

**IN THE COURT OF APPEALS OF IOWA**

No. 0-321 / 09-1548  
Filed May 26, 2010

**IN THE INTEREST OF L.A.S.,  
Minor Child,**

**E.M., Mother,**  
Petitioner,

**T.M.S., Father,**  
Appellant.

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

A father appeals from the order terminating his parental rights.

**AFFIRMED.**

Ryan J. Mitchell of Orsborn, Milani, Mitchell & Goedken, L.L.P., Ottumwa,  
for appellant father.

Cynthia D. Hucks of Box and Box Attorneys, Ottumwa, for mother.

Thomas F. Kintigh of Griffin, Dew & Kintigh, Ottumwa, 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).

**DOYLE, J.**

A father appeals from the termination of his parental rights in a private termination action. He contends there is insufficient evidence in the record to support the juvenile court's finding that he abandoned his child and claims termination is not in the child's best interests. We affirm.

***I. Background Facts and Proceedings.***

E.M. is the mother and T.M.S. is the father of L.A.S., born in May 2005. The parents were together for about a year before the child was born. The parents never married.

The parents lived together for a few months after the child was born, and the father took an active role in the caretaking of the child. In July or August of 2005, the Iowa Department of Human Services (Department) became involved with the family after the child was exposed to illegal drug use by the father. The father moved to a separate residence, and the child and mother continued to reside together. The child was later adjudicated a child in need of assistance (CINA), and the father was ordered by the juvenile court to participate in a substance abuse evaluation and to follow all recommendations for treatment. The father was also granted supervised visitation with the child.

The father received weekly visitation with the child after the CINA adjudication. At some point, the father tested positive for drug use, and his visitations were decreased to an hour of supervised visitation with the child about once a month. The CINA case was closed in May 2007. The father never progressed beyond supervised visits with the child, and the father stopped visits with the child. The father last saw the child in approximately June 2007.

In August 2007, the father was arrested for theft and operating while intoxicated. The father was ultimately convicted of the offenses and sent to prison in November 2007. While in prison, the father mailed the child a birthday card. The father did not send any cards or letters to the mother asking for visits with the child. However, the father's girlfriend contacted the mother to request a visit with the child at the prison. The mother refused. The father was released from prison in November 2008.

After being released from prison, the father obtained employment and paid child support to the mother. The father was also paying a monthly amount towards his \$1372 child support arrearage. At the time of the termination hearing, the father had requested the child be covered by the father's health insurance.

In January 2009, the mother filed a petition under Iowa Code chapter 600A to terminate the father's parental rights. After hearing the evidence presented, including the testimony of the mother, the father, and the father's girlfriend, the court terminated the father's parental rights on September 25, 2009, under Iowa Code section 600A.8(3)(b) (2009) (abandonment). The court explained:

Clearly, [the father] had an opportunity in 2007 to reunite with [the child] and to be an important part of [the child's] life. Unfortunately, [the father] continued to use illegal drugs and had to leave the home. [The father] was then arrested and jailed shortly thereafter and ultimately went to prison. The only direct contact [the father] had with [the child] while in prison was a card on [the child's] birthday. Rather than attempting to contact [the mother] himself both during and after he was in prison, [the father] relied on his girlfriend. These efforts clearly fall short of what would be necessary to foster and maintain a relationship with his child.

....

[The mother] also testified there is a support order requiring [the father] to make payments for child support for [the child]. As of the date of the hearing, [the father] was approximately \$1300 in arrears on that obligation. While some of this is certainly due to [the father's] incarceration, he should not be able to rely on his voluntary decision to participate in criminal conduct as justification for not paying adequate child support.

The court also found that termination of the father's parental rights was in the best interests of the child.

The father now appeals.

## ***II. Standard of Review.***

Termination proceedings under chapter 600A are reviewed de novo. *In re M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993). A petition for termination of parental rights under this chapter must be established by clear and convincing proof. Iowa Code § 600A.8 (2009); *In re Kelley*, 262 N.W.2d 781, 784 (Iowa 1978). The best interests of the child "shall be the paramount consideration" while also "giving due consideration" to "the interests of the parents." Iowa Code § 600A.1.

## ***III. Discussion.***

### ***A. Abandonment.***

The father contends the juvenile court erred in determining that he abandoned the child in accordance with Iowa Code section 600A.8(3). He asserts he was part of the child's life the first months of the child's life and that he maintained visitation thereafter until he was incarcerated. He contends he maintained contact while imprisoned by mailing the child a birthday card and by his girlfriend's contact with the mother requesting visitation at the prison. He also asserts that he was prevented from contacting his child because the mother did not provide him with sufficient contact information. He argues he sought visits at

the end of 2008, in early 2009, and thereafter, but the mother denied his requests. For those reasons, the father asserts he did not abandon the child. We disagree.

A parent is deemed to have abandoned a child unless the parent maintains substantial contact with the child as demonstrated by financially contributing to the support of the child; visiting the child at least monthly when physically and financially able; communicating regularly with the child or the child's custodian; or living with the child for six months within the one-year period immediately preceding the termination of parental rights hearing. *Id.* § 600A.8(3)(b). A showing of abandonment does not require total desertion; feeble contacts can also demonstrate abandonment. *M.M.S.*, 502 N.W.2d at 7.

Upon our de novo review, we find the mother has shown by clear and convincing evidence that the father abandoned his child within the meaning of section 600A.8(3)(b). He has not maintained "substantial and continuous or repeated contact with the child." See Iowa Code § 600A.8(3)(b). The evidence shows the father has made only, at best, half-hearted efforts to communicate with his child. When the father's girlfriend's first request for visitation with the child at the prison was unsuccessful, he did not further pursue the matter. The record evidences that mother did not do anything to prohibit the father from contacting the child. At the time the termination hearing was held, the father had not seen the child in almost two years. The father's conduct shows his intent to forego his parental rights. We accordingly affirm the finding of abandonment under section 600A.8(3)(b).

***B. Best Interests.***

Arguing that the record evidences that he is ready to be a positive role model and influence in the child's life because he no longer uses drugs, he established a residence, he paid child support regularly, and he had been working since his release from prison, the father contends termination of his parental rights is not in the child's best interest. We disagree.

Once we affirm the district court's finding that a ground for termination under Iowa Code section 600A.8 has been established by clear and convincing evidence, we next consider whether termination is in the child's best interests. *In re R.K.B.*, 572 N.W.2d 600, 602 (Iowa 1998). The best interests of the child "shall be the paramount consideration" while also "giving due consideration" to "the interests of the parents." Iowa Code § 600A.1.

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.

*Id.*

The juvenile court considered these matters and found termination of the father's parental rights was in the child's best interests. We look to a child's long-range, as well as immediate, interests. *R.K.B.*, 572 N.W.2d at 601. The father has not shown much interest in acting as a parent to the child. He has been content to let others raise the child. The father has no relationship with the child and has not made a genuine effort to maintain communication with the child.

The father was in arrears on his child support obligation. The father failed to affirmatively assume the duties encompassed by the role of being a parent. We conclude the juvenile court did not err in determining termination of the father's parental rights is in the child's best interests. We accordingly affirm the termination of the father's parental rights.

**AFFIRMED.**