

IN THE COURT OF APPEALS OF IOWA

No. 3-153 / 12-1518
Filed June 12, 2013

EMORY WARD JR.,
Petitioner-Appellee,

vs.

**MARY BETH ROBINSON and DOMINIC
ROBINSON,**
Respondents-Appellants.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge.

A mother and her spouse appeal from an order denying their petition to terminate the parental rights of a father. **AFFIRMED.**

James R. Van Dyke of Eich, Van Dyke & Werden, P.C., Carroll, for appellee.

Ronald E. Langford of Langford Law Office, Des Moines, for appellant.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

VAITHESWARAN, P.J.

This is an appeal from an order denying a mother and her spouse's petition to terminate the father's parental rights.

I. Background Facts and Proceedings

Mary Beth Robinson and Emory Ward had a child in 2005 who, at all times, lived with Mary Beth. The parents went their separate ways, with Mary Beth eventually marrying Dominic Robinson.

In 2011, Ward filed a petition to establish paternity. The Robinsons admitted Ward was the biological father of the child but denied it was in the child's best interests for him to formally claim paternity. They filed an action to terminate Ward's parental rights on the ground that he abandoned the child.

The suits were consolidated and, following trial, the district court denied the Robinsons' petition to terminate, granted Ward visitation, and ordered Ward to pay \$50 a month in child support. The Robinsons appealed.

II. Analysis

"To abandon a minor child"

means that a parent . . . rejects the duties imposed by the parent-child relationship, . . . which may be evinced by the person, while being able to do so, making no provision or making only a marginal effort to provide for the support of the child or to communicate with the child.

Iowa Code § 600A.2(19) (2011). A parent is deemed to have abandoned a child who is six months or older

unless the parent maintains substantial and continuous or repeated contact with the child as demonstrated by contribution toward support of the child of a reasonable amount, according to the parent's means, and as demonstrated by any of the following:

(1) Visiting the child at least monthly when physically and financially able to do so and when not prevented from doing so by the person having lawful custody of the child.

(2) Regular communication with the child or with the person having the care or custody of the child, when physically and financially unable to visit the child or when prevented from visiting the child by the person having lawful custody of the child.

(3) Openly living with the child for a period of six months within the one-year period immediately preceding the termination of parental rights hearing and during that period openly holding himself or herself out to be the parent of the child.

Id. § 600A.8(3)(b).

The Robinsons contend Ward failed to visit regularly or communicate with the child. The district court found otherwise, stating Ward had “numerous contacts” with the child, as reflected in Mary Beth Robinson’s own summary of visits. The court also noted that Ward “made a number of non-court-ordered financial payments for the support of” the child and “sent Christmas and birthday gifts on a fairly regular basis.” The court concluded, “[I]n view of the amount of contacts, the contributions and communications up until the line was drawn in the sand . . . are not, from my perspective, actions of a parent that has abandoned his child.” On our *de novo* review, we agree with these findings and with the court’s conclusion. See *In re C.A.V.*, 787 N.W.2d 96, 99 (Iowa Ct. App. 2010) (setting forth the standard of review).

The record reflects that Ward lived in California and Mary Beth Robinson lived in Texas, and then Iowa. As soon as Ward was notified that he had a child, he flew to Texas to see him. He visited the child several additional times in 2005. Communication between the parents became less amicable in 2006, and Ward saw his son only twice that year. In subsequent years, he made an effort to maintain contact with the child despite his strained relationship with Mary Beth.

He visited the child four times in 2007, five times in 2008, three times in 2009, and twice in 2010.

The parents' relationship deteriorated in 2011, with Mary Beth questioning the quality of Ward's interactions during a January visit. Later that year, the Robinsons planned a trip to California and informed Ward he could have time with his son while they were in the State. That visit did not materialize. While the parents proffered differing explanations for its non-occurrence, the common thread was distrust. After that point, visits ended, and litigation ensued. The court characterized this period as the "line . . . drawn in the sand," a characterization that the Robinsons criticize, but that we find apt.

As the district court found, Ward also gave Mary Beth cash to assist with the child's support. According to Mary Beth's own calculations, she received a total of \$17,400 in voluntary payments from Ward. She also acknowledged the receipt of gifts and cards for the child.

We conclude Ward did not "reject[] the duties imposed by the parent-child relationship." See Iowa Code § 600A.2(19). He visited the child as much as he could in light of the distance and expense, and he provided monetary contributions whenever he was able. Like the district court, we conclude the Robinsons failed to satisfy their burden of proving abandonment.

We turn to whether termination of Ward's parental rights was in the child's best interests. See Iowa Code § 600A.1 (stating "the interests of the parents of this child . . . shall be given due consideration").¹ With the exception of evidence

¹ Iowa Code section 600A.1 states:

that Ward napped during one visit and did not exhibit sufficient enthusiasm concerning the child's sports accomplishments, there is scant evidence that the visits were harmful to the child. Given Ward's interest in the child and his efforts to maintain communication with him, we agree with the district court that termination of Ward's parental rights was not in the child's best interests.

We affirm the district court's denial of the Robinson termination petition.

AFFIRMED.

The best interest of a child requires that each biological parent affirmatively assume the duties encompassed by the role of being a parent. In determining whether a parent has affirmatively assumed the duties of a parent, the court shall consider, but is not limited to consideration of, the fulfillment of financial obligations, demonstration of continued interest in the child, demonstration of a genuine effort to maintain communication with the child, and demonstration of the establishment and maintenance of a place of importance in the child's life.