

IN THE COURT OF APPEALS OF IOWA

No. 0-292 / 09-1589
Filed May 12, 2010

**IN THE INTEREST OF M.L.T.M.,
Minor Child,**

**R.P.N., Intervenor,
Petitioner,**

**M.A.M., Father,
Appellant.**

Appeal from the Iowa District Court for Davis County, William S. Owens,
Associate Juvenile Judge.

A father appeals the termination of his parental rights, contending that he had not abandoned his child and that termination is not in the child's best interests. **AFFIRMED.**

Robert Bozwell, Centerville, for appellant father.

Cynthia Hucks, Ottumwa, for appellee mother.

Rick Lynch, Davis County Attorney, Bloomfield, for appellee.

John Silko, Bloomfield, for minor child.

Considered by Vaitheswaran, P.J., Doyle, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

VAITHESWARAN, P.J.

A mother of a child born in 1998, together with her spouse, petitioned to terminate the parental rights of the child's father on the ground that he abandoned the child. Following a hearing, the district court granted the petition.

On appeal, the father contends (1) he has "maintained a substantial and continuous relationship with M.L.T.M. when physically able to do so and has provided financial support for his child when he was financially able to do so" and (2) termination is not in the child's best interests because "he has taken steps to improve his chances for success upon his release from incarceration." On our de novo review, we disagree with these contentions.

Iowa Code section 600A.8(3) (2009) authorizes termination of a parent's rights where "[t]he parent has abandoned the child." 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.

Iowa Code § 600A.8(3)(b).

The juvenile court made detailed and thorough fact findings on these factors, all of which are supported by the record. To summarize, the father was in and out of prison for significant portions of the eleven-year-old child's life. At the time of the termination hearing, he was serving two concurrent prison terms not exceeding twenty years.

Although he was scheduled for a parole hearing in January 2010, his tentative discharge date was not until 2015. There is no question that he sent his daughter birthday cards and periodically wrote letters, but he had not telephoned her for close to two years prior to the termination hearing and had not seen her for almost two and one-half years. Additionally, the father's minimal support obligation, which was not established until 2002, was significantly in arrears. Based on this record, the juvenile court stated:

The most credible evidence presented shows [the father] may have taken advantage of some opportunities to see [his daughter] on the rare occasions when he was not in prison, but his relationship with her has clearly taken a back-seat to his on-going criminal conduct.

On the question of what was in the child's best interests, the court stated

[The child] clearly has no relationship or bond with [the father] now as he went to prison shortly after she was born, and has been in prison on two other occasions since that time. His conduct in continuing to engage in criminal behavior provides no evidence to suggest [the father] will ever be available to [the child] as a positive role model, or influence in her life. As a result, it would clearly be in [the child's] best interests to terminate [the father's] parental rights so she can be free for adoption by her step-father, a man who she refers to as "dad", and someone who was involved in her life, and is, by all accounts, a very positive influence for her.

We fully concur in the juvenile court's assessment. As abandonment was proven and the record reflects that termination is in the child's best interests, we affirm the juvenile court's decision terminating the father's parental rights to his child, born in 1998.

AFFIRMED.