IN THE COURT OF APPEALS OF IOWA

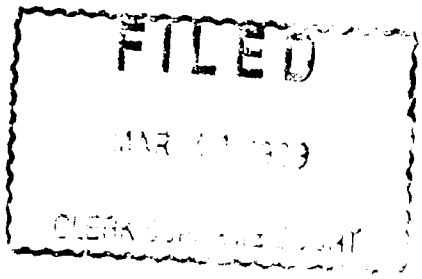
No. 1999-11 (9-055) / 98-1418
Filed March 31, 1999

Upon the Petition of
JASON SEMPLE,

Petitioner-Appellee,

And Concerning
ALISON JENSEN,

Respondent-Appellant.



IN THE INTEREST OF C.C.J., Minor Child,

A.J., Mother,

Appellant,

M.J. and P.J., Grandparents,

Appellants.

IN THE MATTER OF THE GUARDIANSHIP
OF C.C.J., Minor Child.

Appeal from the Iowa District Court for Woodbury County, John D. Ackerman, Judge.

Mother and maternal grandparents of child appeal from the district court's order denying their petition to terminate the parental rights of the child's father.

AFFIRMED.

Dawn E. Mastalir, Sioux City, for appellants mother and grandparents.

Elizabeth A. Row, Sioux City, until withdrawal, and then Jason Semple, Sioux City, pro se.

James N. Daane, Sioux City, guardian ad litem for minor child.

Heard by Sackett, C.J., and Huitink and Mahan, JJ.

PER CURIAM.

In this appeal from a decision following the consolidation of the putative father's petition to establish paternity, visitation, and support, and the mother's petition to terminate parental rights, the mother challenges the district court's findings the father abandoned the child but it was not in the child's best interests to terminate his parental rights. We affirm.

Jason and Alison are the parents of Cailin, born in March of 1997. The couple, who never married, began dating in March of 1996. In July of 1996, Alison confirmed she was pregnant. Throughout the pregnancy, until about one month before Cailin's birth, Alison's relationship with Jason continued. Jason was supportive of the pregnancy. Jason was unemployed or underemployed; Alison was a student. The couple relied heavily on Alison's parents for financial help.

In mid-February of 1997, just before Cailin's birth, the relationship terminated. The doctors became aware Cailin would have problems. Alison was referred to an Omaha physician. A cesarian section was scheduled and, although Jason was in Omaha twice to be present for the birth, the surgery was postponed both times. When Cailin was born, Jason was not present because of job-related problems and his mother's suicide.

Cailin was born with serious medical problems and was hospitalized for about six weeks following her birth. The medical bills for Alison and Cailin were primarily covered by the health insurance of Alison's parents. Alison's parents paid the amounts

not covered by insurance. Alison's parents eventually were appointed as Cailin's guardians so she could continue to be covered under their medical insurance policies. This guardianship, yet in place at the time of the hearing, is not challenged by either Alison or Jason.

Alison did not list Jason as the father on the birth certificate. Following Cailin's release from the hospital, Cailin remained in her mother's care. Jason had limited contact with Alison's family. He testified this was because he felt helpless in his pursuit because of the reluctance of Alison and her parents to have him in Cailin's life.

On November 18, 1997, Jason filed a petition to establish joint legal custody. Alison, in answering the petition, denied Jason was the father of Cailin. On December 19, 1997, Alison filed a petition alleging Jason was Cailin's putative father and seeking to terminate his parental rights on grounds of abandonment.[1]

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[1] Iowa Code sections 600A.8 and 600A.2 provide, in part:

600A.8. Grounds for termination

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. If the termination of parental rights relates to a putative father and the putative father has abandoned the child. For the purposes of this subsection, a putative father is deemed to have abandoned a child as follows:

a. (1) If the child is less than six months of age when the termination hearing is held, a putative father is deemed to have abandoned the child unless the putative father does all of the following:

(a) Demonstrates a willingness to assume custody of the child rather than merely objecting to the termination of parental rights.

