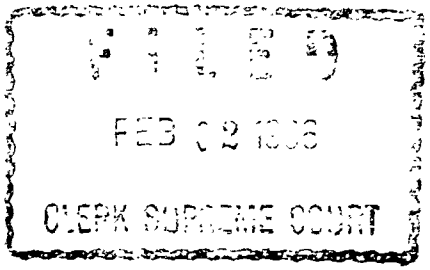
IN THE COURT OF APPEALS OF IOWA

No. 5-506 / 95-857



IN THE INTEREST OF A.C.D., Minor Child,

M.C.D., Father,

Appellant.

Appeal from the Iowa District Court for Clinton County, Arlen Van Zee, Judge.

Father appeals the district court's order terminating his parental rights over his minor child. **REVERSED AND DISMISSED.**

J. E. Tobey, III, Davenport, for appellant.

Robert J. McGee, Clinton, for appellee-mother.

Thomas R. Mayer, Clinton, guardian ad litem for minor child.

Considered by Sackett, P.J., and Habhab and Huitink, JJ.

SACKETT, P.J.

The questions in this case are whether, on de novo review, we agree with the trial court's conclusions (1) there is clear and convincing evidence Mitch, a divorced father, abandoned his son, Andrew, born April 12, 1987, as defined under Iowa Code section 600A.8(3), and (2) whether termination of Mitch's parental rights is in Andrew's best interest. Because we find there is not clear and convincing evidence of abandonment as defined by statute and because we do not find termination in Andrew's best interest, we would reverse and dismiss.

The marriage of Andrew's parents was dissolved on September 6, 1989. Andrew was put in the joint custody of his parents and his mother was given physical care. His father, Mitch, was given specific visitation and ordered to pay child support of $30 per week until August 4, 1990, when he was to commence paying $45 per week child support. Mitch's child support obligation during the time in question was $12,500. Mitch has paid $10,700 of that amount and is delinquent in the amount of $1841. The guardian ad litem reported Mitch has paid support on a regular basis. The trial court found it was paid on a regular basis. Our review shows he has paid on a regular basis.

Abandonment must be proven by clear and convincing evidence before courts are authorized to explore the issue of a child's best interest. *In re B.L.A.*, 357 N.W.2d 20, 21-23 (Iowa 1984). Abandonment must be shown by clear and convincing proof.

In re B.G.C., 496 N.W.2d 239, 246 (Iowa 1992). Abandonment is a relinquishment of parental rights and responsibilities with an intent to forego them. *Id.*

According to the mother's records, Mitch has visited Andrew twenty-three times.

The parties have not lived in the same community. Mitch lived in Bettendorf, Iowa, and the mother lived in Davenport, Iowa, and then moved to Clinton. In June 1990, the mother and her boyfriend, now her husband, and Andrew moved to North Carolina. In October 1991, they moved back to Clinton. During the time Andrew lived in North Carolina, Mitch was able to visit with Andrew twice. Whether Mitch was provided current information as to their whereabouts at all times is contested. The guardian ad litem, an attorney for eighteen years with family law experience, determined both parties were at fault. We agree with this assessment of the guardian ad litem. Our review of the record convinces us there has been a strained relationship between the parents and, while Mitch should have been more aggressive in pursuing visitation, there has been little cooperation from his former wife encouraging him to do so.

M[redacted]st saw Andrew in January 1993. In September 1994, Mitch testified he tried to find the mother and Andrew and contacted the mother's former attorney, who told him they had left the area. He also tried to find Andrew through the stepfather's family. Although Mitch knew Andrew was attending a particular school and he received Andrew's report cards, the school would not give him Andrew's home

address. Mitch's parents went to school for grandparents' day and were put off by Andrew's mother.

Andrew's mother relies on *In re Goettsche*, 311 N.W.2d 104 (Iowa 1981), to support her position. *Goettsche* is distinguishable. The court, in *Goettsche*, found abandonment by the father where he and the mother lived in the same town and the father conceded the mother was cooperative regarding visitation. *Id.* at 107. Also, in *Goettsche*, no child support was paid from October 1977 to December 1978. *Id.* In December 1978, the father paid a sum of money to bring the payments current. *Id.* Then from December 1978, the father defaulted in payments until May 1980. *Id.* In *Goettsche*, the marriage was dissolved in January 1976 and the father seldom visited the children. *Id.* at 106. Following a visit in December 1976, there was no visitation until 1980. *Id.* at 107.

Furthermore, we cannot find termination and adoption is necessarily in Andrew's best interest. His stepfather, who seeks to be his adoptive father, did not find success in an earlier marriage where he fathered two children. These children are in their mother's custody. There is nothing in this record that convinces us his short-term marriage to Andrew's mother is stable and, consequently, we cannot find the proposed adoption in Andrew's best interest. We would follow the guardian ad litem's recommendation and reverse the termination of the parental rights of the father in this case.

REVERSED AND DISMISSED.