IN THE COURT OF APPEALS OF IOWA

No. 9-349 / 08-1857
Filed May 29, 2009

IN THE INTEREST OF L.P.C.,
Minor Child,

BETHANY CHRISTIAN SERVICES,
Plaintiff-Appellant.

Appeal from the Iowa District Court for Marion County, Terry L. Wilson, District Associate Judge.

Bethany Christian Services appeals from the juvenile court's dismissal of its petition to terminate a biological father's parental rights to his child. **AFFIRMED.**

Andrew B. Howie of Hudson, Mallaney & Shindler, P.C., West Des Moines, and Wesley A. Chaplin of Kreykes Law Office, Pella, for appellant, Bethany Christian Services.

Kellie L. Paschke, West Des Moines, and Marc Elcock, Des Moines, for appellee father.

Kathryn Walker of Walker & Billingsley, Newton, for appellee mother.

Terri Beukelman, Pella, for minor child.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

I. Background Facts and Proceedings

R.M.B. and N.L.C. began dating in July 2006. In November 2007, they found out R.M.B. was pregnant. At the time, both parties were sixteen years old. R.M.B. was a senior in high school, lived with her parents, and worked part-time. N.L.C. was a junior in high school, though he was hoping to graduate a year early. He lived with his guardians who had raised him since age three. He also worked part-time, approximately twenty to twenty-five hours per week, earning $7.50 per hour. N.L.C. plans to attend college after high school and study computer programming and graphic design.

Initially, both young parents wanted to keep the child, but after much consideration, R.M.B. decided to put the child up for adoption. R.M.B. and N.L.C. met with Bethany Christian Services (Bethany), an adoption agency, on May 15, 2008, to discuss adoption. Though N.L.C. was not sure at this time that adoption was best for the child, he told Bethany he was willing to support R.M.B. in her decision. R.M.B. began working with Bethany to find adoptive parents for her child.

On June 5, 2008, R.M.B. informed Bethany that N.L.C. was no longer consenting to the adoption. N.L.C. testified that he never wanted to put the child up for adoption, but considered the option with R.M.B. in determining what was best for the child. R.M.B. continued to work with Bethany to find an adoptive family. On June 14, 2008, R.M.B. met with potential adoptive parents she had preselected. R.M.B.'s parents attended the meeting with her and supported the

adoption plan. At the end of the meeting, R.M.B. told the prospective adoptive parents she was going to give them her baby.

R.M.B. gave birth on June 23, 2008. N.L.C. was at the hospital for the baby's birth and remained there the entire time until the baby was discharged, with the exception of leaving for breakfast one morning. N.L.C. helped care for the baby by feeding him, changing his diapers, and rocking him.

On June 24, 2008, Bethany staff met with R.M.B. at the hospital to discuss her adoption plans. N.L.C. was present during this meeting. Despite N.L.C.'s objections, R.M.B. said she wanted to proceed with the adoption. Bethany staff made arrangements for R.M.B.'s chosen adoptive parents to retrieve the baby. N.L.C. again informed Bethany staff he would not consent to the adoption. A social worker informed N.L.C. that he would have to establish paternity, and nurses at the hospital gave N.L.C. a list of places that provided such services. Bethany staff informed N.L.C. that once the baby left the hospital, he would need to establish paternity before he would be allowed to visit the child. On June 24, 2008, a social worker for Bethany offered to arrange to retain a guardian ad litem for N.L.C., and N.L.C. expressed interest in talking about the legal process and his rights. However, the next day N.L.C. informed Bethany staff that he had already found an attorney, with whom he had "kinda" had a chance to talk.

