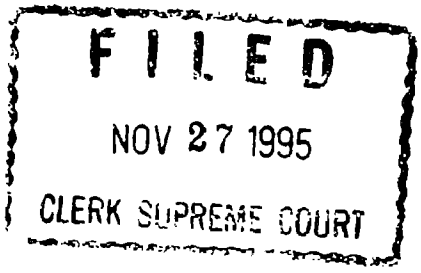
IN THE COURT OF APPEALS OF IOWA

No. 5-641 / 95-0878



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

M.K., Father,

Appellant.

Appeal from the Iowa District Court for Bremer County, Gerald Magee, Judge.

Father appeals district court's order terminating his parental rights. **AFFIRMED.**

Thomas Wolle of Lynch, Dallas, Smith, Harman, P.C., Cedar Rapids, for appellant.

Gerald B. Carney, Waverly, for appellee-Mother.

Christopher Foy, guardian ad litem, for minor child.

Considered by Donielson, C.J., and Sackett and Cady, JJ.

DONIELSON, C.J.

Michael appeals from the termination of his parental rights. Our review of termination proceedings is de novo. *In re J.L.W.*, 523 N.W.2d 622, 624 (Iowa App. 1994). 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.* Based upon our de novo review of the record, we affirm.

The termination proceedings were brought by the child's mother, Mary, pursuant to Iowa Code chapter 600A. In construing and applying the provisions of this chapter we are guided by language of section 600A. 1.

> This chapter shall be construed liberally. The best interest of the child subject to the proceedings of this chapter shall be the paramount consideration in interpreting this chapter. . . . The best interest of a child requires that each biological parent affirmatively assume the duties encompassed by the role of being a parent. In determining whether a parent has affirmatively assumed the duties of a parent, the court shall consider, but is not limited to consideration of, the fulfillment of financial obligations, demonstration of continued interest in the child, demonstration of a genuine effort to maintain communication with the child, and demonstration of the establishment and maintenance of a place of importance in the child's life. . . .

Iowa Code § 600A.1 (1995).

Mary sought to terminate Michael's parental rights on the alternative grounds of abandonment and failure to contribute to the support of a child. Iowa Code § 600A.8 (3), (4) (1995). The juvenile court found Mary had proven abandonment and terminated Michael's parental rights. "Abandonment" is statutorily defined.

> *"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.

Iowa Code section 600A.2(18) (1995). Abandonment must be shown by clear and convincing proof. *In re B.G.C.*, 496 N.W.2d 239, 246 (Iowa 1992).

Abandonment has been characterized as "a giving up of parental rights and responsibilities accompanied by an intent to forego them." *In re Goettsche*, 311 N.W.2d 104, 106 (Iowa 1981) (quoting *In re Burney*, 259 N.W.2d 322, 324 (Iowa 1977)). This characterization captures the two elements, conduct and intent, necesssary for abandonment. *See Goettsche*, 311 N.W.2d at 106.

Michael and Mary were married and their daughter Madisyn was born on April 22, 1991. In January 1992 Michael and Mary separated, and they were divorced on May 21, 1992. From the time of the parties' January 1992 separation until the dissolution of their marriage, Michael only saw Madisyn once. In June 1992 Michael moved to North Carolina. He resided there until January 1995, when he returned to Iowa. Although the dissolution decree had awarded Michael reasonable and liberal visitation rights, he did not see his daughter at any time during his two and one-half year residency in North Carolina.

Pursuant to the parties' May 1992 dissolution decree, Michael was required to pay $265 a month in child support and provide health insurance for Madisyn.

Despite the fact he was employed in North Carolina, Michael failed to pay child support from August 1992 until June 1993, and he did not provide health insurance for Madisyn. He commenced making support payments in June 1993 only because Mary subjected his wages to an involuntary wage assignment. He failed to keep making regular support payments after June 1994.

Following the dissolution of the parties' marriage, Michael did not send any cards or gifts to his daughter. He had no communication with his daughter and what few communications he had with Mary had little to do with Madisyn and more to do with whether Mary would accept a voluntary reduction in Michael's support obligation.