(b) Takes prompt action to establish a parental relationship with the child.

(c) Demonstrates, through actions, a commitment to the child.

(2) In determining whether the requirements of this paragraph are met, the court may consider all of the following:

(a) The fitness and ability of the putative father in personally assuming custody of the child, including a personal and financial commitment which is timely demonstrated.

(b) Whether efforts made by the putative father in personally assuming custody of the child are substantial enough to evince a settled purpose to personally assume all parental duties.

(c) Whether the putative father publicly acknowledged paternity or held himself out to be the father of the child during the six continuing months immediately prior to the termination proceeding.

(d) Whether the putative father paid a fair and reasonable sum, in accordance with the putative father's means, for medical, hospital, and nursing expenses incurred in connection with the mother's pregnancy or with the birth of the child, or whether the putative father demonstrated emotional support as evidenced by the putative father's conduct toward the mother.

(e) Any measures taken by the putative father to establish legal responsibility for the child.

(f) Any other factors evincing a commitment to the child.

b. If the child is six months of age or older when the termination hearing is held, a putative father is deemed to have abandoned the child unless the putative father maintains substantial and continuous or repeated contact with the child as demonstrated by contribution toward support of the child of a reasonable amount, according to the putative father's means, and as demonstrated by any of the following:

(1) Visiting the child at least monthly when physically and financially able to do so and when not prevented from doing so by the person having lawful custody of the child.

(2) Regular communication with the child or with the person having the care or custody of the child, when physically and financially unable to visit the child or when prevented from visiting the child by the person having lawful custody of the child.

(3) Openly living with the child for a period of six months within the one-year period immediately preceding the termination of parental rights hearing and during that period openly holding himself out to be the father of the child.

c. The subjective intent of the putative father, whether expressed or otherwise, unsupported by evidence of acts specified in paragraph "a" or "b" manifesting such intent, does not preclude a determination that the putative father has abandoned the child. In making a determination, the court shall not require a showing of diligent efforts by any person to encourage the putative father to perform the acts specified in paragraph "a" or "b". In making a determination, the court may consider the conduct of the putative father toward the child's mother during the pregnancy. Demonstration of a commitment to the child is not met by the putative father marrying the mother of the child after adoption of the child.

5. 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.

6. A parent does not object to the termination after having been given proper notice and the opportunity to object.

7. 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.

8. An adoptive parent requests termination of parental rights and the parent-child relationship based upon a showing that the adoption was fraudulently induced in accordance with the procedures set out in section 600A.9, subsection 3.

9. Both of the following circumstances apply to a parent:

a. The parent has been determined to be a chronic substance abuser as defined in section 125.2 and the parent has committed a second or subsequent domestic abuse assault pursuant to section 708.2A.

b. The parent has abducted the child, has improperly removed the child from the physical custody of the person entitled to custody without the consent of that person, or has improperly retained the child after a visit or other temporary relinquishment of physical custody.

Iowa Code § 600A.8 (1997 Supp.).

After a hearing, the district court made extensive findings holding Jason's abandonment was established, but refused to terminate Jason's parental rights finding to do so was not in Cailin's best interest. The district court established visitation and ordered Jason pay child support. This appeal follows. Alison contends (1) the trial court should have terminated parental rights after finding Jason abandoned his child, and (2) if Jason's parental rights are not terminated, the ordered visitation be modified.

The guardian ad litem appeared and filed a brief supporting the district court's decision. In advocating for affirmance, the guardian ad litem advances (1) Jason was supportive of Alison during her pregnancy; (2) Alison's parents' hostility toward Jason contributed to his lack of contact; (3) Jason maintaining a relationship with his daughter is in her best interest; and (4) it is not in Cailin's best interest to terminate

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600A.2. Definitions

13. "Parent" means a father or mother of a child, whether by birth or adoption.

14. "Parent-child relationship" means the relationship between a parent and a child recognized by the law as conferring certain rights and privileges and imposing certain duties. The term extends equally to every child and every parent, regardless of the marital status of the parents of the child. The rights, duties, and privileges recognized in the parent-child relationship include those which are maintained by a guardian, custodian, and guardian ad litem.