On June 26, 2008, R.M.B. executed a release of custody. R.M.B. did not name N.L.C. as the father on the birth certificate, though R.M.B. made Bethany aware that N.L.C. was the only possible father of the child. N.L.C. again informed Bethany that he planned to contest the adoption. On June 27, 2008, the baby was placed with the adoptive parents. R.M.B. called Bethany on June

27, 2008, requesting that she and N.L.C. be allowed visitation with the baby. Bethany informed R.M.B. that she could arrange to visit the baby, but N.L.C. needed to complete a paternity test before he would be allowed a visit. Within the next two weeks after the baby's birth, N.L.C. contacted Bethany two or three times to request visitation. Bethany staff responded to N.L.C.'s requests for visitation by informing him that he should speak with Bethany's attorney to arrange for the paternity test. On June 30, 2008, N.L.C. and his guardian called Bethany to determine whether paternity testing had been ordered. Bethany staff directed N.L.C. and his guardian to talk to Bethany's attorney about that matter. N.L.C. submitted DNA for genetic testing on July 1, 2008. N.L.C. did not contact Bethany after July 7, 2008.

There is some dispute as to what communication took place or was attempted during the following two months regarding Bethany's requirements that paternity testing be completed by court order. Marlene Hibma, branch director at Bethany, testified that she informed Kellie Paschke, N.L.C.'s attorney, on June 27, 2008, that paternity would have to be established through a court order. Paschke indicated she first spoke to Wesley Chaplin, Bethany's attorney, in mid-July, at which time she learned Chaplin would not produce the child for a paternity test without a court order. N.L.C. testified he learned from Paschke in mid-July that Bethany was requiring a court order for the paternity test.

Hibma testified Bethany had a policy in place for the child's protection requiring paternity be established when a father contesting adoption sought physical contact with the child. Hibma further testified a court order for paternity testing is generally not required unless payment for the paternity test is an issue,

in which case it is easier to get a court order to solve payment issues and ensure the proper parties receive the correct results. Hibma stated that she spoke with N.L.C.'s guardian, who informed her that he would only pay for N.L.C.'s portion of the paternity test, not for R.M.B.'s and the baby's portions, though all three portions are required to complete the test.

On August 21, 2008, Bethany filed a petition for the termination of R.M.B.'s and N.L.C.'s parental rights.[1] Bethany also filed a notice regarding paternity registry showing no one had registered with the paternity registry as the father of the child born to R.M.B. Bethany alleged N.L.C. had abandoned the child under Iowa Code section 600A.8 (2007). On September 5, 2008, N.L.C. filed an answer to Bethany's petition for termination of parental rights and a petition to establish custody, visitation, paternity, and child support.[2] N.L.C.'s petition requested the court to enter an immediate order directing Bethany and R.M.B. to make the required parties available for testing. However, the petition to establish custody, visitation, paternity, and child support was filed in the wrong name, so the juvenile court did not issue an order for paternity testing. N.L.C. presented the court with a valid order for paternity testing on October 10, 2008, and the order was entered the same day. Bethany immediately complied with the court's order, and on October 22, 2008, the parties received the test results confirming N.L.C.'s paternity. N.L.C. did not request visitation with the child during the week after his paternity was confirmed, though Paschke emailed

[1] R.M.B.'s parental rights are not at issue on appeal.

[2] Paschke stated she prepared the petition to establish custody, visitation, paternity, and child support before Bethany filed an action to terminate parental rights but waited to file it until she had prepared the answer to the petition for termination so they could be filed together.

Chaplin on October 24, 2008, indicating N.L.C. would like to proceed with custody immediately. Trial was held on October 29, 2008.

At trial, the child's guardian ad litem, Terri Beukelman, testified that she had spoken with the adoptive parents, N.L.C. and his guardians, and R.M.B. and her parents. She filed a report with the court that recommended the court terminate N.L.C.'s parental rights. In her report she stated, "While I believe [N.L.C.] sincerely loves his son and wants to raise him I don't believe he took the necessary steps to show a commitment to raising him." Beukelman believed that N.L.C.'s inaction in enforcing and preserving his parental rights established that he had abandoned the child.

R.M.B. testified she believed it to be in the child's best interests for N.L.C.'s parental rights to be terminated. R.M.B. agreed that N.L.C. and his family had good intentions, but she had reservations about their ability to parent the child.

