FILED
MAY 26 1981
CLERK SUPREME COURT

IN THE IOWA COURT OF APPEALS

IN THE INTEREST OF	)	
TAMMERA LYNN BARLOON and MELISSA ANN BARLOON,	)	Filed May 26, 1981
PATRICIA HALL,	)	
Appellant,	)	
VINCENT BARLOON and PATRICIA J. BARLOON,	)	1-95 3-65711
Appellees.	)	

Appeal from Tama District Court - Brent G. Harstad, Magistrate.

Non-custodial natural mother appeals court order terminating her parental rights on grounds of abandonment pursuant to section 600A.8(3), The Code 1979. REVERSED.

Daniel L. Bray, Iowa City, for appellant.

Walter A. Kollmorgen, Belle Plaine, for appellees.

Heard by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

Non-custodial natural mother appeals a court order terminating her parental rights on grounds of abandonment pursuant to section 600A.8(3), The Code 1979. We reverse.

Our review of this equitable proceeding is de novo. In re Ponx, 276 N.W.2d 425, 433 (Iowa 1979); In re Voeltz, 271 N.W.2d 719, 722 (Iowa 1978); Iowa R. App. P. 4. Our responsibility is to review the facts as well as the law and to determine rights anew from the credible evidence on properly presented and preserved issues. Voeltz, 271 N.W.2d at 722. While we give weight to the findings of the trial court, we are not bound by them. In re Long, 255 N.W.2d 140, 143 (Iowa 1977); Iowa R. App. P. 14(f)(7).

I.

The five-year marriage of Vincent Barloon and appellant Patricia Hall was dissolved in November of 1974. Pursuant to a stipulation of the parties, custody of their two minor daughters was granted to the father, while the appellant mother was granted visitation rights. Child support was neither requested nor awarded. Barloon and the children remained in the family's Cedar Rapids home until August of 1976, at which time he remarried and moved the family to Belle Plaine.

Subsequent to the dissolution in 1974, the appellant suffered from a variety of physical and emotional problems, including depression. She moved to her home state of Mississippi and visited the children five or six times between 1974 and April of 1976. She moved to Pennsylvania in 1978, where she has apparently stabilized her life. She claims that since 1976 her attempts to call or visit the children have been intentionally frustrated by her ex-husband. Both of the parties, as well as the appellant's sister, testified that the appellant has never expressed an intent to abandon the children.

In May of 1980, the children's father and his present wife filed a petition to terminate the appellant's parental rights on the grounds of abandonment and lack of support. The petition also stated the desire of the father's present wife to adopt the children. On September 5, 1980, the court filed an order terminating the natural mother's parental rights on the ground of abandonment pursuant to section 600A.8(3), The Code 1979. This appeal then followed.

II.

In order to terminate parental rights on the ground of abandonment, it must be shown by clear and convincing evidence that the parent has abandoned his or her child.

§§ 600A.8 & 600A.8(3), The Code 1979. To abandon one's child means "to permanently relinquish or surrender . . . the parental rights, duties, or privileges inherent in the parent-child relationship." § 600A.2(16), The Code 1979. Abandonment involves both an intent to abandon and the acts by which that intent is evidenced, id., and both elements must be shown. Doan Thi Hoang Anh v. Nelson, 245 N.W.2d 511, 516 (Iowa 1976). More specifically, abandonment

> does not include an act or course of conduct by a parent which is done through force of circumstance . . . , but relates to intentional and wilful acts, or a course of conduct implying conscious disregard or indifference to parental obligations to the child, or a settled purpose to be rid of those obligations and to forgo all parental rights. The factual question must be determined by ascertaining the mental attitude and intent of the parent . . . . It has been said that silence and inaction of the parent must be prolonged to such a point that an intention to abandon the child must be inferred as a matter of law.

Id. (emphasis omitted). We also bear in mind that there exists a strong interest in maintaining the parent-child relationship, unless by conduct it be forfeited. Stanley v. Illinois, 405 U.S. 645, 651, 92 S. Ct. 1208, 1212-13, 31 L. Ed. 2d 551, 558-59 (1972); In re Lewis, 257 N.W.2d 505, 510 (Iowa 1977). We conclude that the record does not reveal clear and convincing evidence of an intent to abandon, and accordingly we reverse the juvenile court's order terminating appellant's parental rights.

Appellant contends that her attempts to visit the children since 1976 have been frustrated by a combination of actions on the part of the children's father and her own limiting circumstances and that she has never at any time intended to abandon her children. She claims she was unable to locate the family after their move from Cedar Rapids and the record suggests that her claim is not without merit. Appellant's brother is a friend of the ex-husband and has apparently been designated by the latter to serve as a go-between in arranging any visits by the appellant to the children. When asked by the appellant to arrange for such a visit, however, the brother stated that the ex-husband did not want the appellant to visit the children. The brother further refused to tell the appellant where the family had moved and he has consistently refused to reveal this information. It also appears that the appellant has not contacted the children by telephone largely because of cost and because she was told to arrange visits through her brother. In general, although perhaps the appellant has not been as persistent as she might have been in her attempts to locate the children, we are not convinced of her intent to relinquish her parental rights. Although she has not managed to see the

children for several years for reasons that to at least some extent may have been beyond her control, she has regularly asked her brother and sister how the children were doing and has asked that pictures of them be sent to her. She maintains that she loves her children very much and denies ever having intended to give up her parental rights. We are simply not convinced that an intent to abandon has been proved by clear and convincing evidence as required by section 600A.8; the order terminating appellant's parental rights under section 600A.8(3) is therefore reversed.

REVERSED.