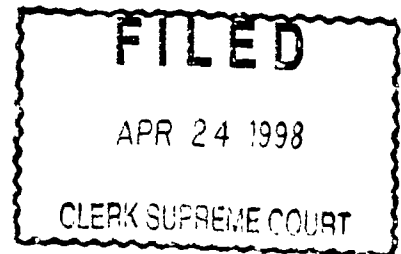


IN THE COURT OF APPEALS OF IOWA

No. 8-180 / 97-2104



IN THE INTEREST OF S.L.T., Minor Child,

T.K., Mother, and M.K., Stepfather,
Appellants.

Appeal from the Iowa District Court for Jasper County, Thomas W. Mott,
District Associate Judge.

The mother and stepfather of minor child S.L.T. appeal a district court ruling denying their petition to terminate the parental rights of the child's natural father in preparation for the stepfather to adopt S.L.T. **AFFIRMED.**

Lee M. Walker and Corey J. L. Walker of Walker, Knopf & Billingsley,
Newton, for appellants.

Steven J. Holwerda of Selby, Updegraff, Smith & Holwerda, Newton, for
appellee father.

Pamela A. Vandel, West Des Moines, guardian ad litem for minor child.

Considered by Sackett, P.J., and Vogel and Mahan, JJ.

MAHAN, J.

Petitioners Martin K. and Tamara K. appeal the juvenile court's finding Dennis S. has not abandoned his daughter Shauna T. and the court's refusal to terminate Dennis's parental rights so the stepfather, Martin, could adopt Shauna. We affirm.

Tamara and Dennis are the natural parents of Shauna, born out-of-wedlock on August 2, 1989. Dennis has been incarcerated various times. He was in prison when Shauna was born. Since her birth, Dennis has been free twice -- January 1990 to May 1992, and January 1994 to May 1994. He currently is serving a federal sentence and will not be released until at least the year 2000.

After his release in January 1990, Dennis and Tamara lived together for about one year. They obtained a marriage license, but never married. Dennis provided financial support and participated in parenting Shauna during that time. After their separation, Dennis gave Tamara money several times and opened a savings account for Shauna which, at the time of trial, had a balance between \$400 and \$500. During his incarcerations, Dennis has attempted to maintain contact with Shauna by sending cards and letters, by purchasing birthday and holiday presents, and by trying to telephone her. During his release in 1994, he sought visitation and family-centered counseling through Broadlawns Medical Center but Tamara refused, referring everything to her attorney.

Tamara and her family consistently have sought to keep Dennis from having any contact with Shauna. Tamara has moved without giving Dennis her new address.

She has obtained unlisted telephone numbers. Tamara's parents helped her avoid calls and letters from Dennis. The presents Dennis purchased for Shauna remain unclaimed at his mother's home. Tamara removed Shauna's name from the savings account Dennis set up for Shauna. Tamara has told Shauna Dennis is a bad person and she never wants to meet him.

Tamara married Martin in March 1996. On April 1, 1996, they filed a petition under Iowa Code chapter 600A to terminate Dennis's parental rights to Shauna, alleging abandonment and failure to pay court-ordered child support. It is Martin's desire to adopt Shauna.

Following a deposition of Dennis in prison and a hearing on the petition, the juvenile court filed its findings, conclusions, and order on October 27, 1997. The court found Dennis had not abandoned Shauna, but rather had made repeated and consistent attempts to maintain contact with her. It also found there never was any court-ordered child support as claimed by Tamara and Martin. The court found Tamara and her parents had stymied Dennis's attempts to contact Shauna. The court refused to terminate Dennis's parental rights so that Martin could adopt Shauna. Tamara and Martin appeal.

We review termination of parental rights under chapter 600A de novo. Iowa R. App. P. 4.; *In re Goettsche*, 311 N.W.2d 104, 106 (Iowa 1981). Section 600A.1 (1997) provides in part:

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.

Id. Section 600A.2 defines "abandon" as "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." *Id.*; see *Goettsche*, 311 N.W.2d at 105. Abandonment must be shown by clear and convincing proof. Iowa Code § 600A.9; *In re B.C.G.*, 496 N.W.2d 239, 246 (Iowa 1992).

A parent's life choices, such as committing crimes leading to imprisonment, can be considered in terminating parental rights. See *In re M.M.S.*, 502 N.W.2d 4, 8 (Iowa 1993); *In re Griffin*, 210 N.W.2d 665, 667 (Iowa 1973) (while not deciding whether it amounts to abandonment, father's pursuit of crime in preference to family life warranted termination); *In re J.S.*, 470 N.W.2d 48, 51 (Iowa App.1991) (incarceration is no justification for father's failed responsibilities; termination ordered); *In re R.L.F.*, 437 N.W.2d 599, 601-02 (Iowa App.1989) (mere generalized interest in child whom prisoner-father has not met cannot bar termination). Termination under chapter 600A cannot be based solely on the best interests of the child, but must include proof statutory grounds exist. *In re B.C.G.*, 496 N.W.2d at 245; see *In re B.L.A.*, 357 N.W.2d 20, 23 (Iowa 1984) (after deciding statutory

grounds for termination exist, we must determine whether it would benefit children); *In re Adoption of Hangartner*, 407 Pa. 601, 608-09, 181 A.2d 280, 284 (1962) (welfare of child does not become material in adoption proceedings until abandonment is established or consent of natural parent proven); 2 Am.Jur.2d Adoption § 60 (1962).

In our de novo review of the record, we find ample evidence of Dennis's interest in Shauna and his continual efforts to maintain contact with her. The only lack of contact, lack of support, or lack of relationship is because of Tamara's efforts to keep Dennis away from Shauna. The juvenile court correctly found Dennis has not abandoned Shauna under Iowa Code section 600A.8(3). The district court also correctly found there never was any court-ordered child support and the allegation under Iowa Code section 600A.8(4) must fail. We therefore affirm the juvenile court's decision not to terminate his parental rights.

We note the stepfather, Martin, testified his relationship with Shauna, his feelings for her, and his provision of support for her would not change even if he were unable to adopt her. The Iowa Supreme Court aptly observed in another termination-in-preparation-for-adoption situation:

As tempting as it is to resolve this highly emotional issue with one's heart, we do not have the unbridled discretion of a Solomon. Ours is a system of law, and adoptions are solely creatures of statute. As the district court noted, without established procedures to guide courts in such matters, they would "be engaged in uncontrolled social engineering." This is not permitted under our law; "[c]ourts are not

free to take children from parents simply by deciding another home offers more advantages.

In re B.C.G., 496 N.W.2d at 241.

AFFIRMED.