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IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF	)	
NICOLE BEAL,	)	Filed June 28, 1979
A Child,	)	
ALAN B. PYLES,	)	131
	)	<u>3-62268</u>
Appellant-Father.	)	

Appeal from Story District Court - Glenn C. Sedgwick, Magistrate.

Putative father appeals from termination of parental rights pursuant to chapter 600A, The Code 1977. Affirmed.

Dale E. Ruigh, of Smith, Nutty, Sharp & Ruigh, of Ames, for appellant.

Thomas J. Miller, Attorney General of Iowa, Stephen C. Robinson, Special Assistant Attorney General, and Francis C. Hoyt, Jr., Assistant Attorney General, for appellee, State of Iowa.

Jere C. Maddux, of Ames, guardian ad litem.

Heard by Oxberger, C. J., Donielson, Shell, and Johnson, JJ; Carter, J., takes no part.

DONIELSON, J.

This is an appeal from an order of the trial court terminating the parental rights of appellant, Alan Pyles, with respect to the minor child Nicole Beal. The proceeding for termination was brought pursuant to chapter 600A, The Code 1977, to terminate the parental rights of the natural mother, Judy Beal, and two putative fathers, appellant and Terry Parks, on the grounds of abandonment.¹ Section 600A.8(3). Only Alan has appealed, contending that his request for a continuance of the termination hearing should have been granted when he could not be present, and that his incarceration in a Michigan prison and subsequent escape did not establish abandonment of the child under the statute. We affirm.

Initially we note that paternity of Nicole has never been established. The natural mother testified in an April 14, 1977 hearing to determine whether Nicole was a child in need of assistance that Alan was not the father of Nicole, and notice of termination was served on another putative father. Alan claims to be Nicole's father.

The hearing on the termination petition was scheduled for January 25, 1978, but was continued until April 26, 1978 upon Alan's request. Alan was at that time incarcerated in a Michigan prison, but expected to be released in the spring to be able to attend the hearing. On April 25, 1978, Alan's counsel requested a second continuance since Alan was again unable to attend the hearing. In fact, Alan had escaped from prison on March 15, 1978 and remained at large, and he had not contacted his counsel since his escape. This motion for continuance was denied and the termination hearing proceeded.

The decision to grant or deny a motion for continuance lies within the sound discretion of the trial court; we interfere only on a clear showing of abuse of that discretion. Madison Silos, Division of Martin Marietta Corp. v. Wassom, 215 N.W.2d 494, 498 (Iowa 1974). We find no abuse of discretion here. Alan had already been granted one three-month continuance, and had been afforded more than adequate time to prepare for the case. His whereabouts were unknown at the time of the second request for continuance, and he had not been in touch with the attorney representing him or anyone connected with the termination proceeding after March 15, 1978. To grant a

¹ Additional grounds that conditions giving rise to a child in need of assistance adjudication had not been corrected were alleged against Judy Beal. Section 600A.8(6).

further continuance would postpone for perhaps an indefinite time the fixing of Nicole's custody. See In re Interest of Kester, 228 N.W.2d 110 (Iowa 1975). The trial court did not abuse its considerable discretion in denying the motion for continuance.

Alan also contends that there was insufficient evidence to justify termination of his parental rights on the ground of abandonment. Our review is *de novo*. In the Interest of Kelley, 262 N.W.2d 781, 782 (Iowa 1978). While Alan had some contact with Nicole in the early months of her life, he had not seen her since the natural mother moved from Michigan with Nicole in February 1977. In March 1977 Alan was incarcerated in Michigan as a result of a conviction for felonious assault involving a firearm. Alan expressed some interest and concern for Nicole to the trial court in a letter, but he has never assumed any involvement in her care or support, or undertaken any parental duties or responsibilities. Alan's imprisonment itself would not have constituted abandonment; his escape from prison only shortly before his expected parole, remaining at large and out of contact during the time he was to have demonstrated to the trial court his ability to assume his parental duties and provide a loving and caring home for Nicole does. As the trial court noted, "Prison escape necessarily implies that a person must either be on the run if he is successful, or incarcerated for a long term if he is not successful. The parental rights, duties or privileges inherent in the parent-child relationship...are necessarily subjugated entirely to the desire to remain free." Section 600A.2(16), in defining abandonment, states: "The term includes both the intention to abandon and the acts by which the intention is evidenced. The term does not require the relinquishment or surrender to be over a long or any particular period of time."

Our concern is not only for the rights of the parent but for the best interest of the child. In the Interest of Crooks, 262 N.W.2d 786, 789 (Iowa 1978). Even assuming Alan was the father, we find there was clear and convincing evidence to establish that appellant abandoned Nicole Beal and that termination of parental rights is justified under section 600A.8(3).

AFFIRMED.