FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-575 / 89-922

IN THE INTEREST OF C.T. Jr., T.J. Jr., and M.M.,
Children.

A.M., Father,

Appellant,

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T.J. Sr. Father,

Appellant.

Appeal from the Iowa District (Juvenile) Court for Polk County, Vincent M. Hanrahan, Judge.

The three children in question have the same mother but three different fathers. The juvenile court terminated the parental rights of all of parents involved, and two of the fathers have appealed. **AFFIRMED.**

Wendell J. Harms of Smith & Harms, Des Moines, for appellant A.M.

Bruce L. Cook of Cook, Gotsdiner, McEnroe & McCarthy, Des Moines, for appellant T.J. Jr.

Thomas J. Miller, Attorney General; Gordon E. Allen, Deputy Attorney General; and Kathrine S. Miller-Todd and Mary K. Wickman, Assistant Attorneys General; for appellee State.

Heard by Schlegel, P.J., and Hayden and Habhab, JJ.

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The three children in question have the same mother but three different fathers. The juvenile court terminated the parental rights of all of these parents, and two of the fathers have appealed.

This case involves three children, a girl born in June 1979 and boys born in January 1981 and March 1983. The children have the same mother but different fathers. None of the three fathers has had a substantial role in the life of his child.

The children lived with their mother until February 1987, when the family home was destroyed by fire. At that time they were placed in emergency foster care. Shortly thereafter they were adjudicated to be children in need of assistance at the request of the mother, who consented to foster care and expressed the view that she was emotionally unable to resume custody. The children have been in foster care continuously since February 1987, primarily due to the mother's lack of interest in regaining physical custody.

In August 1988 the State filed a petition to terminate the parental rights of the mother and all three fathers. After a hearing, the juvenile court did terminate the parental rights of the mother and all three fathers. With respect to the three fathers, the juvenile court relied on the ground of abandonment. With respect to the mother, the juvenile court relied on Iowa Code section 232.116(1)(e),

which permits termination if a child has been adjudicated CHINA, has been in foster care for twelve of the last eighteen months, and cannot be returned to the parent's care.

Two of the three fathers have appealed from the termination order. The mother and the third father have not appealed.

Each appellant challenges the sufficiency of the evidence to establish that he had abandoned his child. In addition, each appellant contends that termination of his parental rights is not in the best interests of his child. Finally, one appellant contends the juvenile court erred by admitting the CHINA court file into evidence without requiring that transcripts of the CHINA hearings also be included.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984), cert. denied, 469 U.S. 1222, 105 S. Ct. 1212, 84 L. Ed. 2d 353 (1985). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. Id. at 491-92.

I. **Termination of M.M.'s Father's Parental Rights.** A.M. contends that the State failed to establish the required elements of abandonment. Clear and convincing evidence is required to establish abandonment. Iowa Code § 232.116(1)(b). Abandonment is defined as:

> "Abandonment of a child" means the permanent relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include 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 § 232.2(1) (1987).

There are two elements necessary to establish abandonment: 1) the giving up of parental rights and responsibilities as exhibited by the party's conduct; and 2) an accompanying state of mind which shows an intent to forego these rights and responsibilities. In Interest of Goettsche, 311 N.W.2d 104, 106 (Iowa 1981). Affirmative parenting to the extent practical and feasible in the circumstances is required. Id. It is not enough to subjectively maintain an interest in the child. Id.

In the field of affirmative parenting, A.M. has failed miserably. The only times he inquired about his daughter in seven years was when he happened to be in Des Moines on some other business. He never came into town just to see his daughter. The mother of the daughter may have discouraged A.M.'s efforts to see her, but affirmative parenting requires more than giving up at the first sign of resistance. It is apparent that A.M. gave up his parental rights and responsibilities. The intent to give these rights up can be inferred from the lack of effort displayed by A.M. There is substantial evidence to support the charge of abandonment against A.M.

A.M. also contends the trial court abused its discretion in terminating his parental rights. A.M. bases his claim on the lack of notice he received regarding the juvenile court proceedings. Any lack of information on A.M.'s part was caused, at least in part, by his failure to become involved in his daughter's life. The trial judge could certainly take this into account. We find no abuse of discretion.

Finally, A.M. contends the best interests of the child will not be protected by terminating his parental rights. The best interests of the child are always of paramount importance. The child in this case does not know her father. On the other hand, she has managed to develop a relationship with her foster family. The child needs stability in her life and cannot be forced to wait for her father to make up his mind whether he wants to be a parent. The termination was clearly in the best interests of the child.

II. Termination of T.J.'s Father's Parental Rights. The father of this child also claims the elements of abandonment were not established. While the father of T.J. Jr. maintained more contact with his son than A.M. did with his daughter, there is still sufficient conduct on the part of T.J. to show an intent to abandon his son. T.J. did not visit his son for almost two years. There was also little evidence that he contacted him at all. T.J. certainly did

not exert himself in any meaningful way to maintain contact with his son. T.J. in effect gave up his parental rights and responsibilities toward T.J. Jr. He took some interest in the early years of his son's life, but failed to take affirmative action to maintain control over his son's life. Both of the elements of abandonment were established in this case.

The trial court did not abuse its discretion in terminating the parental rights of T.J. T.J. was aware that his son had been placed in foster care and yet made no attempt to contact the juvenile court or any other effort to get his son back. T.J. was not denied the opportunity to demonstrate his qualifications because any failure to get in contact with the juvenile court occurred through his own indifference to his son's whereabouts.

The best interests of the child require the termination of T.J.'s parental rights. The child has become attached to his foster family and adoption into that family is likely. The therapist stated that it is in T.J.'s best interests to find a permanent home. A child should not be forced to endlessly await the maturity of his or her natural parent. In the Interest of T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). The best interests of T.J. Jr. require that he remain where he is and try to establish some stability. The trial court was correct in terminating the parental rights of T.J.

Finally, T.J. contends the trial court erred in admitting only a portion of the CHINA record. He argues that under the decision of In the Interest of Adkins, 298 N.W.2d 273, 277-78 (Iowa 1980), the entire record of the CHINA proceedings must be admitted at the termination hearing rather than just a portion of it. In Adkins, the Iowa Supreme Court stated:

> We hold it is permissible for a trial court in a subsection 232.114(5) termination proceeding to judicially notice the prior CHINA case, including the evidence, providing certain safeguards are followed. Papers requested to be noticed must be marked, identified, and made part of the record. Testimony must be transcribed, properly certified, marked and made part of the record. Trial court's ruling in the termination proceeding should state and describe what it is the court is judicially noticing. Otherwise, a meaningful review is impossible.

Id.

Adkins merely states that it is permissible for the trial court to admit portions of the prior CHINA case provided certain safeguards exist. There is no contention that the safeguards do not exist regarding the admitted portions of the CHINA record. The safeguards listed in Adkins were intended to insure a proper appellate review. Exactly what is to be admitted is in the discretion of the trial court. The decision to terminate the parental rights of T.J. Sr. is affirmed.

AFFIRMED.