IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

IN THE INTEREST OF
CHERYL SUE W.,
A child,

KALA W. AND LARRY W.

Appellants.

Filed April 27, 1982
1-330
3-65353

247

Appeal from Johnson District Court (Juvenile Division), Brent G. Harstad, Judge.

Natural parents appeal juvenile court order, which (a) terminated their parental rights for abandonment pursuant to section 600A.8(3), The Code 1979, (b) dismissed the natural mother's child in need of assistance petition and (c) appointed as guardian the couple who had physical custody of the child. The natural parents claim (a) there was not clear and convincing proof of permanent abandonment and (b) the juvenile court failed to follow statutory procedures in the termination proceedings. We find there was sufficient proof of permanent abandonment and affirm the trial court's order terminating the natural parents' parental rights. AFFIRMED.

Michael Megan, Iowa City, for appellant Kala W., the natural mother.

Bruce Washburn, Cedar Rapids, for appellant Larry W., the natural father.

James C. McCarragher of Meardon, Sueppel, Downer & Hayes, Iowa City, for Larry and Judy D.

Patricia C. Kamath, Iowa City, guardian ad litem for the child.

Ann Lahey, Assistant County Attorney, for the State.

Heard by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

SNELL, J.

Natural parents appeal juvenile court order, which (a) terminated their parental rights due to abandonment pursuant to section 600A.8(3), The Code 1979, (b) dismissed the natural mother's child in need of assistance petition and (c) appointed as guardian the couple who had physical custody of the child. The natural parents claim (a) there was not clear and convincing proof of permanent abandonment and (b) the juvenile court failed to follow statutory procedures in the termination proceedings. We find there was sufficient proof of permanent abandonment and affirm the trial court's order terminating the natural parents' parental rights.

Appellant, Kala W., gave birth to her third child, Cheryl Sue W., in September of 1975. The W.s' other children, Allen and Donnie, are eleven and nine, respectively. When Cheryl was three days old, Kala and her husband, Larry W., took Cheryl to the home of Larry and Judy D., the appellees in this case. The D.s testified they were given the impression the W.s intended to permanently place Cheryl in their custody. The W.s testified the placement of Cheryl with the D.s was merely a temporary placement designed to provide care for Cheryl while Kala recovered from an industrial accident and while Kala and Larry W. resolved their marital problems. No one questions the fact that the D.s provided all of the care for Cheryl from the day Cheryl was placed with them until the W.s began asserting their parental rights to Cheryl in July of 1979, nearly four years later.

In July of 1979, Kala filed a petition in the Johnson County District Court (Juvenile Division) for a writ of habeas corpus requesting the return of Cheryl to her. In September, Larry and Judy D. filed an answer, counterclaim and cross-claim asking the court to terminate the parental rights of Larry and Kala W. and place custody of Cheryl with them. The trial court held Kala and Larry abandoned Cheryl and their parental rights had been terminated. The trial court also appointed the D.s as guardians of Cheryl.

Kala and Larry W. appeal the juvenile court's order terminating their parental rights. Larry W. contends the trial court did not have jurisdiction to entertain the D.s' petition to terminate parental rights since it was not filed in compliance with chapter 600A, The Code 1979. Kala claims the trial court erred in finding the W.s abandoned Cheryl.

I. Jurisdiction.

Larry W. contends the juvenile court did not have jurisdiction to act on the petition to terminate the W.s' parental rights. Larry W. grounds his claim on section 600A.5(1), The Code 1979, which states in part

> The following persons may petition a juvenile court for termination of parental rights under this chapter if the child of the parent-child relationship is born or is expected to be born within one hundred eighty days of the date of petition filing. . .

Larry W. contends the petition was not filed within one hundred eighty days of the date of Cheryl's birth, which precludes the juvenile court's exercise of jurisdiction. Larry misinterprets section 600A.5(1), The Code 1979. We hold section 600A.5(1), The Code 1979, giving the language used its plain meaning, see Hamilton v. City of Urbandale, 291 N.W.2d 15, 17 (Iowa 1980), permits filing of a petition for termination of parental rights anytime after the child is born, but limits filing of a petition, with respect to an unborn child, to one hundred eighty days before the child is expected to be born. Given our interpretation of section 600A.5(1), The Code 1979, the juvenile court properly exercised jurisdiction over the petition.

