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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-401 / 91-767

IN THE INTEREST OF A.L.S.,

A Minor Child.

G.N.S., Natural Father,

Appellant.

579

Appeal from the Iowa District Court for Poweshiek County, Michael R. Stewart, District Associate Judge.

Father appeals the termination of his parental rights. **AFFIRMED.**

C. Jean Pendleton of Charnetski, Olson, Lacina, & Pendleton, Grinnell, for appellant.

Nancy L. Burk, Toledo, and C. M. Manly of Manly Law Firm, Grinnell, for appellee.

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

SCHLEGEL, P.J.

A.L.S. was born on January 17, 1985, and is the daughter of P.L.G. and G.N.S. At the time of the child's birth her parents were not married but were living together. They were together six months after the birth of their daughter, and during that time each shared in the care of the child. After the parents separated in the middle of 1985, the mother, P.L.G., had custody of the child. G.N.S., the father, continued to have visitation. These visits continued until the middle of 1986 when G.N.S. had an emergency appendectomy. At that time he told P.L.G. that he would be unable to see A.L.S. for three to six weeks. Other than a chance encounter at a restaurant orchestrated by the paternal grandmother, G.N.S. has not seen the child since June 1986. G.N.S. claims P.L.G. has told him to stay away from their daughter and has indicated that she would not accept any support from him.

In 1988 P.L.G. remarried, and A.L.S. has come to think of her mother's husband as her father. In 1989 an attorney wrote to G.N.S. asking his consent to the termination of his parental rights. G.N.S. filed an action against P.L.G. seeking temporary and permanent child visitation. P.L.G. responded by filing an action seeking to terminate G.N.S.'s parental rights.

After a hearing, the district court, on February 25, 1991, terminated G.N.S.'s parental rights. The court noted he had not seen the child, except for the

one chance encounter, for four and one-half years, nor had he made any child support contributions for three years. The court believed P.L.G. established that G.N.S. had abandoned the child pursuant to Iowa Code sections 600A.2(16) and 600A.8(3). Accordingly, the district court terminated his parental rights. He appeals.

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.

The primary concern in termination proceedings is the best interest of the child. Iowa R. App. P. 14(f)(15); In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

> We look to the child's long-range, as well as immediate, interests. We consider what the future holds for the child if returned to his or her parents. Insight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care the parent is capable of providing. Our statutory termination provisions are preventative as well as remedial. They are designed to prevent probable harm to a child.

In re R.M., 431 N.W.2d 196, 199 (Iowa App. 1988) (citing Dameron, 306 N.W.2d at 745); see In re A.C., 415 N.W.2d 609, 613 (Iowa), cert. denied, 458 U.S. 1008 (1987).

I.

G.N.S.'s parental rights were terminated under Iowa Code section 600A.8(3). This section provides that abandonment of a child by a parent shall be grounds for termination of parental rights. Abandonment is defined:

> '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 § 600A.2(16) (1991).

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 re 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.

G.N.S. argues abandonment has not been demonstrated by clear and convincing evidence. He claims he had no intent to abandon his daughter and his attempts to visit or support her were thwarted by P.L.G. He puts great emphasis on a Pennsylvania case which holds the father did not abandon his child because the mother prevented him from

maintaining a relationship with the child. See In re Adoption of B.D.S., 494 Pa. 171, 180, 431 A.2d 203, 208 (1981).

We believe that case is not determinative here. In that case a father was able to maintain his parental rights by showing the mother denied him access to his child and frustrated his attempts to parent. Id. The Pennsylvania Supreme Court relied on the lower court to judge the credibility of the witnesses and noted the inconsistencies within the testimony of the mother and her present husband as indicative of a collusive attempt to prevent the father from parenting his child. Id. at 174, 431 A.2d at 205. The trial court in the present situation found differently. In addition, the antipathy between the mother and the father is not good cause for abandonment of the child. See Klobnock v. Abbott, 303 N.W.2d 149, 153 (Iowa 1981).

While P.L.G. did not encourage visitation between A.L.S. and G.N.S., she did nothing to prevent such. G.N.S. had surgery in July 1986. P.L.G. denies ever receiving any support, presents, or phone calls after June 1986. According to G.N.S. he telephoned twice in August to arrange visitation and was told he could not see A.L.S. In September G.N.S. consulted an attorney but did not pursue legal action because he felt it too costly. G.N.S. claims in 1986 he called for visitation for both Thanksgiving and Christmas and that his mother left gifts for A.L.S. on

Christmas 1986. No attempt to see A.L.S. was made again until Christmas 1987. That year G.N.S. took a sweater as a gift to A.L.S. but no one was home, so he mailed it.

According to his testimony, G.N.S. took no action to see A.L.S. from December 1986 until December 1989 when he filed for visitation and to set support. He acted only after receiving a letter requesting that he terminate his relationship with his daughter. The trial court noted: "Absent the letter from [the attorney], there is no indication the father would have ever seen the child again." We agree.

We determine there is clear and convincing evidence to show the father abandoned the child. G.N.S. argues P.L.G. prevented him from seeing A.L.S. and that he did not have the money to pursue legal action. Within a year's time of G.N.S.'s visit to an attorney, he had changed to a better job and was receiving a net salary of $325 per week. In addition, the evidence suggests P.L.G. did not receive phone calls, presents, or greeting cards for A.L.S. after 1986. See Maisel v. Gelhaus, 416 N.W.2d 81, 86 (Iowa App. 1987) (factual disputes which depend heavily on the credibility of witnesses are best resolved by the trial court).

G.N.S. has not shown that he tried to promote a parental relationship or provide support for A.L.S. Parental responsibilities require affirmative parenting--something more than subjectively maintaining an

interest in a child. In re S.K.C., 435 N.W.2d 403, 404 (Iowa App. 1988). We find both action and intent to abandon his daughter on the part of G.N.S.

II.

The determination that the statutory ground of abandonment has been established does not end our inquiry. The issue of whether the welfare of the child will be best served by the termination of the father's parental rights remains. In re B.L.A., 357 N.W.2d 20, 23 (Iowa 1984). We find by clear and convincing evidence that the welfare of A.L.S. will be best served by the termination of G.N.S.'s parental rights.

We consider the effect of a stepparent's relationship on the child. Klobnock, 303 N.W.2d at 153. In Klobnock the court considered the role of the stepparent in assuming support of the child after the natural father ceased contribution, the stable home the child had with the mother and stepfather, and the love and desire of the stepfather to adopt the child. Id. We conclude that here also the termination will be in the best interest of the child. A.L.S. has a stepfather who loves her; this relationship is more beneficial to her than the indifference shown by her natural father.

We affirm the trial court's termination of G.N.S.'s parental rights.

AFFIRMED.