15. "Putative father" means a man who is alleged to be or who claims to be the biological father of a child born to a woman to whom the man is not married at the time of birth of the child.

. . . .

18. "To abandon a minor child" means that a parent, putative father, custodian, or guardian rejects the duties imposed by the parent-child relationship, guardianship, or custodianship, which may be evinced by the person, while being able to do so, making no provision or making only a marginal effort to provide for the support of the child or to communicate with the child.

Iowa Code § 600A.2(13), (14), (15), (18) (1997 Supp.).

Jason's parental rights. Alison advances the district court's refusal to terminate is not in Cailin's best interest.

Once the ground for termination under Iowa Code section 600A.8 has been established by clear and convincing evidence, the court must next determine whether it is in the child's best interests to order termination of parental rights. At that step in the analysis, the paramount consideration is Cailin's best interests. *See In re Morrison*, 259 Iowa 301, 311, 144 N.W.2d 97, 103 (1966).

Appellate review of termination proceedings is de novo. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We give weight to the findings of fact of the trial court, especially when considering the credibility of witnesses, but we are not bound by those determination. *Id.* The grounds for termination must be proved by clear and convincing evidence. *See In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

We will, however, affirm the trial court if any reason for doing so appears in the record. We are bound to affirm the trial court for any reason, whether argued or not. *See State v. Vincik*, 436 N.W.2d 350, 354 (Iowa 1989). We are obligated to affirm on appeal where any proper basis appears for a trial court's ruling, even though it is not one upon which the court based its holding. *Fankell v. Schober*, 350 N.W.2d 219, 223 (Iowa App. 1984).

Abandonment is characterized as a giving up of parental rights and responsibilities accompanied by an intent to forego them. *In re D.M.*, 516 N.W.2d 888, 891 (Iowa 1994); *In re Burney*, 259 N.W.2d 322, 324 (Iowa 1977). The giving

up of parental rights and responsibilities refers to conduct. *D.M.*, 516 N.W.2d at 891; *see also In re Goettsche*, 311 N.W.2d 104, 106 (Iowa 1981). The intent element refers to the accompanying state of mind. *D.M.*, 516 N.W.2d at 891; *see also Goettsche*, 311 N.W.2d at 106. Parental responsibilities include more than subjectively maintaining an interest in a child. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996). The concept requires affirmative parenting to the extent it is practical and feasible in the circumstances. *Id.*

A parent who continuously manifests a desire to maintain a relationship with his or her child except for delay in asserting parental rights does nothing to show an intention to abandon the child. *Burney*, 259 N.W.2d at 324. The delay in asserting his or her rights alone is not sufficient to establish abandonment. *See id.*

Yet, parental responsibilities include more than subjectively maintaining an interest in a child. Affirmative parenting is required to the extent it is practical and feasible. *Id.* The affirmative duty requires a continuing interest in the child and a genuine effort to maintain communication and association with the child. *In re S.K.C.*, 435 N.W.2d 403, 404 (Iowa App. 1988).

We disagree with the trial court's finding Alison has proven abandonment by clear and convincing evidence. We agree with the trial court that from March to November Jason had virtually no contact with his daughter. We also agree with the guardian ad litem that Alison and her parents, while taking excellent care of Cailin and providing all her material needs, were not friendly to Jason's contact with the

child. They wanted him out of his daughter's life, a fact made evident by Alison's initial decision to deny Jason's paternity in pleadings, despite later admitting she knew he was the father.

Jason's filing the paternity petition negated their attempt to show he intended to abandon Cailin. He used reasonable efforts in filing the petition to obtain visitation and his requests were delayed in part by Alison's attempt to keep him from establishing paternity.

We also agree with the district court and the guardian ad litem terminating Jason's rights is not in the child's best interest. The visitation provisions made by the district court are reasonable and are also affirmed.

AFFIRMED.