IN THE COURT OF APPEALS OF IOWA

No. 6-747 / 96-1523

IN THE INTEREST OF M.J.W., II,
a Minor Child,

K.M.G., Mother,

Appellant,

vs.

M.J.W., Father,

Appellee.

FILED
DEC 20 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Mother appeals the district court's denial of her petition to terminate the father's parental rights. **AFFIRMED.**

Jane E. Rosien, Des Moines, for appellant.

Ryan A. Genest of the Borseth & Genest Law Firm, Pleasant Hill, for appellee.

Mike Bandstra, Des Moines, guardian ad litem for minor child.

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

STREIT, J.

Mother appeals the district court's denial of her petition to terminate the father's parental rights of their son.

Kamala and Michael were married in June 1990 and are the parents of Michael James, II, born December 25, 1992. Kamala and Michael separated in March 1993 and were divorced in Michigan in November 1993.

The parties' dissolution of marriage decree provided that Kamala and Michael be awarded joint legal custody and Kamala be awarded primary physical care of their son. The decree further provided that Michael be allowed to exercise supervised visitation with his son for three hours every other Monday for a period of sixty days. At the end of sixty days, further visitation would be granted upon Michael's petitioning of the court. The decree ordered Michael to pay $55 per week in child support.

In March 1996, Kamala filed a petition for termination of Michael's parental rights pursuant to Iowa Code sections 600A.8(4) and 600A.8(3) (1995). Kamala had remarried and was living in Iowa. She alleged Michael abandoned his son and had been ordered to but failed to provide for his son's support. Kamala sought termination of Michael's parental rights so that a step-parent adoption could be completed and alleged that such an adoption was in her son's best interests.

Following a July 1996 hearing, the district court denied Kamala's petition.

Kamala appeals. She argues there was clear and convincing evidence Michael abandoned the child, that Michael failed to pay court ordered child support, and that termination of Michael's parental rights is in their child's best interests.

I. Standard of Review. Appellate review of termination proceedings is de novo. *In re W.G.*, 349 N.W.2d 487, 491 (Iowa 1989), *cert. denied sub nom., J.G. Tauke,* 469 U.S. 1222 (1985). We give weight to the findings of fact made by the trial court, but we are not bound by them. *Id.* at 491-92. Termination of parental rights is governed by chapter 600A of the Iowa Code 1995. The party moving must prove one of the seven grounds for termination set forth in Section 600A.8 by "clear and convincing proof." *See* Iowa Code § 600A.8 (1995).

II. Abandonment. Kamala contends Michael has abandoned his son. She claims he has failed to have significant involvement or participate in affirmative parenting by visitation with their son, therefore his parental rights must be terminated under section 600A.8(3) of the Iowa Code. Abandonment is defined as the relinquishment or surrendering of parental rights and includes both the intention to abandon and the acts by which the intention is evidenced. Iowa Code § 600A.2(16). Abandonment is said to be a relinquishment of parental rights and responsibilities with an intent to forego them. *In Interest of B.G.C.*, 496 N.W.2d 239, 246 (Iowa 1992); *In re Goettsche*, 311 N.W.2d 104, 105 (Iowa 1981). The district court stated "[a]t best the evidence concerning Michael's failure to exercise visitation with his son is in equipoise. Kamala has thus failed to establish by clear and convincing evidence

that Michael has abandoned their child." The court found Michael's failure to visit his son since December 1993 "was a result of Kamala not wanting that visitation to take place and Michael's frustration with the Michigan judicial system . . . ."

We find upon review of the evidence Michael did not intend to abandon his son or give up his parental rights. We affirm the district court.

III. Termination for failure to provide support. Kamala further contends Michael's failure to pay support for his son is without good cause and justifies termination of Michael's parental rights under section 600A.8(4) of the Iowa Code. The district court found that Michael had a child support arrearage of $4286 as of July 1996. Once a court finds a failure to pay ordered support, the question is whether that failure was without good cause. *Klobnock v. Abbott*, 303 N.W.2d 149, 152 (Iowa 1981). The district court concluded "at least part of the period of time that Michael was not paying his support he was unemployed or employed in a position which paid barely enough to cover his basic living expenses." A substantial, and not merely sporadic or insignificant, failure to pay ordered without good cause justifies termination of parental rights for failure to pay ordered support. *Id.* Up until the time Michael became unemployed in 1996, he had been paying $60 per week plus $10 toward the arrearage. We hold there is not clear and convincing proof to justify termination of Michael's parental rights under section 600A.8(4).

The primary concern in termination proceedings is the best interest of the child. Iowa R. App. P.14(f)(15); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

We affirm the district court's ruling that it would not be in the best interests of Michael James II to have his father's parental rights terminated under the facts and circumstances presented in this case. The trial court was right in finding Kamala has failed to establish the grounds of termination by clear and convincing proof.

Michael requests appellate attorney fees for defending this action. He has failed to cite any authority supporting his request and therefore it is deemed waived.

AFFIRMED.