.116(6)(e)(1985). Section 232.116(6)(e) provides:

Notwithstanding the provisions of subsection 2 to 5 the court need not terminate the relationship between parents and child if the court finds:

...

- e. That the absence of a parent is due to the parent's admission or commitment to any institution. . .

We agree that the mere absence of a parent because of incarceration may not constitute abandonment. We cannot, however, consider the incarceration in isolation, but must consider it with the other factors in the record.

In Interest of Kester, 228 N.W.2d 107, 110 (Iowa 1975), the court discussed the fact they did not know how long the mother would remain in prison or whether she would rehabilitate her life after release in affirming termination of her parental rights. In assessing the record, the court stated: "We do know she has refused by her past conduct over a period of five years to provide her children with necessary parental care and attention." Id.

Other courts have also held incarceration per se is not sufficient to constitute abandonment, however, the fact of incarceration may combine with other factors, such as parental neglect and withholding of parental affection, so as to lend support to a finding the parent has relinquished all parental claims and thereby has abandoned the child. Avera v. Rainwater, 150 Ga. App. 39, 256 S.E.2d 648, 649 (1979); Matter of Welfare of Walker, 287 N.W.2d 642, 644 (1979); In re Staat, 287 Minn. 501, 178, N.W.2d 709 (1970).

In Avera, the court weighed the fact that the father was serving a life sentence and therefore was unable to provide his children with emotional and physical support in determining the children's best interests would be served by termination. Avera, 150 Ga. App. 39, 256 S.E.2d at 649. The court found the fact the father had not given financial support to his children in over six years also showed he had willfully and voluntarily abandoned his children. Id.

In Matter of Welfare of Walker, the court affirmed termination of the incarcerated father's parental rights despite the father's testimony he had changed his attitude and life-style since his incarceration for armed robbery, had become

aware of the importance of the parent-child relationship and had initiated efforts to establish a relationship with his son by correspondence. Matter of Welfare of Walker, 287 N.W.2d at 644. The court found the father had seen the child only three times in 11 years and had not shown any interest in providing physical or emotional support for his son when he was not incarcerated. Id. The court held the father's incarceration combined with earlier parental neglect justified termination of his parental rights. Id.

The record in the instant case clearly reflects factors showing M.J.C.'s life with her mother was difficult. This father made no financial contribution to M.J.C. He never communicated concern for M.J.C. nor sought to be a part of M.J.C.'s life. His attempts at correspondence with M.J.C. from prison were sporadic and not sustained.

We find clear and convincing evidence appellant has abandoned M.J.C., and affirm termination of his parental rights.

AFFIRMED.¹

¹ We would like to inform appellant's counsel that in all future submissions to this court the appellant's appendix shall contain an index with page numbers of the parts of the record it contains and a list of the names of each witness who is included in the appendix. See Iowa R. App. P. 15(d).