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CLERK SUPREME COURT
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IN THE COURT OF APPEALS OF IOWA

IN THE MATTER OF THE PARENTAL RIGHTS OF D.L.S., Natural Mother Of P.L.R.S., A Minor Child)

P.M.B.,)

Appellant.)

5-610
85-665

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Appeal from the Iowa District Court for Polk County (No. TPR 942) - Vincent M. Hanrahan, Judge.

Appellant appeals from trial court's refusal to terminate parental rights. **MODIFIED AND REMANDED.**

Mark S. Pennington, of Kutmus & Pennington, Des Moines, for appellant P.M.B.

Robert A. Burnett, Jr., Des Moines, for appellee, D.L.S.

Ronald L. Anderson, Des Moines, for the child.

Considered by Schlegel, P.J., and Hayden and Sackett, JJ.

Appellant, the maternal grandmother of P.L.R.S., appeals from the trial court's refusal to terminate the parental rights of her daughter D.L.S. from the minor child P.L.R.S.

P.L.R.S. was born February 9, 1983 to D.L.S. and A.R.S. The parental rights of A.R.S. have been terminated by a prior order of court. From the time of his birth until July of 1983, the child was in D.L.S.'s custody but spent nearly every weekend with the appellant.

In July of 1983 pursuant to a temporary decree in D.L.S.'s dissolution action, custody of P.L.R.S. was given to appellant and A.R.S., the natural father, jointly. In November of 1983, a final decree was entered and appellant was granted sole custody of the child.

Between July of 1983 and the hearing on February 5, 1985, D.L.S. saw the child only twelve times generally for less than an hour, although twice she may have spent most of the day in appellant's home. During a portion of that time she was incarcerated in California and at Mitchellville. She made absolutely no contribution to the child's support. She has used drugs and practiced prostitution. She exhibited no care or concern for the child. She appears to know little or nothing about him or his activities.

On October 11, 1984, she signed the following:

AFFIDAVIT

> I, D.L.S., natural mother of P.L.R.S., hereby givemy[sic] consent of [sic] the adoption of my child P.L.R.S.
>
> /S/ D.L.S.
>
> subscribed and sworn to before me this 11th day of October 1984 by the above said D.L.S.
>
> /S/ Notary Public
> in and for the
> State of Iowa
>
> [stamp affixed]

On October 22, 1984, P.M.B. filed a petition for termination of D.L.S.'s parental rights. She attached a copy of the signed affidavit and alleged D.L.S. consented and intended to allow the termination. An attorney appointed guardian ad litem answered and stated it would be in P.L.R.S.'s best interest to have D.L.S.'s parental rights terminated.

On December 27, 1984, an order was entered finding that D.L.S. had stated in open court that she consented to adoption of the child under a misrepresentation and she no longer consents. The court determined she should have an opportunity to defend the action, found her indigent, and appointed an attorney to represent her. The matter then came on for hearing.

After hearing, the trial court determined when D.L.S. signed the consent she thought appellant and her husband would adopt P.L.R.S. but health problems developed and the adoption was not advisable. When D.L.S. learned P.L.R.S. was to be adopted by someone other than her parents, D.L.S. objected and is resisting termination. The court found she had never intelligently consented to termination of her parental rights in order that P.L.R.S. be adopted by strangers.[1] The court went on to find that P.M.B. presented evidence intending to show D.L.S. had abandoned P.L.R.S. The trial failed to find D.L.S. intended to abandon P.L.R.S.[2].

Our de novo review of the record clearly convinces us that other than during the two months following his birth, D.L.S. has shown little interest or concern in her child.

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[1] The trial court made no further findings with reference to the effect of the consent to adoption. The issue was not raised on appeal.

[2] The petition termination was sought only on the release. The abandonment issue was tried by consent and D.L.S. has not challenged the sufficiency of the notice.

Since July 1983 she has assumed no responsibility for the care of her child, she has shown no interest in him, she has made no contribution toward his material need, and she has provided no financial support. She has abused drugs, run afoul with the law and been incarcerated. While she indicated at trial she would take parenting classes at Mitchellville and care for her child, the record is completely void of any evidence supporting her intentions. She was content to terminate her parental rights if her parents would adopt the child. It is relevant, too, that during all of the time P.L.R.S. was in appellant's home, D.L.S. knew where he was and she was never denied an opportunity to see him.

Appellant, the person who has assumed total responsibility for him, recognizes his need to be in a permanent home.

We determine this to be a section 600A proceeding. Iowa Code section 600A.8 provides:

> The juvenile court shall base its findings and order under section 600A.9 on clear and convincing proof. The following shall be, either separately or jointly, grounds for ordering termination of parental rights:
>
> 1. A parent has signed a release of custody pursuant to section 600A.4 and the release has not been revoked.
>
> 2. A parent has petitioned for the parent's termination of parental rights pursuant to section 600A.5
>
> 3. A parent has abandoned the child.
>
> 4. A parent has been ordered to contribute to the support of the child or financially aid in the child's birth and has failed to do so without good cause.
>
> 5. A parent does not object to the termination after having been given proper notice and the opportunity to object.
>
> 6. A parent does not object to the termination although every reasonable effort has been made to identify, locate and give notice to that parent as required in section 600A.6.

Iowa Code section 600A.2(16) provides;

> "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.

Iowa Code section 600A.1 states chapter 600A shall be construed liberally. The welfare of the child subject to the preceding chapter 600A shall be the paramount consideration in interpreting the chapter. Iowa Code § 600A.1; see also In Interest of Goettsche, 311 N.W.2d 104, 105 (Iowa 1981).

In interpreting section 600A.2(16), the Iowa court has determined relinquishment or surrender must not be a situation where a parent has merely turned to a particular person for help in caring for a child in a time of need. In Interest of Goettsche, 311 N.W.2d 104, 106 (Iowa 1981). Abandonment is a giving up of parental rights and responsibilities accompanied by an interest to forego them. Id. The giving up of parental rights and responsibilities refers to conduct. Id. The intent element relates 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. In Interest of Goettsche, 311 N.W.2d at 106. 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 child. Id. 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. Id.

D.L.S. relies on In the Matter of Burney, 259 N.W.2d 322 (Iowa 1977), in support of her contention she has not abandoned P.L.R.S. In Burney, the

court refused to terminate the parental rights of a mother who as a 17-year-old had placed her newborn child in the care of a couple who kept him for 2-1/2 years and subsequently became his guardians. Burney is clearly distinguishable since that petition for termination was filed by the guardians only after the mother had asked the child be returned to her. Furthermore, in Burney the mother had visited the child once or twice a month, given him clothes and toys, and provided money for his care when able to do so. She also held various jobs, obtained a GED, and married a man who shared her desire to have the child.

We fail to find D.L.S. exhibited any such interest or concern. This action came to the court's attention because of a termination petition filed by appellant to which was attached D.L.S.'s consent to adoption. D.L.S. exercised virtually no visitation, showed no concern, and provided absolutely no financial support. In fact, she made no effort to give her mother those supplies she had when the mother took custody. In addition thereto, she supplied no additional items. And she has done nothing with her life to help prepare for her child.

We modify the trial court's order to provide the parental rights of D.L.S. in P.L.R.S. should be terminated. We remand to the trial court for the purpose of appointing a guardian and a custodian or a guardian only. See Iowa Code § 600A.9(1)(b).

A copy of this order is being sent to the Polk County Department of Human Services.

MODIFIED AND REMANDED.