



IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF
C.A.B. AND C.J.B.,

Children,

vs.

E.B., JR., Natural Father,

Appellant.

Filed November 30, 1983

3-365
83-705

Appeal from Story District Court- Glenn G. Sedgwick, Judge.

The natural father of two children appeals from the termination of his parental rights pursuant to Iowa Code section 600A.8(3), asserting the evidence was not clear and convincing that he abandoned the children. AFFIRMED.

Christine A. Hunziker, of Payer, Steensland, & Lathrop, Ames, for appellant.

William J. Pattinson, of Curtis, Finn, & Pattinson, Ames, for appellee.

Sandra Tedlock, guardian ad litem of the children.

Heard by Oxberger, C.J., and Snell and Sackett, JJ.

PER CURIAM

Appellant E.B., Jr., is the natural father, and the appellee R.T., is the natural mother of two children: C.A.B., a girl, born in 1972; and C.J.B., a boy, born in 1974. The parties' marriage was dissolved in 1978; the dissolution decree awarded custody of the children to the mother and directed the father to pay \$200 per month child support.

In 1983, the mother filed a petition for termination of the father's parental rights pursuant to Iowa Code section 600A.8(3) and (4), on grounds that he had abandoned the children and had failed to pay child support. The father resisted the petition, and a hearing was held.

Testimony at the hearing indicated the following: In the four years since the dissolution decree, the father had paid little or no child support and had visited the children only once, in 1981; he had not written them letters or sent cards, and had never contacted their school.

The father testified that he loved the children, that he could not afford to pay child support because his employment had been sporadic and limited, and that he believed he had to pay all or nothing of each monthly support obligation. On cross-examination, he admitted that he had sold most of the property he had received in the dissolution to relatives and others for a fraction of its value and used part of the proceeds to pay off debts, and that he and his mother had bought a new pickup truck together in 1980. He also testified that he had been devastated when the trial court had awarded custody to the mother, so much so that he had gone into a deep depression, and that after he recovered, he had attempted to contact the children seven times, without success. Finally, he testified that he believed he could not visit the children unless he had paid all his back child support.

The mother testified that she had remarried soon after the decree, and that the children no longer recognize the father when they see him. They apparently

consider the mother's new husband their father.

The juvenile court terminated the father's parental rights pursuant to Iowa Code section 600A.8(3) on the ground of abandonment. It noted that the father's failure to pay child support, although not sufficient ground for termination here, was a factor in abandonment.

The father appeals, claiming the mother did not present the clear and convincing proof of the father's abandonment of the children necessary to terminate his parental rights. Our review of parental termination proceedings is de novo. In re Goettsche, 311 N.W.2d 104, 106 (Iowa 1981). We accord weight to the findings of the juvenile court, particularly where the credibility of witnesses is at issue, however, we are not bound by those findings. Iowa R. App. P. 14(f)(7); In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981). As always, the best interests of the child are our paramount consideration. In re Chad, 318 N.W.2d 213, 216 (Iowa 1982).

The father's nonpayment of child support, combined with his apparent reluctance to visit the children during the four years since the dissolution of the parties' marriage, are evidences sufficiently clear and convincing to us to affirm the trial court's termination order. See In re Goettsche at 106. We recognize that there is a parental interest in the integrity of the family unit; however, this interest may be forfeited by certain parental conduct. In re Dameron, at 745. The court may look at a parent's past performance. Id. The father's past performance regarding his parental responsibilities did not amount to "affirmative parenting to the extent it is practical and feasible in the circumstances". See In re Goettsche at 106. Nor did the father's conduct manifest a "continuing interest in the child[ren] and a genuine effort to maintain communication and association with the child[ren] . . ." In re J.L.Z., 492 Pa. 7, 421 A.2d 1064, 1064-65 (1980) (quoted with approval in In re Goettsche at 106). Parental duty requires that a parent exert himself to take and maintain a place of importance in his children's lives. Id. The father in the instant case has not shown this type of exertion. He

has demonstrated "a giving up of parental rights and responsibilities accompanied by an intent to forego them". Matter of Burney, 259 N.W.2d 322, 324 (Iowa 1977).

His children no longer recognize him. Instead, they recognize the mother's new husband as their father. We believe the father has forfeited his parental rights by his past conduct and that it is in the best interests of the children that the parental rights of the father, E.B., Jr., be terminated.

AFFIRMED