N.L.C. testified that he wanted to raise his child with the help of his guardians. N.L.C. asserted he had been diligently trying to obtain custody of his child, but Bethany frustrated his efforts by delaying the process. N.L.C.'s guardians were supportive of N.L.C.'s choice and agreed to help N.L.C. raise the child. Specifically, N.L.C.'s guardians offered to babysit the child while N.L.C. was at work and to help provide for the child financially.

Throughout the pregnancy, N.L.C. was supportive of R.M.B. He attended Lamaze classes with her and attended three of her doctor appointments. He also offered to help pay R.M.B.'s medical expenses. N.L.C. did not contribute to R.M.B.'s medical expenses, explaining that he was never presented with a bill

requesting payment for such expenses. N.L.C. did not contribute anything to the adoptive parents, nor did he exchange emails, letters, cards, or photos with the adoptive parents. However, R.M.B. forwarded N.L.C. emails she received from Bethany regarding the child's progress. N.L.C. purchased items that would be necessary if the baby were to be placed in his custody, including a crib, two car seats, toys, and clothes. N.L.C. looked into daycares for supervision of his child while he was at school and selected two that he wanted to visit.

The adoptive parents are by all accounts very good parents. N.L.C. does not dispute that the adoptive parents would provide a stable and loving home for his child.

The juvenile court issued its ruling on November 6, 2008, finding a lack of clear and convincing evidence that N.L.C. had abandoned the child. The juvenile court further ordered that the child be returned to N.L.C.'s custody immediately. Bethany appeals, arguing: (1) the juvenile court erred in denying its petition to terminate N.L.C.'s parental rights; (2) the juvenile court erred in terminating R.M.B.'s parental rights, but not N.L.C.'s; and (3) the juvenile court erred in ordering Bethany to transfer the child into N.L.C.'s custody.

II. Standard of Review

We review termination proceedings de novo. Iowa R. App. P. 6.4; *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998). "[W]e give weight to the juvenile court's findings of fact because the juvenile court has had the unique opportunity to hear and observe the witnesses firsthand." *In re S.V.*, 395 N.W.2d 666, 668 (Iowa Ct. App. 1986).

III. Abandonment

Bethany argues the juvenile court erred in concluding N.L.C. had not abandoned the child.

> "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). Grounds for terminating parental rights must be proved by clear and convincing evidence. Iowa Code § 600A.8; *see In re Goettsche*, 311 N.W.2d 104, 107 (Iowa 1981). We only address the best interests of the child if the grounds for termination have been proved. *In re M.M.S.*, 502 N.W.2d 4, 8 (Iowa 1993). Iowa Code section 600A.8 lists grounds for termination and provides:

> The following shall be, either separately or jointly, grounds for ordering termination of parental rights:
>
> . . . .
>
> 3. The parent has abandoned the child. For the purposes of this subsection, a parent is deemed to have abandoned a child as follows:
>
> a. (1) If the child is less than six months of age when the termination hearing is held, a parent is deemed to have abandoned the child unless the parent does all of the following:
>
> (a) Demonstrates a willingness to assume custody of the child rather than merely objecting to the termination of parental rights.
>
> (b) Takes prompt action to establish a parental relationship with the child.
>
> (c) Demonstrates, through actions, a commitment to the child.
>
> (2) In determining whether the requirements of this paragraph are met, the court may consider all of the following:
>
> (a) The fitness and ability of the parent in personally assuming custody of the child, including a personal and financial commitment which is timely demonstrated.

> (b) Whether efforts made by the parent in personally assuming custody of the child are substantial enough to evince a settled purpose to personally assume all parental duties.
>
> (c) With regard to a putative father, whether the putative father publicly acknowledged paternity or held himself out to be the father of the child during the six continuing months immediately prior to the termination proceeding.
>
> (d) With regard to a putative father, whether the putative father paid a fair and reasonable sum, in accordance with the putative father's means, for medical, hospital, and nursing expenses incurred in connection with the mother's pregnancy or with the birth of the child, or whether the putative father demonstrated emotional support as evidenced by the putative father's conduct toward the mother.
>
> (e) Any measures taken by the parent to establish legal responsibility for the child.
>
> (f) Any other factors evincing a commitment to the child.