II. Standing

The D.s, as defendants in a habeas corpus action, seek termination of the W.s' parental rights through their counterclaim. Section 600A.5, The Code 1979, permits a prospective parent of the child to file a petition for termination of parental rights. In Klobnock v. Abbott, 303 N.W.2d 149, 151 (Iowa 1981), the supreme court held the stepparent, who intended to adopt the child of his spouse,

had standing to file a petition to terminate the parental rights of the divorced natural father. The court concluded the stepparent was a prospective parent under section 600A.5(1)(a), The Code 1979, and was also a custodial-stepparent under section 600A.2.(6) and .2(8). The petitioners in this case stand in a procedural posture similar to the petitioner in Klobnock. The D.s have indicated their intent to complete adoption proceedings, thus making them prospective parents of Cheryl. Although petitioner in Klobnock, was a stepparent-custodian, as defined in sections 600A.2(6) and .2(8), The Code 1979, in addition to being a prospective parent, that fact alone is not controlling. Given the liberal construction to be accorded chapter 600A and the express admonition to provide due consideration to "the interests of. . . any natural person standing in the place of the parents," see section 600A.1, The Code 1979, we conclude the D.s have standing to petition for the termination of the W.s' parental rights.

We note further, even if D.s are not prospective parents within the meaning of section 600A.5(1)(a), The Code 1979, that fact would not warrant dismissal of their appeal as urged by the W.s. The D.s, although not technically custodians of Cheryl as the term is defined in section 600A.2(8), The Code 1979, have fulfilled many of the obligations and exercised many of the rights of custodians. See § 600A.2(b), .2(c) and .2(d), The Code 1979. The juvenile referee, and the juvenile court, recognized this by appointing them temporary custodians of Cheryl pending the termination hearing and installed them as guardians of Cheryl in the court's final decree. If this case was dismissed, the D.s could petition to be appointed custodians of Cheryl and then reinstitute the action. Thus, the W.s complain of what does not prejudicially affect them, which this court is at liberty to ignore. Baysinger v. Haney, 261 Iowa 577, 583, 155 N.W.2d 496, 499 (Iowa 1968). We hold the D.s had standing to seek termination of the W.s' parental rights and the trial court had jurisdiction of this matter.

III. Termination of Parental Rights

Our review is de novo, which requires us to review the facts as well as the law and adjudicate rights anew on those propositions properly presented. In the Interest of Voeltz, 271 N.W.2d 719, 722 (Iowa 1978). We accord weight to the fact findings of the juvenile court, especially when considering the credibility of witnesses, whom the court heard and observed firsthand, but we are not bound by those findings. In the Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981); Iowa R. App. P. 14(f)(7). Although the issues involved in this type of case are different from the issues in a child custody case ancillary to a divorce or separate maintenance action, the best interests of the child are still of primary importance. § 600A.1, The Code 1979; Voeltz, 271 N.W.2d at 723; see also Dameron, 306 N.W.2d at 745.

The D.s contend the W.s abandoned their child Cheryl. In the loose sense of the word, there is no doubt both Kala and Larry W. "abandoned" Cheryl. Chapter 600A, however, appropriately requires a more stringent standard of abandonment given the important rights involved. Section 600A.2(16), The Code 1979, defines abandonment:

> "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.

In In the Interest of Goettsche, 311 N.W.2d 104, 105 (Iowa 1981), the court rejected the notion section 600A.2(16), The Code 1979, requires total desertion of the child. In Goettsche, the court characterized abandonment as "a giving up of parental rights and responsibilities accompanied by an intent to forego them" Id. at 106; see also Matter of Burney, 259 N.W.2d 322, 324 (Iowa 1977). The court went on to say that "characterization captures the two elements necessary for abandonment as defined in section 600A.2(16). The giving up of parental rights and responsibilites

refers to conduct. The intent element relates to the accompanying state of mind." There must be clear and convincing evidence of both elements. § 600A.8, The Code 1979. Santosky v. Kramer, No. 80-5889, slip op. at 21-22 50 U.S. Law Week 4333, 4339 (U.S. March 24, 1982).

