FILED
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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF)
JASON BRIAN SCHEFFER,)
A child,)
JAN SCHEFFER,)
Petitioner-Appellant.)

Filed November 19, 1979
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3-62895

Appeal from Clay District Court - Murray S. Underwood, Judge.

Petitioner step-mother appeals from the trial court's order dismissing her petition to terminate the parental rights of natural mother. AFFIRMED.

Rosemary Sackett of Sackett, Sackett, Hemphill & Howe, Spencer, for petitioner-appellant.

Robert Peters of Crane & Peters, Carroll, for natural mother.

Randy Nuebel of Spencer for guardian ad litem.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Petitioner step-mother, Jan Scheffer, appeals from the trial court's order dismissing her petition to terminate the parental rights of Jason Scheffer's natural mother, Errollynne Peters. We affirm the decision of the trial court.

On January 5, 1978, Jan filed a petition in Clay County to terminate the parental rights of Errollynne with regard to Errollynne's son, Jason. The petition stated Jan was now married to Jason's natural father, Roger Scheffer, and was presently caring for the child. At the hearing before a juvenile referee on May 22, 1978, the juvenile referee found that Errollynne had not abandoned the child and recommended that the petition for termination of her parental rights be dismissed. Jan requested a rehearing of the referee's findings before a judge of the juvenile court as provided in section 231.3, The Code 1977. On rehearing, the court found that Errollynne had not abandoned the child and dismissed Jan's petition for termination of Errollynne's parental rights. This appeal followed.

Our review is **de novo**. Iowa R. App. P. 4; In Interest of Kelley, 262 N.W.2d 781, 782 (1978). In order to terminate Errollynne's parental rights, Jan must prove by clear and convincing evidence that Errollynne has abandoned Jason. Section 600A.8, The Code; Kelley, 262 N.W.2d at 784. Section 600A.2(16), as amended by 1977 Session, 67th G.A., ch. 140, §16, defines "to abandon a minor child" as follows:

> [T]o 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.

Abandonment, therefore, can be said to involve the giving up of parental rights and responsibilities accompanied by an intent to forego them. In Matter of Burney, 259 N.W.2d 322, 324 (Iowa 1977); Doan Thi Hoang Anh v. Nelson, 245 N.W.2d 511, 515 (Iowa 1976). In reviewing the evidence, we give weight to the trial court's findings of fact but we will not abdicate our function as a trier **de novo** on appeal. See Paxton v. Paxton, 231 N.W.2d 581, 584 (Iowa 1975).

Jason Scheffer was born December 12, 1969 to Roger and Errollynne Scheffer. In April of 1971, Roger and Errollynne were living in Sioux City where Roger was employed and Errollynne was attending college and caring for Jason. Difficulties developed

between Roger and Errollynne and Errollynne placed Jason in the care of their regular babysitter and left for California without Roger's knowledge. She informed Roger of her whereabouts and returned to Iowa within two or three weeks. At that time she informed Roger that she felt a dissolution would be the best thing for them. A few months later she moved to Idaho where she was employed as a school teacher until 1977. She presently resides in Portland, Oregon, where she is currently teaching.

The marriage between Roger and Errollynne was dissolved in January of 1972. Under the terms of the dissolution decree, Roger received custody of Jason and Errollynne received "reasonable visitation rights." After Errollynne left in April of 1971, Roger placed Jason with his parents. Jason lived with Roger's parents until shortly after Roger and Jan were married in February of 1973. Since March of 1973 Jason has been living with Roger and Jan. Jan has a daughter, Dana, by a previous marriage whom Roger has adopted. Jan and Roger also have a son, Ryan. At appears that Roger and Jan are providing a stable and happy home for Jason.

Erroilynne's contact with Jason after she left until 1977 was infrequent. The record discloses Errollynne sent Jason Christmas and birthday presents in 1971. She sent him a card at Easter in 1972. At Christmas of 1972 she returned to Iowa and visited Jason for approximately an hour and a half. Errollynne contends she asked Roger's parents if she could have Jason for a week and that they denied this request, while Roger's mother denies that such a request was ever made. Errollynne's father also visited Jason during Christmas in 1971 and 1972 while he was in the custody of Roger's parents, and again in 1976 when Jason was living with Roger and Jan. Errollynne testified that she was, to some extent, able to learn from her father about Jason's well being.

In April or May of 1977 Errollynne contacted Roger's parents to learn where Roger was located. She then contacted Roger to inquire of Jason's well being and asked if she could visit him in July or August of 1977 when she would be in Iowa. Although there is some dispute as to Roger's answer, apparenty he did not deny the request at this time. Errollynne subsequently came to Iowa and attempted unsuccessfully, for a period of about three weeks, to get Roger to allow her to visit Jason. The record also indicates she sent five letters in 1977 on behalf of Jason.

On November 29, 1977, she filed an application to modify the dissolution decree to provide specific visitation rights with Jason. Jan filed her petition to terminate

Errollynne's parental rights on January 5, 1978. On January 20, 1978, Errollynne was granted visitation rights with Jason in January of 1978 and in May of 1978. The record indicates she exercised visitation under the supervision of the Clay County Department of Social Services. The Department's reports indicated that the continuation of the parent-child relationship between Errollynne and Jason would be beneficial to Jason and recommended additional visitation be granted. The report further suggested that Jan and Roger endeavor to adjust to the realities of visitation.

During the period of time from when Errollynne left in April of 1971 until the date the petition to terminate her parental rights was filed, Errollynne made no contributions toward Jason's support. The decree of dissolution does not require any support payments and Roger has not asked for any. Nevertheless, Errollynne testified that over the years she has accumulated approximately $1900 for Jason which she hoped would be his educational fund and that, in any event, this money was to be his.

We feel the evidence is insufficient to show Errollynne abandoned Jason as that term is defined in section 600A.2(16). The case of In Matter of Burney, 259 N.W.2d 322, 324 (Iowa 1977) interpreted abandonment as "a giving up all parental rights and responsibilities accompanied by an intent to forego them." Although there was a period of approximately four and one-half years where Errollynne did not exercise visitation or in any way attempt to contact Jason, her efforts since mid-1977 have clearly indicated an intention to strengthen the relationship between herself and her son. A delay such as this, alone, fails to establish abandonment pursuant to section 600A.2(16). See Burney, 259 N.W.2d at 324. Furthermore, it appears that despite the fact she was not in contact with Jason, she was concerned enough to begin setting aside funds for his future educational needs. Errollynne has openly professed no desire to ever acquire custody of Jason or to in any way usurp Jan's role as a mother in Jason's life. She testified that she only wishes to be able to write and visit him on a regular basis and to allow him the opportunity to know her and his maternal grandparents. We find that the realization of these goals would be in the best interests of Jason. Our view is substantiated by the recommendations of the Clay County Department of Social Services and the report of the attorney appointed for Jason. The decision of the trial court is affirmed.

AFFIRMED.