IN THE COURT OF APPEALS OF IOWA

No. 9-353 / 08-2069
Filed June 17, 2009

IN THE INTEREST OF J.K.N., Minor Child,

K.A.N., Mother,
Petitioner-Appellant,

J.K.N., Minor Child,
Appellant.

Appeal from the Iowa District Court for Johnson County, Stephen C. Gerard II, District Associate Judge.

A mother appeals the juvenile court's denial of her Iowa Code chapter 600A petition to terminate the father's parental rights to their child. **REVERSED AND REMANDED.**

Ellen Ramsey-Kacena, Cedar Rapids, for appellant-mother.

Joan Black, Iowa City, for appellant-minor child.

Steven Bent, Titusville, Florida, pro se.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

MILLER, J.

A mother appeals the juvenile court's denial of her Iowa Code chapter 600A (2007) petition to terminate the father's parental rights to their child. We reverse and remand.

K.N. and S.B. were married in November 2002. The marriage was ended by a decree of dissolution filed in July 2007. In August 2007, after the dissolution was finalized, K.N. learned she was pregnant by S.B. K.N. notified S.B., who was living in Florida by that time, of the pregnancy and he indicated he did not want anything to do with the child. The only communication K.N. had with S.B. during her pregnancy was to discuss the termination of his parental rights. He did not pay for any expenses related to the pregnancy or to the birth of the child.

J.N. was born April 26, 2008. K.N. notified S.B. of the child's birth and told him that the child was a boy. S.B. again stated he did not want anything to do with the child. At the time of the termination hearing in December 2008 K.N. had not spoken to S.B. since June of 2008 and that was only regarding the termination of his parental rights.

K.N. was thirty-two years of age at the time of the termination hearing and resided in Tiffin, Iowa, with J.N. She had lived at that residence for approximately two years. At the time of the hearing K.N. had been employed at ACT for approximately eighteen months as a software engineer and was earning about $54,000 per year. Through her employment she receives health, dental, and vision insurance for herself and J.N. K.N. testified at the hearing that she was very comfortable with her job security as her company had recently hired

new employees and continued to post for vacant positions. She stated that in the unlikely event anything were to happen with her employment, or some other unforeseen event were to occur, she had sufficient money in a savings account and IRA accounts to support herself and J.N. K.N. testified she has a large support group through her family and church if anything were to happen to her. She also testified her parents had never sought any sort of public assistance, she had never in her adult life sought or received public financial assistance, and she had no intention of ever seeking state aid in order to support J.N.

S.B. was forty-one years of age and living in Florida at the time of the termination hearing. He apparently has an aircraft maintenance certificate and is employed by Cessna. Since J.N.'s birth S.B. has not sent any letters to J.N. or attempted to communicate or have any contact with him. S.B. has not provided any support for J.N. since his birth, nor has K.N. sought any from him. Further, K.N. testified it was her belief and understanding that S.B. had never told any of his family of the existence of the child. As set forth above, S.B. stated he wanted nothing to do with the child both at the time he was notified of the pregnancy and at the time he was notified of the birth and gender of the child.

After S.B. at least twice stated to K.N. he had no interest in the child, K.N. asked S.B. to "make it legal" and terminate his parental rights. S.B. agreed to release his parental rights and signed a voluntary "Release of Custody and Consent to Termination of Parental Rights" on July 22, 2008. The release was duly witnessed and notarized and had not been revoked at the time of the termination hearing.

On August 20, 2008, K.N. filed a petition to terminate S.B.'s parental rights under Iowa Code section 600A.8(1) and (2) alleging he had signed a proper release of custody and consent to termination pursuant to section 600A.4, and under section 600A.8(3)(a) alleging he had abandoned the child. In her petition K.N. also requested a guardian ad litem (GAL) be appointed for J.N., and the court subsequently appointed attorney Joan Black as GAL for J.N.

Black spoke with both parents in her capacity as the GAL, and her report was submitted to and considered by the court at the termination hearing. In the report Black stated that S.B. had confirmed to her his desire to relinquish his parental rights, that K.N.'s home was very neat and had many appropriate toys for J.N., that there was a clear bond between K.N. and J.N., and that K.N.'s income was sufficient to support herself and J.N. comfortably. The GAL opined it was in J.N.'s best interest to terminate S.B.'s parental rights.

