IN THE COURT OF APPEALS OF IOWA

No. 1-834 / 11-0925
Filed December 7, 2011

IN THE INTEREST OF C.T.A.O.,
Minor Child,

S.J.R., Mother,
Petitioner-Appellant,

S.K.O., Father,
Respondent-Appellee.

Appeal from the Iowa District Court for Dickinson County, David C. Larson, District Associate Judge.

A mother appeals the juvenile court decision denying her request to terminate the father's parental rights. **REVERSED.**

Michael J. Houchins of Zenor & Houchins, P.C., Spencer, for appellant.

John M. Sandy of Sandy Law Firm, P.C., Spirit Lake, for appellee.

John M. Bjornstad, Spirit Lake, guardian ad litem for minor child.

Considered by Danilson, P.J., Mullins, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MAHAN, S.J.

I. Background Facts & Proceedings.

Sarah and Solomon were married in January 2000 and are the parents of a child, C.T.A.O., born in 2001. A dissolution decree was entered for the parties on September 20, 2006. The decree incorporated the parties' stipulation that they would have joint legal custody of the child, with Sarah having physical care. Solomon was granted regular visitation and ordered to pay child support of $200 per month.[1]

At the time of the dissolution, Sarah was a Methodist minister. Solomon had also been a Methodist minister, but at the time of the dissolution had returned to school to obtain a master's degree. Solomon paid his child support obligation from his student loans, and he stated it was difficult for him to remain current in his child support obligation due to the timing of when he received the loan proceeds.

On December 18, 2006, Sarah filed an application for rule to show cause claiming Solomon had not paid his child support obligation. Before a hearing could be held on the matter, Solomon paid the child support that was due, and the matter was dismissed. Sarah filed another application for rule to show cause on May 21, 2007. Again, Solomon paid the amount due, and the application was dismissed.

Sarah filed a third application for rule to show cause on June 13, 2008. Solomon was found to be in contempt and ordered to serve thirty days in jail. The sentence was suspended, and he was allowed the opportunity to purge

[1] This is the same amount as established in a temporary order of January 2006.

himself of contempt by remaining current in his child support obligation. In August 2008, Solomon became a missionary in Barbados. He has not returned to the United States, citing immigration issues and financial problems. He kept in contact with the child through telephone calls, e-mail, and more recently, Skype.

On May 20, 2009, Sarah filed an application for mittimus, claiming Solomon had not been making his child support payments. On July 13, 2009, Sara's application for mittimus was granted, and Solomon was ordered to serve thirty days in jail. He has not served his sentence, however, because he has remained in Barbados.

On November 9, 2010, Sarah filed a petition to terminate Solomon's parental rights under Iowa Code section 600A.8 (2009). She sought termination on the grounds of abandonment, under section 600A.8(3)(b), and failure to financially support the child, under section 600A.8(4). Solomon resisted the termination, and the case proceeded to a hearing on April 1, 2011. He participated in the hearing by telephone.

Sarah testified she has continued in her position as a Methodist minister in Iowa. She has adopted two children from Ghana, and she testified she and her three children have formed a family unit together. She had no plans to have anyone adopt C.T.A.O. if Solomon's parental rights were terminated. She stated she initiated the termination proceedings because she was concerned that if she died Solomon would have legal custody of the child and require her to move to Barbados.

Solomon testified he had paid his child support obligation to the best of his ability. He stated his income in Barbados was dependent upon the goodwill of his congregation and he earned between $5000 and $10,000 per year. Solomon testified he also tried to keep in contact with the child to the best of his ability. He stated he contacted her by telephone or e-mail at least once a month. He stated sometimes he would call and no one would answer the telephone or his messages were not returned.

The juvenile court entered a decision on May 27, 2011, denying Sarah's request to terminate Solomon's parental rights. The court found "the record does not support by clear and convincing evidence a finding that Solomon's failure to pay court-ordered child support was without good cause." The court also concluded "grounds for termination of parental rights based upon abandonment had not been shown by clear and convincing proof." Additionally, the court found even if the grounds for termination had been proved, "the court is not convinced that [the child's] best interest would be promoted by terminating Solomon's parental rights." Sarah has appealed the juvenile court's decision.

II. Standard of Review.

Our review in matters pertaining to termination of parental rights under Iowa Code chapter 600A is de novo. *In re D.E.E.*, 472 N.W.2d 628, 629 (Iowa Ct. App. 1991). In cases in equity, we give weight to the factual findings of the juvenile court, especially considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.904(3)(*g*).