A. Conduct

Upon Kala's release from the hospital after Cheryl's birth, Larry and Kala W. immediately took Cheryl to the D.s'. Cheryl was three days old at the time. Prior to Cheryl's birth, the only preparations Kala made for care of the baby were discussions with Judy D. concerning the D.s' taking the baby into their home. The D.s, without encouragement or contribution from the W.s, purchased a crib, sterilizer, diapers, gowns, formula and miscellaneous other necessities in anticipation of the baby's birth. We should note at this juncture that discussion of the conduct of the D.s' is relevant as an element of abandonment to the extent that their exclusive preparation for the child's birth and their provision of the child's necessities indicates a correlative abnegation by the W.s of their responsibility as parents to fulfill their parental obligations.

During the four years after Cheryl's birth, Kala and Judy remained friends. Judy D. testified Kala came to the D.s' home approximately twice per week; once during the week, and again on Friday so Judy could babysit Kala's two other children, Allen and Donnie. Kala testified she never visited the D.s' home specifically to see Cheryl, but rather to visit both Judy and Cheryl. Moreover, there is evidence the frequency of Kala's visits to the D.s' home did not increase after Cheryl's placement in the D.s' home. Kala testified she would also babysit for Judy, sometimes at the D.s' and other times in her own home. The record indicates Judy occasionally paid Kala for babysitting Cheryl, and Kala occasionally paid Larry D. for babysitting Allen and Donnie. When Kala visited the D.s, she never changed Cheryl's diapers, fed Cheryl, rarely held Cheryl, and did not kiss her goodbye when she left. There is some testimony indicating Kala directed Cheryl to call "her father or mother" in reference to Larry D. and Judy D.when Cheryl needed little things done for her, like providing drinks of

water. There is no indication Kala ever exercised any control over what Cheryl ate, how she was dressed or what she could do. There is also no evidence Kala ever disciplined Cheryl.

Larry W. similarly left the parenting responsibilities of Cheryl to the D.s. The record indicates Larry visited D.s' home alone only once after Cheryl's birth, and then only to "pick up some tires." Larry visited the D.s' more frequently, however, with Kala. Judy testified that it was "a couple times a week and that was mainly when she [Kala] was going to go out partying." The evidence is strong Larry W. did not involve himself at all with feeding, diapering, disciplining or caring for Cheryl's needs. Larry W., in fact, testified he had no real responsibility for Cheryl.

Kala claims there is substantial evidence of conduct indicating their exercise of parental rights and fulfillment of parental duties. Kala had Cheryl baptized and named herself as parent. She obtained a social security card for Cheryl. Kala was sought for consent purposes when Cheryl needed medical attention. Kala and Larry also took Allen, Donnie and Cheryl to Pennsylvania to visit Kala's father.

Our analysis of the record convinces us Kala and Larry W. shunned their responsibility for the care of Cheryl from her birth until the present time. In reaching our conclusion, we give weight to the juvenile court's following comment on the parties' credibility:

> The Court does specifically find that the statements and the testimony of D[.s'] is essentially credible, however, that the recollection of Kala [W.] as to motivations, desires and facts were not such that the Court could rely upon her testimony; in particular, Kala's testimony with respect to the use of drugs by others than herself has been discounted completely by the court.

In In the In Interest of Goettsche, 311 N.W.2d 104, 106 (Iowa 1981), the court indicated "parental responsibilities include more than subjectively maintaining an interest in the child. The concept requires affirmative parenting to the extent it is practical and feasible in the circumstances." The court also quoted from a Pennsylvania case that stated:

> This affirmative duty encompasses more than a financial obligation; it requires continuing interest in the child and a genuine effort to maintain communication and association with the children. . . . Because a child needs more than a benefactor, parental duty requires that a parent exert himself to take and maintain a place of importance in the child's life.

In re J.L.Z., 492 Pa. 7, 421, A.2d 1064, 1064-65 (Pa. 1980).

We do not think either Kala or Larry W.s' conduct even approaches "affirmative parenting." The evidence is clear and convincing on this matter. See § 600A.8, The Code 1979; Santosky v. Kramer, No. 80-5889, slip op. at 21-22, 50 U.S. Law Week at 4339 (U.S. March 24, 1982).

The following portion of the juvenile court's decree succinctly summarizes that evidence from the advantageous perspective of the juvenile court.