K.N. testified at the termination hearing that she believed it was in J.N.'s best interest that S.B.'s parental rights be terminated because he had made it clear he does not want the child, and she did not believe J.N. should be forced to have a relationship with someone who clearly does not want anything to do with him. She further stated she and S.B. had been involved in a church when they were living in Florida prior to their December 2006 move to Iowa and she had moral and ethical disagreements with some of the church's ideologies regarding marriage. However, S.B. had refused to change his opinions about the church or what was best for the marriage. She testified she was afraid that at some point

in the future either members of that church or S.B.'s immediate family would pressure S.B. to seek a relationship with J.N.

In a ruling filed December 9, 2008, the juvenile court found there was clear and convincing evidence that several statutory grounds to support termination of S.B.'s parental rights had been met. These included, among others, Iowa Code section 600A.8(1) (having voluntarily signed a release of custody and the release has not been revoked); section 600A.8(3)(b) (abandonment of the child); and section 600A.8(6) (parent does not object to termination although every reasonable effort has been made to identify, locate, and give notice to that parent). Thus, the court stated the sole remaining issue in the case was whether it was in J.N.'s best interest that S.B.'s parental rights be terminated. On this issue the court concluded,

> Termination of parental rights in this case could deprive the child and the public of resources for the child's support. The child's father may become eligible for Social Security Disability benefits or death benefits which would provide financial assistance to and benefit the child. [S.B.] is employed and has a history of gainful employment. He might pay child support, if requested, or even involuntarily through Child Support Recovery. He may acquire other rights or assets which could benefit the child. [Citation].
>
> The child's mother has sole custody. She can take legal steps to protect herself and the child, if necessary, from the child's father should he seek to become involved in his son's life in the future and if such involvement would not be in the child's best interests. The mere possibility that the father might become interested in his son due to family or peer pressure certainly does not amount to a reason why termination of parental rights would be in the *child's* best interests. The Petitioner has not established that it would be in the child's best interests to terminate parental rights, and the Petition should be denied.

K.N. appeals the juvenile court ruling, contending the court erred in concluding that terminating S.B.'s parental rights is not in J.N.'s best interests.

More specifically, she contends the court erred in finding that a disinterested father is better than no father at all, in speculating as to the potential future performance of the father, and in speculating that the consent to termination by S.B. was an attempt to escape financial responsibility for the child. The GAL filed a separate brief on appeal, also contending the court erred in finding that terminating S.B.'s parental rights would be contrary to J.N.'s best interest and making arguments very similar to those made by K.N.

A termination proceeding pursuant to chapter 600A is reviewed de novo. *In re R.K.B.,* 572 N.W.2d 600, 601 (Iowa 1998). The statutory grounds for termination under chapter 600A must be proved by clear and convincing evidence. Iowa Code § 600A.8. Our primary interest is the best interest of the child. Iowa R. App. P. 6.14(6)(*o*); *R.K.B*., 572 N.W.2d at 601. The petitioner has the burden to prove a statutory ground for termination under chapter 600A. *R.K.B*., 572 N.W.2d at 601-02. Proof of a statutory ground, however, is not dispositive. We must also determine whether it is in the child's best interests to terminate parental rights. *In re J.L.W*., 523 N.W.2d 622, 625 (Iowa Ct. App. 1994).

It is clear and undisputed that more than one statutory ground for termination of S.B.'s parental rights under chapter 600A was proved. Thus, the only issue on appeal is whether the juvenile court erred in concluding K.N. had not proved it would be in J.N.'s best interest to terminate S.B.'s parental rights. For the following reasons, we respectfully disagree with the juvenile court.

In determining a child's best interest, the child's long-range, as well as immediate, interests are considered. *In re R.K.B.,* 572 N.W.2d at 601. Insight into this determination can be found from evidence of the parent's past performance, as it may be indicative of the quality of the future care a parent is capable of giving. *Id.* In the present case, S.B. has demonstrated a complete lack of interest in parenting J.N. He has not attempted to contact or communicate with J.N. in any way, he has not provided any financial support to J.N., and he has repeatedly stated he wants nothing to do with the child. Perhaps most tellingly, S.B. willingly signed a consent to terminate his parental rights, thereby clearly indicating his present and future intent regarding J.N.

