IN THE COURT OF APPEALS OF IOWA

No. 0-196 / 99-1520
Filed June 14, 2000

IN THE INTEREST OF

D.L.G. and H.A.G.,
Minor Children

L.C., MOTHER,
Appellant.

FILED
JUN 14 2000
CLERK SUPREME COURT

Appeal form the Juvenile District Court for Sac County, David D. Gidel, Judge.

Mother appeals the dismissal of her lawsuit seeking to have the natural father's paternal rights terminated.

AFFIRMED.

Laurel L. Boener, Boerner & Goldsmith Law Firm P.C., Ida Grove, for appellant.

Charles Schulte, Schulte & Graven Law Firm P.C., Sac City, for appellee

Joseph Heidenreich, Dressehuis & Heidenreich, Odebolt, Guardian Ad Litem for the Minor Children.

Considered by Vogel and Hecht, J.J., and Honsell, S.J.*

Senior judge assigned by order pursuant to Iowa Code Section 602.9206 (1999).

HONSELL, S.J.

L.C., the natural mother of D.L.G. and H.A.G., brought this action seeking to terminate the parental rights of P.G., the natural father of the twins, pursuant to Chapter 600A, of the 1999 Iowa code. She alleges that he abandoned the children by failing to maintain substantial and continuous or repeated contact with them, and he failed to pay child support as ordered. The termination trial proceeding was not court reported. The transcript includes the juvenile judge's decision and appellant's Statement of Evidence and Proceedings, which have been determined by the juvenile judge to be accurate. Counsel for P.G has also approved the transcript.

The children, D.L.G. and H.A.G. were born on October 16, 1988. L.C. and P.G. separated during 1989, at which time both resided in Muscatine, Iowa. A decree of dissolution was entered on February 21, 1990. It incorporated their stipulation. They were granted joint legal custody of the twins with L.C. being responsible for their physical care. P.G. was provided with liberal visitation and was to pay $55.00 per week child support.

On November 21, 1992 L.C. married T.C. and they resided with the children in Muscatine until July of 1996 when the family moved to Ida Grove for three months and then to Odebolt, Iowa, where they now live. L.C. and T.C. provide a good and stable environment for the children who enjoy their relationship with T.C.

Shortly after the divorce, P.G. moved to Missouri and then within a short time to Rapid City, South Dakota, where he now resides. He has held several relatively low paying jobs and at this time grosses $375.00 per week as a cook. For a short period of time after the divorce he had contact with the children on

many of the days set forth in the stipulation incorporated into the divorce decree. After he moved to Missouri and from that time on his visitations with the children have been "sporadic at best with occasional calls and visits and in the case of child support essentially non-existent to the extent that the Respondent is now delinquent in his child support payments in excess of $22,000.00."[1]

The children, D.L.G. and H.A.G., "desire that their relationship with their biological father be maintained."[2] "No allegations were made or evidenced regarding any danger or harm that has been or likely would be caused to the children as a result of continued contact with their natural father."[3]

I. The scope of review in termination cases is de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1994). The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa App. 1997). Our primary concern is the best interests of the child. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

II. L.C. asserts that she offered clear and convincing evidence that the children were abandoned pursuant to Iowa code section 600A.8(4) and (5).

The Iowa Supreme Court in *Klobnock v. Abbott*, 303 N.W.2d. 149 (1981) stated: "Although abandonment is a separate ground for termination, section 600A.8(3), we conclude that the legislature intended termination for nonsupport to occur where a parent's failure to pay manifests indifference to a child and is therefore akin to abandonment."

Abandonment is characterized as a giving up of parental rights and responsibilities accompanied by intent to forego them. *In re D.M.*, 516 N.W.2d

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[1] Juvenile Judge Gidel's order filed September 2, 1999.
[2] Juvenile Judge Gidel's order filed September 2, 1999.

888, 891 (Iowa 1994). Two elements are involved in this characterization. First, the giving up of parental rights and responsibilities refers to conduct. *Id.* Second, the intent element refers to the accompanying state of mind. *Id.* Parental responsibilities include more than subjectively maintaining an interest in a child. The concept requires affirmative parenting to the extent it is practical and feasible in the circumstances. *See id. In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

The nonpayment of court ordered child support when accompanied with a failure to show good cause for the nonpayment is a very serious matter and a factor we have considered[4]. While we do not condone the nonpayment of child support, we do note that the record is void of any showing of child abuse, there has been some effort towards exercising visitation with the children, there is no intent to abandon the children by P.G., and the children want to continue their relationship with P.G.

We affirm the decision of the juvenile court 's decision to dismiss L.C.'s petition.

AFFIRMED.

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[3] Juvenile Judge Gidel's order filed September 2, 1999.
[4] See: *In The Matter of The Name Change of William Otto Strube, Minor Child*, No. 0-150/99-0314, filed April 28,2000.