Iowa Code § 600A.8(3)(a).

We agree with the juvenile court's conclusion that clear and convincing evidence does not support a finding that N.L.C. abandoned his child. The record shows N.L.C.'s willingness to assume custody of the child was genuine and not a mere objection to the termination of parental rights. N.L.C. was proactive and took affirmative steps in an attempt to assume custody of his child. He informed Bethany staff before and immediately after the child's birth that he would not consent to the adoption. He found a lawyer within several days of the child's birth. He submitted a DNA sample for paternity testing within eight days of the child's birth. He contacted Bethany several times within the first two weeks after the child's birth to set up visitation. He contacted R.M.B. to try to achieve visitation through her. He was in constant communication with his attorney, whom he trusted to handle the legal aspects of the situation.

N.L.C. took steps to ensure that he could provide for the child if the child were placed in his custody. He looked into daycares, bought clothes and toys,

and arranged for his guardians to watch the child while he was at work. He had a crib for the child in his room and a separate room for the child when the child was old enough. N.L.C. was supportive of R.M.B. throughout her pregnancy and was present during her stay in the hospital. He cared for the child at the hospital and testified that he had bonded with the child.

"[P]arental responsibilities include more than subjectively maintaining an interest in a child. The concept requires affirmative parenting to the extent it is practical and feasible in the circumstances." *Goettsche*, 311 N.W.2d at 106. Bethany's requirement that N.L.C. get a court ordered paternity test limited N.L.C.'s parenting options until the court order was obtained. Though N.L.C.'s actions in obtaining the court order seem delayed, the evidence does not support the conclusion that N.L.C. caused the delay. Bethany repeatedly referred him to the lawyers, who were not communicating. At all times since June 2008, N.L.C. insisted that he wanted custody of his child and refused to consent to adoption. N.L.C. consistently expressed a desire to visit his child and build a relationship with him. Though N.L.C.'s delay was detrimental to him and the child, "we do not find the delay in asserting [his] rights is alone sufficient to establish abandonment." *In re Burney*, 259 N.W.2d 322, 324 (Iowa 1977).

Iowa statutes do not allow an analysis of the best interests of the child unless statutory grounds for termination have been established. *In re J.L.W.*, 523 N.W.2d 622, 625 (Iowa Ct. App. 1994). Therefore, we cannot and do not conduct an analysis of the best interests of the child.

IV. Termination of R.M.B.'s Parental Rights

Bethany argues the juvenile court erred by terminating R.M.B.'s parental rights and not N.L.C.'s. R.M.B. executed a release of custody and did not appeal the termination of her parental rights. R.M.B.'s counsel stated at trial that R.M.B. consented to the termination of her parental rights if N.L.C.'s parental rights were terminated. R.M.B. filed a motion to vacate the order terminating her parental rights after N.L.C.'s parental rights were not terminated. Hearing on that motion has been continued, and the juvenile court should consider this argument at the hearing on R.M.B.'s motion to vacate. Although Bethany may well be correct that depriving the child of R.M.B.'s support is not in the child's best interests, on this record we conclude the juvenile court did not err as a matter of law in terminating the rights of one parent but not the other.

V. Transfer of the Child to N.L.C.

Bethany argues the juvenile court erred in ordering Bethany to transfer the child to N.L.C.'s custody. Bethany contends that its status as legal guardian of the child, derived from R.M.B.'s release of custody, continued after termination of the parental rights of R.M.B. We disagree. Because we determined above that N.L.C. had not abandoned the child and N.L.C. established paternity, he has the right to custody of the child. The child has been in N.L.C.'s custody since November 2008, and we find that a period of reintroduction to N.L.C. now is unnecessary and contrary to the child's best interests.

AFFIRMED.