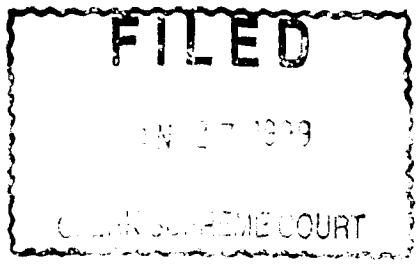
IN THE COURT OF APPEALS OF IOWA

No. 8-747 / 98-0456



IN THE INTEREST OF K.J.M., Minor Child,

M.D.K., Father,
Appellant.

Appeal from the Iowa District Court for Howard County, Alan D. Allbee, Associate Juvenile Judge.

The father of a minor child appeals a district court order terminating his parental rights. **REVERSED.**

Kevin E. Schoeberl of Story, Schoeberl & Kowalke Law Firm, Cresco, for appellant.

Joseph P. Braun of Elwood, O'Donohoe, O'Connor & Stochl, Cresco, for appellee mother.

Thomas J. Miller, Attorney General, and Kathrine S. Miller-Todd, Assistant Attorney General, until withdrawal, for appellee State.

Mark B. Anderson of Anderson Law Office, Cresco, guardian ad litem for minor child.

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

SACKETT, C.J.

Michael, the father of Karen, born in November of 1986, appeals after the juvenile court, on the petition of Karen's mother, Joan, terminated Michael's parental rights. Michael contends there is not clear and convincing evidence he abandoned Karen or the termination of his rights as her birth father are in her interest. We reverse.

Karen was born following a one-time sexual encounter between her unmarried parents. Michael provided no financial or emotional support during Joan's pregnancy. Joan initially intended to release Karen to Catholic Charities to allow her to be adopted, but subsequently changed her mind.

Michael visited with Karen several times, but provided no financial support until after the Child Support Recovery Unit filed a petition in March of 1987 seeking support for Karen. In October of 1987, Michael acknowledged paternity. He was unemployed but agreed to pay $50 a month child support and was subsequently ordered to do so.

In August of 1995, a petition was filed to modify Michael's child support obligation. The petition claimed circumstances had changed and the child support guidelines should be applied. A consent judgment followed ordering Michael to provide medical support as available through his employer. The order further provided, "At the request of the custodial parent [Joan], no modification is made in the level of child support."

On April 27, 1996, Joan married Dale, who expressed a desire to adopt Karen. On November 5, 1997, Joan filed a petition to terminate Michael's parental rights under Iowa Code section 600A.5 (1997). She contended Michael had abandoned Karen and Dale wished to adopt her.

On January 20, 1998, Michael filed a petition asking the court to establish custody and visitation with Karen.

On January 27, 1998, a hearing was held on Karen's petition to terminate. The juvenile court found Michael had abandoned Karen, a ground for termination under Iowa Code section 600A.8(3), in that he had no significant contact with her during the ten years of her life.[1] The court further determined, despite the fact Michael had paid the ordered support in a timely manner, the support he was ordered to pay was insignificant and insufficient. The court concluded it was in Karen's best interest Michael's parental rights be terminated so Dale could become her adoptive father.

Michael contends he did not abandon Karen. He advances he paid all ordered support. He said he did not visit Karen because Joan did not allow it. He contends evidence he named Karen in his will and as a beneficiary of his life insurance policy show his continual interest in her. Michael further advances, while the support he

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[1] Iowa Code section 600A.2(18) provides:

> 18. "To abandon a minor child" means that a parent, putative father, custodian, or guardian rejects the duties imposed by the parent-child relationship, guardianship, or custodianship, which may be evinced by the person, while being able to do so, making no provision or making only a marginal effort to provide for the support of the child or to communicate with the child.

Iowa Code § 600A.2(18).

paid was not substantial, during much of the time he was disabled and unemployed. Michael said he could not afford the legal fees necessary to establish visitation. He also advances he is disabled and receiving disability social security and he has made arrangements for Karen to receive social security benefits. Michael also contends he will probably not live for more than ten years; consequently, Karen will not have the opportunity to contact him and learn about her birth father after she becomes an adult. Michael has another child and points out he has contact with him and there are no problems.

Appellate review of termination proceedings is de novo. *In re Dameron,* 306 N.W.2d 743, 745 (Iowa 1981). We give weight to the findings of fact of the trial court, especially when considering the credibility of witnesses, but we are not bound by those determinations. *Id.*

The question is whether there is clear and convincing evidence Michael abandoned Karen within the meaning of Iowa Code section 600A.8(3). There exists a parental interest in the integrity of the parental unit, but such interest is not absolute and may be forfeited by certain conduct. *Id.*

Michael paid $5800 in child support. He was current with all ordered support until June of 1997, at which time he became eligible to receive Social Security Disability benefits. He notified Joan that Karen was eligible as his child to begin drawing dependent benefits of over $300 monthly. Joan, as Karen's mother, refused the benefits, which at the time of the termination hearing would have been about $325 a month.

No father-daughter relationship has been established between Michael and Karen. Joan contends it is because Michael did not seek to exercise visitation or assist her with Karen's care. Michael contends it is because Joan has not provided contact.

Joan further advances Dale and Karen have a close relationship and Karen looks to Dale as her father and it is in Karen's best interest Dale adopt her. Yet, only after a ground for termination under Iowa Code section 600A.8 has been established by clear and convincing evidence does the court look to whether it is in the child's interests to order termination of parental rights. *See In re Morrison*, 259 Iowa 301, 309-11, 144 N.W.2d 97, 102-03 (1966).

We commend Dale for the concern he has shown Karen. Joan and Dale contend their marriage is now stable, but it is a short-term marriage and there are no guarantees it will remain stable in the future.

Michael acknowledged paternity before Karen was one year old. He has paid all court-ordered child support. We agree with the juvenile court's finding the support he paid was not substantial. Yet, there was no showing when the original order was entered Michael had the ability to pay more. When modification was sought and medical support was ordered, the child support was not increased at Joan's request. Disabled, Michael has made all reasonable efforts to see that Karen receives social security based on his disability and Joan refused it. The only showing is Michael paid all ordered child support and does not have the ability to pay more. Michael made some attempts to visit Karen. Joan did nothing to foster their relationship and, in fact,

failed to honor Michael's request for visitation. Michael should have been more aggressive in seeking visitation. While there was no court-ordered visitation, Joan could have been more cooperative.

This is not a case of a father failing to pay court-ordered child support. *See In re R.K.B.*, 572 N.W.2d 600 (Iowa 1998) (father's parental rights were terminated when he failed without good cause to pay court-ordered child support); *In re B.L.A.*, 357 N.W.2d 20 (Iowa 1984) (father's parental rights were terminated where court found father substantially failed to pay child support without good cause); *In re Goettsche*, 311 N.W.2d 104 (Iowa 1981) (father's parental rights were terminated where relevant evidence included nonpayment of child support); *In re J.L.W.*, 523 N.W.2d 622 (Iowa App. 1994) (father failed to maintain any contact with daughter and any financial or emotional support warranted finding of abandonment as ground for termination of his parental rights).

Michael has complied with all orders on support. He had made provisions for Karen to receive social security. He has made efforts to visit Karen. We reverse.

REVERSED.