III. Section 600A.8(4).

Sarah claims there is sufficient evidence in the record to support her request to terminate Solomon's parental rights based on his failure to pay child support. A parent's rights may be terminated under section 600A.8(4) when, "[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." The elements of section 600A.8(4) must be proven by clear and convincing evidence. *In re C.M.W.,* 503 N.W.2d 874, 875 (Iowa Ct. App. 1993).

In considering whether a failure to pay child support is "without good cause," the key factual consideration is whether a parent has the ability to pay the ordered child support. *In re B.L.A.*, 357 N.W.2d 20, 22 (Iowa 1984). The petitioner, in this case Sarah, has the burden to show the other parent, Solomon, had the ability to pay child support. *See D.E.E.*, 472 N.W.2d at 630. "Although it is not necessary for the petitioner to show that the parent was willful in failing to pay, the parent's intent is clearly tied to an ability to pay." *In re R.K.B.*, 572 N.W.2d 600, 602 (Iowa 1998).

The district court ordered Solomon to pay temporary support of $200 per month in January 2006. The dissolution decree of September 2006 incorporated the stipulation of the parties continuing this support at $200 per month. As early as November 3, 2006, Sarah's attorney wrote Solomon's attorney stating child support for September, October, and November 2006 was unpaid. Her attorney apparently received no response. Thus, on December 18, 2006, Sarah filed her first application for rule to show cause. Hearing was held on January 8, 2007.

Solomon stated at the hearing that he had mailed a check for the full amount the previous Friday and the matter was dismissed. Sarah's attorney was awarded attorney fees.

Solomon continued with the same pattern of nonpayment, and Sarah filed her second application for rule to show cause in May 2007. Hearing was set for June 18, 2007. Solomon submitted a check for $1550 on June 14, 2007, and the matter was again dismissed.

Solomon once again continued his pattern of nonpayment. Sarah filed her third application for rule to show cause on June 13, 2008. It was alleged Solomon had not paid any further amount since June 2007. Solomon paid $2200 on the day of the hearing. This time, however, the court also held him in contempt for failure to pay. He was ordered to serve thirty days, but mittimus was withheld to allow him to purge the contempt by voluntarily paying his child support obligation.

Solomon moved to Barbados in August 2008. He continued his pattern of nonpayment of child support. On May 20, 2009, Sarah filed an application requesting that mittimus issue. Hearing was held on July 13, 2009, and Solomon failed to appear. The district court ordered that mittimus issue.

It is not disputed Solomon is in arrears. As of July 10, 2010, $11,000 was due, and Solomon had only paid $4720, leaving a deficit of $6280. It is also undisputed Solomon had not paid support since November 21, 2008.

Solomon's defenses at the termination of parental rights hearing were many. He specifically mentioned student loans, his low salary at his church in

Barbados, and his bizarre claim that bank policy in Barbados precluded from sending the child any support.

The district court in the termination matter stated it was "a close case" and that "[u]nder the circumstances, it appears that Solomon has the ability to pay some support even if it is not the full $200 per month." The district court, however, concluded the evidence did not prove Solomon failed to pay child support without good cause. We disagree.

It is undisputed Solomon is in arrears and has not made a child support payment since November 21, 2008. It is undisputed Solomon has a mittimus issued against him and was ordered to serve a thirty-day jail sentence. It is undisputed Solomon only makes child support payments when faced with a contempt action. It is undisputed Solomon was able to come up with sums of $1550, and $2200 when faced with jail time. It is undisputed Solomon blames his plight on student loans, his salary, and problems with his bank obstructing his ability to send child support payments. We conclude Sarah has established by clear and convincing evidence that Solomon has been ordered to contribute to the support of the child and has failed to do so without good cause. The ground for termination of parental rights under section 600A.8(4) has been established.

We further conclude termination of parental rights is in the best interests of this child. Solomon has shown an indifference to this child at least from the standpoint of support. He has also voluntarily removed himself from the child's life and has been absent for many of her critical years. This case must be reversed. The decision on this ground eliminates the need to address Sarah's

other contentions involving telephonic testimony and abandonment under section 600A.8(3)(b). *See In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (stating only one statutory ground is necessary to terminate a parent's rights).

REVERSED.