IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT

No. 8-057 / 97-1393
Filed March 27, 1998

IN THE INTEREST OF B.J.A., Z.M.A. and A.L.A.,
Minor Children,

G.L.A., Father,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Associate Juvenile Judge.

Father appeals the juvenile court order terminating his parental rights. **REVERSED.**

Robert J. Murphy of Roberts and Murphy, Independence, for appellant.

Sara A. Kersenbrock, Waterloo, for appellee-mother.

David R. Zellhoefer of Zellhoefer Law Offices, Waterloo, guardian ad litem for minor children.

Heard by Cady, C.J., and Huitink and Streit, JJ.

HUITINK, J.

G.A. appeals a juvenile court order terminating his parental rights to his children, B.J.A., Z.M.A., and A.L.A. We reverse and remand.

I. Background Facts and Proceedings.

G.A. is the father of B.J.A., born November 13, 1984; Z.M.A., born January 19, 1986; and A.L.A., born April 11, 1989. G.A. and the children's mother, J.M., were divorced in June 1992. G.A. and J.M. were awarded joint custody of the children with primary physical care given to J.M. Both G.A. and J.M. have remarried.

On January 8, 1997, J.M. petitioned the juvenile court seeking termination of G.A.'s parental rights to all three children. In her petition, J.M. alleged J.A. abandoned his children by failing to pay court-ordered child support without good cause.

At the beginning of the termination hearing, the juvenile court inquired:

> Court: Let me make sure I am reading your pleadings correctly. The grounds that you're asserting is available to your client under 600A is the natural father has abandoned the children by wilful failure to pay support as ordered. Is that correct?
>
> Counsel: Yes.

The record includes G.A.'s history of child support payments. He paid $5805 in 1995, $5968 in 1996, and $2800 from January 1, 1997 through April 23, 1997. There is also evidence of a March 26, 1994 incident during which G.A. held a gun to his

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head and threatened to kill himself in the children's presence. During this incident, he threatened the children by asking them if they "wanted to see Jesus."

G.A. was charged with going armed with intent, terrorism, and aggravated assault as a result of this incident. He was subsequently sentenced to a term of incarceration and has since been treated for depression and substance abuse.

The juvenile court declined to terminate G.A.'s parental rights citing L.M.'s failure to prove by clear and convincing evidence G.A.'s failure to pay was without good cause. However, the court, referring to the March 26, 1994 incident, found:

> [G.A.'s] total abandonment of his children by his actions is clear . . . . He totally abandoned all sense of parental responsibility to his children. But for the intervention of others, including the police, he could have caused their deaths and/or his own death in their presence.

Despite its preliminary inquiry, the juvenile court characterized J.M.'s petition as seeking termination on two grounds, abandonment and failure to contribute to the children's support without good cause, pursuant to Iowa Code sections 600A.8(3) and (4).[1] G.A.'s parental rights were terminated based on the district court's conclusion that G.A.'s March 26, 1994 conduct amounted to abandonment of his children.[2]

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[1] Iowa Code sections 600A.8(3) and (4), Grounds for Termination, state:

> 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:
>
> 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.

[2] Iowa Code section 600A.2(18) states:

> "*To abandon a minor child*" means to permanently relinquish or surrender, without reference to any particular person, the parental rights, duties, or privileges

On appeal, G.A. contends the only ground for termination before the juvenile court was his alleged failure to provide child support. He argues the court improperly considered the March 26 incident as a basis for termination, because J.M. did not raise it in her pleadings. Even if the court properly considered the March 26 incident, G.A. argues this single incident does not amount to abandonment under sections 600A.2(18) and 600A.8(3).

II. Standard of Review.

The scope of review in termination cases is de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1994). The grounds for termination must be proven by clear and convincing evidence. *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa App. 1995). Our primary concern is the best interests of the children. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996). In seeking those best interests, we look to the child's long-range as well as immediate interests. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990).

III. Abandonment.

J.M.'s petition states G.A. "has abandon [sic] the children by his failure to provide support for them which is a ground for termination pursuant to Section 600A.8(3) of the Iowa Code." Abandonment and failure to pay support are distinct grounds for termination of parental rights that may be separately or jointly raised. Iowa Code § 600A.8. It is "a denial of due process to adjudicate a termination of

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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.

parental rights on a ground of which the parent has not had proper notice." *In the Interest of Kelly,* 262 N.W.2d 781, 784 (Iowa 1978) (citations omitted). The foregoing excerpts from the record clearly indicate abandonment was not among the grounds upon which J.M. initially relied. Additionally, there is nothing in the record to suggest G.A. was notified of any grounds for termination other than failure to pay his child support. Termination on abandonment grounds was accordingly unjustified and we reverse on this issue.

Even if we were to conclude otherwise, the evidence does not justify the extreme remedy of termination of G.A.'s parental rights. Termination may not occur except on a showing of one or more of the statutory grounds established by the legislature. *In re R.M.,* 431 N.W.2d 196, 199 (Iowa App. 1988). The best interests of the children do not provide an independent basis for terminating parental rights. *In the Interest of L.H.*, 480 N.W.2d 43, 47 (Iowa 1992) (citations omitted). Although the potentially dire consequences of G.A.'s criminal conduct are undeniable, we cannot say they were sufficient to satisfy the foregoing definition of abandonment. Because J.M. has failed to establish grounds for termination, the judgment of the juvenile court is reversed.

REVERSED.