In March 1993, Madisyn became critically ill and was hospitalized for three months with leukemia. Despite Mary's request that he come see his daughter during this time, and his mother's offer to provide him with a plane ticket to do so, Michael did not visit Madisyn during her illness. He declined to do so because of his concerns regarding his job, his new family in North Carolina and his struggle in dealing with flashback memories of childhood abuse which he had endured.

After Madisyn's release from the hospital she and Mary lived in a Ronald McDonald house for three months so she could remain close to the hospital. After that, they resided in a nearby home provided by Michael's mother and stepfather.

Despite his family's ongoing relationship with Madisyn, Michael continued to fail to have contact with his daughter.

While between jobs in July 1994, a friend made it possible for Michael to return to Iowa for a visit. Michael did not contact Mary and arrange to see Madisyn during that visit. Instead, he contacted Mary's mother, and, after being "rebuffed," he decided not to contact Mary. Even though he moved back to Iowa in January 1995, Michael had not see his daughter prior to the time of the April 25, 1995, termination hearing.

Despite Michael's contention that he did not intend to abandon Madisyn, this court has previously recognized intent can be shown through conduct as a parent's "actions speak louder than words." *In re J.L.W.*, 523 N.W.2d at 624. For over three years, Michael failed to see his daughter, failed to provide her with any gifts, cards or communications, failed to provide her with emotional support and failed to express any significant interest in her welfare by communicating with Mary. Michael's failure to comply with his court-ordered duty to financially support Madisyn is further evidence of abandonment. *See Goettsche*, 311 N.W.2d at 106. Any financial support he provided was compelled by imposition of a wage assignment, and at the time of trial, he was approximately $3,000 in arrears on his support payments.

Michael's relocation to North Carolina would not in and of itself constitute an abandonment of Madisyn. However, his parental duties required he take

advantage of the opportunities he had to visit, correspond or communicate with his daughter. Our supreme court has recognized the need for a parent to utilize his or her opportunities to maintain a relationship with his or her child. "When opportunities for association with a child are few, they become more precious, and the spurning of them more egregious. If few opportunities for association are available, spurning all of them will suffice for a showing of abandonment." In re M.M.S., 502 N.W.2d 4, 7 (Iowa 1993).

In his brief Michael claims "it was not practical and feasible in his circumstances to perform affirmative parenting." He contends he had as much of a relationship with his daughter as his circumstances would allow. He points to his finances, his new family and his personal struggle to cope with his childhood abuse to explain his lack of contact with Madisyn.. However, "[a]n abandoned child is no less abandoned because the parent can rationalize a reason for the abandonment." *M.M.S.*, 502 N.W.2d at 7. Without undo hardship to his new family, Michael could have continued to foster a meaningful relationship with his daughter, and his failure to do so constitutes abandonment.

The close relationship between Michael's parents and Madisyn does not negate the fact he has completely failed to maintain a relationship with his daughter. The involvement of the paternal grandparents in Madisyn's life does not substitute for Michael's abandonment of her. *See M.M.S.*, 502 N.W.2d at 8.

"[T]otal desertion is not required for a showing of abandonment." *M.M.S.*, 502 N.W.2d at 8. Parental responsibilities require more than subjectively maintaining an interest in a child. *Goettsche*, 311 N.W.2d at 106 . Michael's conduct did not rise to the level of affirmative parenting. We find clear and convincing evidence supports the finding of abandonment.

Once we determine a ground for termination under section 600A.8 has been established b y clear and convincing evidence, we must next determine whether it is in the child's best interests to order termination of parental rights. *J.L.W.*, 523 N.W.2d at 625. At this step in the analysis, the paramount consideration is the child's best interests. *Id.* The record reveals Madisyn has no meaningful relationship with Michael and has not seen him since April 1992. She has bonded with her stepfather and he intends to adopt her if Michael's rights are terminated. Given Madisyn's age and the long period of time over which Michael had no contact with her, Madisyn will not be detrimentally affected by a termination of her father's parental rights. We find termination would be in her best interests as it will enable her to be adopted by the man whom she knows as her father.

AFFIRMED.

Cady, J., concurs; Sackett, J., specially concurs without opinion.