> From the time the child was taken to the [D.s'] days after her birth, Cheryl Sue W[.] has lived with Judy and Larry [D.] Larry and Judy have nursed and cared for Cheryl all through her infant baby years. They fed her, cared for her, and nurtured her, and undertook all of the parental duties of support toward Cheryl, including financial. Meanwhile, during the same period, Larry and Kala [W.] were seeking fulfillment of their own needs and wants, rather than undertaking the parental rights and duties inherent in any parent-child relationship with Cheryl [W.] From the time of Cheryl's birth to the present, neither Larry nor Kala has contributed clothing, food, shelter, or any monetary support for the daily care and maintenance of Cheryl except an occasional gift on birthdays and holidays. From the time of Cheryl's birth until July of 1975, they voluntarily relinquished all physical custody of Cheryl to Larry and Judy [D.] They made no restrictions as to how she was to be raised, the clothes she would wear, what she would eat, what friends she could associate with, or even the type of training that she would have. Although the [D.s] allowed the [W.s] to see Cheryl from time to time, the amount of which is disputed, there is no question that the [D.s'] control the time, place and length of Cheryl spending time with Kala or Larry [W.] During almost all of these periods Larry and Kala [W.] would see Cheryl, one or both of [D.s'] other girls would also be present. In addition, the usual time Cheryl spent with Kala, since Larry [W.] very seldom saw Cheryl, was for the reason that the [D.s] needed someone to look after Cheryl or provide babysitting services for her when they were not available. This can best be summarized from the evidence in the remark which Kala herself made to her counselor, Val Wagner, who testified when, after being initially told by Kala that Judy wanted to leave Cheryl with Kala on one weekend when Judy and Larry [D.] could not care for her, Judy came to Kala's home, told her they were able to work things out, that they could take care of

> Cheryl, and was quoted by Judy as saying, "I won't need you this weekend."
>
> Throughout all these years, Larry [W.] has never assumed any parental obligations of visiting, supporting, nurturing or caring for the child, nor did he claim to have exercised any parental prerogatives over the child, nor does he contest the fact that he essentially abandoned the child.

Although there is substantial evidence concerning Kala's injury to her hand and an exploratory spleen operation, the juvenile court indicated her condition would be only a minimal inconvenience in taking care of a child. As such, her condition would not make taking more affirmative parenting action impractical or unfeasible in the circumstances. Cf. Hulbert v. Hines, 178 N.W.2d 354 (Iowa 1970). The record supports the juvenile court's conclusion and we agree. There is testimony regarding Kala's employment in various capacities, in which the use of her hand was substantial. There is testimony Kala babysat for children, generally, but not exclusively two years of age and older, shortly after Cheryl's birth. Kala testified she would have placed Cheryl with the D.s even if her hand had not been injured. This is not a case where a parent became temporarily incapacitated from fulfilling parental responsibilities as alluded to by the court in Matter of Burney, 259 N.W.2d 322, 324-25 (Iowa 1977). See also In Interest of Mann, 293 N.W.2d 185, 188-90 (Iowa 1980); Hulbert v. Hines, 178 N.W.2d 354, 361-62 (Iowa 1970). Nor is this a case where the conduct of the parents was dictated by "force of circumstance or dire necessity." Doan Thi Hoang Anh v. Nelson, 245 N.W.2d 511, 516 (Iowa 1976). This is a case where the natural parents have chosen not to exercise their parental prerogatives, rights or privileges and have consciously shirked their parental responsibilities.

B. Intent

The intent element of abandonment relates to the state of mind of the parents. In the Interest of Goettsche, 311 N.W.2d 104, 106 (Iowa 1981). It is axiomatic that "[t]he intent with which an act is done is a state or condition of mind and is usually difficult to prove by direct evidence. The intent in the doing

of an act is usually inferred from all the facts and circumstances surrounding the act to be gathered from all the evidence in the case." Lukecart v. Swift & Co., 256 Iowa 1268, 1278 130 N.W.2d 716, 722 (Iowa 1964). The crucial question is whether the evidence establishes the W.s manifested an intent to relinquish permanently their parental rights. § 600A.(2)(16), The Code 1979. Our review of the record indicates there is clear and convincing evidence Kala and Larry W. intended to permanently surrender their rights, duties and responsibilities with respect to Cheryl.