"The best interest of a child requires that each biological parent affirmatively assume the duties encompassed by the role of being a parent." Iowa Code § 600A.1. As set forth above, S.B. has made no affirmative effort to contact or communicate with J.N. or make any inquiry as to his well-being since the child's birth. The juvenile court stated that "while it is clear that [S.B.] has not asked for information about the child, it is equally clear that [K.N.] has not voluntarily provided any." First, we do not wholly agree with this finding. K.N. did in fact provide S.B. information about the child. K.N. notified S.B. when she found out she was pregnant by him, even though their divorce was finalized and S.B. was living in Florida by that time. She again notified him when she gave birth and informed him of the gender of the child. On both occasions S.B. indicated to K.N. he had no interest in parenting the child and wanted nothing to do with it. Second, the court's comment seems to suggest that following J.N.'s

birth K.N. had some greater burden than S.B. to assure that S.B. had information regarding the child or to force contact between the two. We cannot agree. S.B. is an adult and once aware of J.N. he bore equal responsibility for affirmatively assuming the duties encompassed in the role of parenting. Accordingly, due to S.B.'s complete lack of any affirmative action to assume the duties encompassed in parenting we believe it is in J.N.'s best interest that S.B.'s parental rights be terminated. *See* Iowa Code § 600A.1.

The juvenile court also seemed to suggest that S.B's parental rights should not be terminated based, in part, on what S.B. might do in the future. The court stated,

> Who is to say what the minor child would desire if he was in a position to express whether his father's parental rights should be terminated? What if [S.B.] decides in the future that he wishes to become involved in his son's life to some extent? What if [S.B.]'s extended family wishes to have some contact with [J.N] and to provide emotional and/or financial support to [J.N.]? Who is to say that [J.N.] would not want to know his father or grandparents?

As noted above, the court then went on to speculate that termination "could" deprive the child of resources, S.B. "might" become eligible for Social Security Disability, and S.B. "might" pay child support in the future. We do not believe it is proper for the court to base its determination regarding J.N.'s best interests on the slim possibility that such things might happen in the future. There is no indication in the record that S.B. will at some point in the future decide to become involved in J.N.'s life. We do not believe it can be in a child's best interest to maintain a purely legal tie to a parent who has failed to initiate any type of relationship and has over a considerable period of time repeatedly indicated both

by word and action an intent to never do so, in the hope that someday that parent may choose to affirmatively assume parental responsibilities. Termination of parental rights should not be granted or denied on purely speculative grounds. We also note the court's reliance on future possibilities seems to be somewhat contradictory given the fact it rejected K.N.'s position, at least in part, because her concerns regarding the possibility S.B. might be pressured to establish contact with J.N. in the future were based on only a "mere possibility."

Juvenile law is replete with the conclusion that parents do not have an unlimited amount of time to decide to assume their role as a proper parent. *See e.g. In re L.L.,* 459 N.W.2d 489, 495 (Iowa 1990) (stating that children cannot wait for responsible parenting, parenting cannot be turned off and on like a spigot, and parenting must be constant, responsible, and reliable); *In re R.J.,* 436 N.W.2d 630, 636 (Iowa 1989) (finding that the period must be reasonably limited because patience with the parent can quickly translate into intolerable hardship for the child); *In re T.D.C.,* 336 N.W.2d 738, 744 (Iowa 1983) (stating a child must not be made to await the parent's maturity). In fact, the legislature has statutorily determined some times after which patience with a parent presumptively must end. *See* Iowa Code §§ 232.116, 600A.8(3)(b). Furthermore, if possible future actions by S.B. can be given substantial weight and consideration in this case, such speculative future actions could be viewed as preventing termination in any termination of parental rights case under chapter 600A or chapter 232. However, as set forth above, it has been determined that it is not in a child's best interest to have to wait indefinitely for the *possibility* a parent will affirmatively assume the

duties and responsibilities encompassed by the role of being a parent. It is not in J.N.'s best interest to be placed in a situation in which he is waiting on "what if?"

