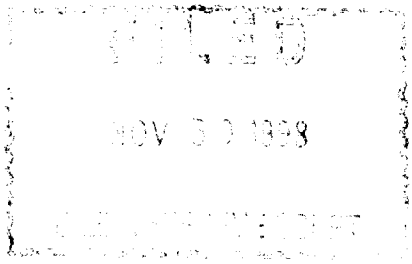
IN THE COURT OF APPEALS OF IOWA

No. 8-499 / 97-2336
Filed November 30, 1998



IN THE INTEREST OF D.H, Minor Child,

D.B., Mother,
Appellant,

U.H., Father,
Appellee.

Appeal from the Iowa District Court for Scott County, John G. Mullen, Judge.

On appeal from the district court's denial of her request to terminate the appellee's parental rights, the appellant claims the appellee had abandoned their child and it was in the child's best interests to terminate his rights. **REVERSED.**

James D. Hoffman of James D. Hoffman, P.C., Davenport, for appellant.

Theodore J. Priester of Priester & Shie, Davenport, for appellee.

Heard by Sackett, C.J., and Huitink and Vogel, JJ.

HUITINK, J.

I. Background Facts and Proceedings.

This action commenced with Urdane's petition to establish paternity and visitation with his seven-year-old daughter, Davia. Dianna responded by filing a petition to terminate Urdane's parental rights alleging Urdane abandoned Davia.

Following trial on Dianna's petition, the court concluded:

> While the evidence does establish grounds upon which termination of parental rights could be based, nonetheless the Court is not impressed that termination of parental rights is in the best interests of Davia . . . .

Dianna's petition to terminate Urdane's parental rights was accordingly dismissed.

On appeal, Dianna contends clear and convincing evidence supports a finding Urdane abandoned Davia. She also argues Davia's best interests necessitate termination.

II. Standard of Review.

Appellate review of termination proceedings is de novo. *In re T.Q.*, 519 N.W.2d 105, 106, (Iowa App. 1994). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. *Id.* at 491-92.

III. The Merits.

Before terminating parental rights in a Iowa Code chapter 600A proceeding, the court must find one or more statutory grounds for termination have been

established, and termination is in the child's best interests. *In re B.C.G.*, 496 N.W.2d 239, 245 (Iowa 1992); *In re D.W.K.*, 365 N.W.2d 32, 34-35 (Iowa 1985).

As noted earlier, Dianna claims Urdane has abandoned Davia. Abandonment is one of the statutory grounds for ordering termination of parental rights. Iowa Code § 600A.8(3). Iowa Code section 600A.2(18) provides:

> "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.

Our supreme court has held this definition is not limited to situations where a parent has left the child's welfare wholly to circumstance or fate. *In the Interest of Goettsche*, 311 N.W.2d 104, 106 (Iowa 1981). It includes relinquishment of parental rights and privileges as well as abdication of parental duties. *Id.* at 107.

Urdane, by his own admission, has had no contacts with Davia since September 1993. He also acknowledges failure to financially support Davia since May 1993 despite his ability to do so.

In denying abandonment, Urdane claims Dianna refused to allow visitation with Davia. The record, however, indicates Dianna assumed sole responsibility for arranging visitation and related transportation following the parties' separation in February 1993. It was only after Dianna declined to continue transporting Davia one hundred miles for weekend visits that the frequency of Urdane's visits declined.

There is also evidence Dianna's reluctance to accommodate Urdane's visitation demands was substantially based on his history of domestic abuse and controlling behavior. Moreover, there is abundant evidence that Urdane's interest in parenting Davia was diminished by his chronic substance abuse. Any notion that Dianna is at fault for Urdane's abdication of his parental responsibilities is not supported by the evidence. We, like the district court, find clear and convincing evidence that Urdane abandoned Davia.

In making its best interests determination, the district court noted:

> This court is impressed that Urdane . . . is an appropriate and capable person. Clearly he loves his child very much. He has extended family that is close and supportive of him and each other. Clearly they also love this child. Dianna . . . and her husband are capable and successful people. They are nurturing and competent caregivers. The child benefits from her relationship with her mother, stepfather, and extended family on both sides of the relationship. There is no reason that Davia should not should not benefit from the love and support also from her natural father and her natural father's family.

While we do not dispute the court's assessment of Urdane's extended family, we nevertheless disagree with the conclusion that Davia's best interests are not served by termination of Urdane's parental rights.

Iowa Code section 600A.1 provides, in pertinent part:

> 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.

Urdane's failure to affirmatively assume his duties as Davia's parent cannot be seriously disputed. His subjective interest in her welfare is not sufficient to meet his parental obligations. *In Interest of Goettsche*, 311 N.W.2d 104, 106 (1981). Moreover, the duty to affirmatively parent belongs to Urdane, and cannot be vicariously discharged by his extended family regardless of the nobility of their intentions.

Dianna has remarried. She has established a stable environment for Davia. Davia has not seen Urdane for at least three years. Her step-father wishes to adopt her. Under these circumstances, we believe Davia's best interests necessitate termination of Urdane's parental rights. For all of the foregoing reasons, we reverse the judgment of the district court and order termination of Urdane's parental rights.

REVERSED.