Judy testified Kala initially broached the subject of placing Cheryl with the D.s approximately five months prior to her birth. Judy also testified those conversations continued until Cheryl was born. There is also testimony Kala had contemplated aborting the child rather than raising the child in the extant environment, but Larry W. would not permit an abortion. No corroborating testimony indicated the placement was only temporary.

Once Cheryl was born, Kala phoned Judy and indicated "[She] had your little girl" and would bring Cheryl to the D.s' as soon as she left the hospital. Three days after Cheryl's birth, Larry and Kala W. gave Cheryl to the D.s and stated, "Here's your baby girl," or words to that effect. There is also substantial testimony the W.s encouraged Cheryl to treat the D.s as her parents. Cheryl was directed by Kala and Larry to address the D.s as Mommy and Daddy. The evidence indicates neither Kala nor Larry attempted to engender any more than a friend-of-the-family relationship with Cheryl, let alone a parent-child relationship. Judy testified on several occasions Kala had agreed to see an attorney to sign the necessary custody papers, but she had procrastinated in doing so. There is evidence Kala wrote to Larry W., just before she moved to Missouri and told him to do whatever he wanted to do with Cheryl. Larry indicated his desire was to leave Cheryl with the D.s.

Only Kala testified to the fact the D.s were to care for Cheryl until Kala's hand healed. Kala, in the presence of Donna Hamilton, never denied she was going

to give the baby to Judy D., when the two of them were at Donna's house purchasing a crib. Theresa Gott testified Kala stated she would never have to worry about carrying the baby since it was to be Judy D.'s responsibility once the child was born. Even the report of Families, Inc., concluded Cheryl had been placed with the D.s on a more or less permanent basis.

The evidence clearly rebuts the presumption that surrender of custody by a child's parent is temporary. Doan Thi Hoang Anh v. Nelson, 245 N.W.2d 511, 516 (Iowa 1976). The cumulative effect of the evidence indicates clearly and convincingly the W.s intended to permanently relinquish their parental rights. We find, as did the juvenile court, that even though Kala's marriage situation was deplorable, it did not constitute such mitigating circumstances that would justify leaving Cheryl with the D.s for almost four years, without maintaining more parental-type contact.

We are convinced the W.s' actions, and their intent, as gleaned from their conduct, establishes their permanent abandonment of Cheryl. Although there has not been a total absence of contact between Cheryl and the W.s', the superficial quality of those contacts easily brings this case under the rationale and philosophy of In the Interest of Goettsche, 311 N.W.2d 104 (Iowa 1981). The instances of "affirmative parenting" by the W.s since Cheryl was born have been quantitatively and qualitatively inadequate. Consequently, we find Cheryl has been abandoned as defined in section 600A.(2)(16), The Code. 1979, by both parents.

IV. Best Interests of the Child

Under section 600A.(g)(1)(b), The Code 1979, once a juvenile court has granted a petition to terminate parental rights, the court "shall appoint a guardian and a custodian or a guardian only." Since the W.s' parental rights have been terminated, this is essentially a child custody dispute, Matter of Burney, 259

N.W.2d 322 (Iowa 1977), in which the best interests of the child are the polestar. § 600A.1, The Code 1979; In the Interest of J.R. and S.R., 315 N.W.2d 750, 752-53 (Iowa 1982); In the Interest of Goettsche, 311 N.W.2d 104, 105 (Iowa 1981). We think the best interests of Cheryl mandate placing her in the custody of the D.s'.

The record includes expert testimony by Dr. Donald Routh of the University of Iowa's Department of Psychology. Dr. Routh specializes in clinical child psychology, which is a combination of clinical and developmental psychology. Dr. Routh testified to the effects of removing a child from his or her psychological parents. A psychological parent "is one who, on a continuing day-to-day basis, through interaction, companionship, interplay and mutuality, fulfills the child's psychological needs for a parent, as well as the child's physical needs." Goldstein, Freud and Solnit, Beyond the Best Interests of the Child, 98. Dr. Routh testified that normally the traumatic effect of such removal is at its peak at age two and one-half and decreases as the child becomes older. At its worst level, the trauma can include long-term educational and behavorial difficulties and the child can become withdrawn or exhibit aggressive behavior.