Finally, we recognize that termination of parental rights should not be granted just because a parent wants to escape a financial duty of support, *In re D.W.K.,* 365 N.W.2d 32, 35 (Iowa 1985), especially when the termination may result in the need for financial aid from the State, *In re K.J.K.,* 396 N.W.2d 370, 372 (Iowa Ct. App. 1986). Where it is found that the primary motive in terminating parental rights is to free the parent from the support obligation, termination should be denied. *Id.* However, for the following reasons we find no evidence in the record to support a belief that S.B. consented to termination to escape payment of child support.

First, we note S.B. was not under a court ordered support obligation from which he might be trying to free himself. Second, the evidence shows that K.N. has sufficient resources to support herself and J.N. without any assistance from S.B. She has asked for no financial assistance from S.B. and testified she does not intend to do so. Further, there is nothing in the evidence to indicate K.N. would seek public assistance from the State if S.B.'s rights are terminated. She testified she has never asked for or received public assistance, has no intention of ever doing so, earns sufficient income to support herself and J.N., and has adequate savings and IRA accounts to take care of herself and her son in the event of a change in her employment or some other crisis. She also has strong family and church support. Finally, we note the evidence indicates S.B. has been consistently employed and would likely have the means to pay child support if

required to do so. Thus there is little reason to believe his primary motivation in consenting to termination of his rights was to avoid a financial obligation.

Based on our de novo review, and for all the reasons set forth above, we conclude that because S.B. has not taken and does not intend to take any affirmative action to assume the duties encompassed by the role of being a parent, it is in J.N.'s best interest that S.B.'s parental rights be terminated. *See* Iowa Code § 600A.1. We reverse the judgment of the juvenile court and remand for entry of an order terminating S.B.'s parental rights to J.N.

REVERSED AND REMANDED.

Vogel, J., concurs; Sackett, C.J., dissents.

SACKETT, C.J. (dissents)

I respectfully dissent.

The juvenile court denied a mother and father's[1] request to terminate the father's parental rights finding it was not in the child's best interest because, among other things, it would cause the child to lose the right to financial support from his father. The majority has reversed and ordered the termination. I find the juvenile court did not abuse its discretion in refusing to terminate because it is in the child's best interest to be able to obtain support from two parents[2] and the juvenile court correctly applied existing precedent in arriving at its decision.

In *In re D.W.K.*, 365 N.W.2d 32, 35 (Iowa 1985), the Iowa Supreme Court affirmed a juvenile court's denial of a father's petition to terminate his parental rights where the father had established at least one of the grounds for termination of Iowa Code section 600A.1(a) (Interim Supp. 1983). The juvenile court found, and the supreme court agreed, that termination was not in the child's best interest. *Id.* at 34. The supreme court noted that acceptance of the father's argument would open a hatch for a parent to escape his or her duty to support a child and further noted that they were not persuaded the legislature intended section 600A.8 to alter so radically the parental support obligation. *Id.* at 35. The majority has made an attempt to distinguish *D.W.K.* from the case before us on a finding the record here does not support a belief that the father consented to termination to escape payment of child support. They arrived at this conclusion finding, unlike the father in *D.W.K.*, the father here was not under a court-ordered

[1] While the father did not file the petition, he signed a release and consented to the termination.

[2] There is no evidence that there was a second adult available to adopt the child.

support obligation[3] that he might try to free himself from and he has the means to pay the support if he is required to do so.[4] I find neither reason persuasive. First, child support could, should, and can be established by court order at any time. Second, I have difficulty rationalizing why a father who has the money to pay child support would be less likely to free himself of a support obligation than a father who has limited resources.

The majority finds, and I agree, that currently the mother has the means to support the child. Whether she will always have that ability and whether her income will always be sufficient to provide the child the level of support he is entitled to, no one can predict. That said, I strongly disagree with the majority conclusion that the fact termination could deprive the child of resources from his father was not a proper basis for the juvenile court's determination of best interest, as it was a slim possibility that it might happen in the future. This child has two parents and deserves support from both of them. He also deserves the assurance that should one or the other of his parents die, suffer health issues, or encounter financial hardship, the other parent is available to support him. Furthermore, society should not be required to support this child if his mother is unable to do so. We hope there is only a slim possibility that these events may occur, but they can occur and I consider them as did the juvenile court.

---

[3] It is clearly not in the child's interest for the mother not to pursue support from the father even if she does not need the money to provide for the child's current support.

[4] Apparently the father does not want to pay support. If he wanted to, he could have done so by this time.