Clearly the evidence establishes the D.s as the psychological parents of Cheryl. There is no indication at all in the record the W.s provided Cheryl any love, affection or attention. The D.s, on the other hand, are very attentive to the physical and emotional needs of Cheryl. Uncontradicted evidence shows Larry D. to be intensely interested in Cheryl and he exhibits an almost unbounded love for, and enjoyment of, Cheryl. Judy D. similarly involves Cheryl in many activities and household projects. Cheryl also interacts and communicates well with Judy's sister's two children who are living with the D.s The D.s became the guardians of the children at the request of Judy's sister.

There is no evidence in the record the D.s are not fully capable of parenting Cheryl. They have done so since her birth. No one contests that fact, not even Kala or Larry W.

Our examination of this record leads us to the same conclusion as the juvenile court that Cheryl remain with her psychological parents. The D.s have shown by their actions and ability to provide the care and love Cheryl needs. Moreover, the trauma associated with stripping a young child of psychological parents would likely be very damaging to Cheryl. Children who are receiving proper care should not be disturbed in the absence of cogent or compelling reasons. Davis v. Davis, 237 N.W.2d 455, 458 (Iowa 1976). Accordingly, we affirm the decree of the juvenile court appointing the D.s legal guardians of Cheryl.

AFFIRMED.

Donielson and Snell, JJ., concur. Oxberger, C.J., and Johnson, J., dissent. Carter, J., concurs specially.

CARTER, J. (concurring specially)

I concur in the result in the present case but for somewhat different reasons than are set forth in the decision of the court.

At the outset, I submit that a clear distinction must be maintained between the custody issue and the issue involving termination of parental rights. Custody issues involving children placed with persons other than their parents are relatively common and are frequently tried in habeus corpus proceedings. See, e.g., Smith v. Holt, 225 N.W.2d 906 (Iowa 1975); Eddards v. Suhr, 193 N.W.2d 113 (Iowa 1971); Painter v. Bannister, 258 Iowa 1390, 140 N.W.2d 152 (1966). In such cases the issues turn on broad equitable principles involving the best interests of the child. On the other hand, actions by third party custodians to terminate parental rights under chapter 600A, The Code, are relatively rare and turn upon narrowly prescribed statutory grounds.

If the present controversy were viewed as merely a custody dispute, I submit that the record clearly shows that the legal custody should be placed with the D.s. There is a strong temptation under such circumstances to let the tail go with the hide and, in view of the D.'s avowed intention to adopt the child, sever the rights of the natural parents. Indeed, strong arguments can be made that such a course of action is in the best interests of the child. I do not believe, however, that presenting a successful custody case on behalf of the third party custodians necessarily satisfies the statutory requirements for termination of parental rights. As to whether such grounds are satisfied on the present factual situation, I view the issue as very close on the evidence. The fact that the custodians have almost exclusively shouldered the burden of parenthood with respect to the child would not be sufficient, standing alone, to justify termination. But where, as here, there appears to have been an express or clearly implied arrangement that the child was to be given to the custodians as their child, the burden of defacto parenthood is assumed in reliance on such arrangement, and the defacto arrangement continues with the acquiescense of the natural parents for the period of time involved in the present case, the law should permit a finding of abandonment based upon the conduct of the natural parents. For this reason I vote to affirm the trial court.

OXBERGER, C.J., (dissenting.)

I dissent. While the record may establish other grounds for termination of Kala's parental rights, the issue in this case is whether the State has established by clear and convincing evidence that Kala intended to abandon her parental rights to Cheryl. (emphasis added). I do not find the evidence presented convincing.

Although the testimony was conflicting as to whether the D.s asked Kala to sign a release of custody or consent to adoption, they at all times recognized Kala as the legal custodial parent of Cheryl. The D.s sought Kala's permission for major medical decisions for Cheryl. Kala had continuous monthly visitations with Cheryl. While Cheryl called D. mother, she also called Kala "mother." The D.s permitted Cheryl to go with Kala to visit Kala's mother in Pennsylvania. When Kala obtained a dissolution, she was awarded legal custody of Cheryl. The D.s did not contest Kala's legal custody of Cheryl. The D.s and Kala had Cheryl baptized and listed the D.s as witnesses and Kala as Cheryl's mother. I do not find this evidence established Kala's intent to abandon her legal parental rights to Cheryl.

Johnson, J., joins this dissent.