

**IN THE COURT OF APPEALS OF IOWA**

No. 1-282 / 10-1731

Filed May 11, 2011

**IN THE INTEREST OF B.B.A.D. and B.B.B.D.,  
Minor Children,**

**J.S., Father,**  
Appellant.

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Appeal from the Iowa District Court for Benton County, Russell G. Keast,  
District Associate Judge.

A father appeals the juvenile court decision terminating his parental rights.

**AFFIRMED.**

Craig Elliott, Anamosa, for appellant.

Ray Lough, Vinton, for appellee Bethany Christian Services.

John Mossman of Mossman & Mossman, L.L.P., Vinton, guardian ad litem  
for minor children.

Considered by Vogel, P.J., Vaitheswaran, J., and Mahan, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

**MAHAN, S.J.****I. Background Facts & Proceedings.**

Jamie and Holly are the parents of twins, B.B.A.D. and B.B.B.D., who were born on April 1, 2010. Jamie and Holly had an on-and-off relationship. Both parents have a history of using methamphetamine. In addition, Jamie has an extensive criminal history. While Holly was pregnant, she decided to give the children up for adoption through Bethany Christian Services. After reviewing information provided by Bethany, she chose T.L. and D.L. to adopt the children she was carrying.

Jamie did not agree with Holly's decision to give the children up for adoption. At that time Jamie was living with his mother, and she agreed Holly and the children could also move into her home. Jamie purchased about twenty-six dollars worth of items for the children, which he kept in his room. Although Jamie had a part-time job, he did not provide any financial assistance to Holly during her pregnancy. He made no further plans for the birth of the children.

The children were born prematurely on April 1, 2010, and placed in the neonatal intensive care unit. The children had drug screens that were positive for amphetamine and methamphetamine. Jamie was present when the children were born, and he came to the hospital to see them the next day. Jamie told a caseworker from Bethany, Mikki Hamdorf, that he wanted his Aunt Victoria to adopt the children.<sup>1</sup> Holly signed a release of custody of the children. The

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<sup>1</sup> Jamie's parental rights to two older children were terminated. These children were adopted by Victoria. Jamie has supervised visitation with the children.

children remained in the hospital until April 26, 2010, and then they were placed with T.L. and D.L.

In the meantime, on April 3, 2010, as part of his probation, Jamie had a drug test, and the results were positive for methamphetamine. He was arrested on April 8 and placed in the county jail. Jamie's probation was revoked, and he was sent to prison. His discharge date is in January 2012, but he testified he expected to be released on parole in December 2010.

On April 20, 2010, Bethany filed a petition to terminate the parental rights of Jamie under Iowa Code section 600A.8(3) (2009), alleging he abandoned the children.<sup>2</sup> After a hearing, the juvenile court terminated Jamie's parental rights, finding, "While Jamie [ ] has continuously expressed an interest in maintaining his parental rights, he has not followed that declaration with any significant actions that would put himself in a position to raise his children." The court concluded termination of Jamie's parental rights was in the children's best interests. Jamie appeals the decision of the juvenile court.

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

Our review in matters pertaining to termination of parental rights under Iowa Code chapter 600A is de novo. *In re D.E.E.*, 472 N.W.2d 628, 629 (Iowa Ct. App. 1991). In cases in equity, we give weight to the factual findings of the district court, especially considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.904(3)(g).

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<sup>2</sup> Holly did not contest the termination of her parental rights under section 600A.8(1), which provides, "A parent has signed a release of custody pursuant to section 600A.4 and the release has not been revoked."

### III. Sufficiency of the Evidence.

Jamie contends the juvenile court improperly terminated his parental rights on the grounds of abandonment. He states he did not have an intent to abandon his children, and he did what he could prior to his arrest on April 8, 2010, to care for them. He claims Bethany prevented him from continuing and strengthening his relationship with the children.<sup>3</sup> Jamie asserts the children should be placed with either his mother or his aunt until he is released from prison.

Iowa Code section 600A.8(3)(a)(1) provides:

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.

(Emphasis added.) The statutory provisions in chapter 600A are to be liberally construed, and the welfare of children is our paramount consideration. *In re N.D.D.*, 434 N.W.2d 919, 919-20 (Iowa Ct. App. 1988).

In considering whether a parent has abandoned a child under this statute, we may consider the following factors:

- (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.

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<sup>3</sup> On appeal, Jamie makes an argument that Bethany did not properly have custody of the minor children under section 600A.4(3). He did not make any objection on this ground before the juvenile court, and we determine this issue has not been preserved for our review. See *In re N.W.E.*, 564 N.W.2d 451, 455 (Iowa Ct. App. 1997) (noting an issue which has not been raised before the juvenile court may not be raised for the first time on appeal).

(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 parenting 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)(2).

"Clearly, actions speak louder than words." *In re J.L.W.*, 523 N.W.2d 622, 624 (Iowa Ct. App. 1994). A parent's intent may be shown through conduct. *Id.* The evidence in this case shows Jamie has never demonstrated "a settled purpose to personally assume all parenting duties." See Iowa Code § 600A.8(3)(a)(2)(b). He would like his mother or aunt to assume the parenting responsibilities. Furthermore, Jamie does not have the fitness or ability to parent the children. See *id.* § 600A.8(3)(a)(2)(a). While he has publicly acknowledged paternity, he provided no financial support to Holly while she was pregnant, or to the children after they were born.

Beyond objecting to the termination of his parental rights, Jamie has done very little to demonstrate a willingness to assume custody of the children. See *id.* § 600A.8(3)(a)(1)(a). Section 600A.8(3)(a)(1) requires a parent to demonstrate all three factors, or the parent will be deemed to have abandoned the child. Although we do not need to address the other factors, we find Jamie has not

taken prompt action to establish a parental relationship with the children. *See id.* § 600A.8(3)(a)(1)(b). He visited the children a few times soon after they were born, but has made no other attempts to contact them. Furthermore, Jamie has not demonstrated, through his actions, a commitment to the children. *See id.* § 600A.8(3)(a)(1)(c). Jamie took no steps to learn how to address the children's medical needs as premature infants, and has made no inquiries about their health.

We conclude the juvenile court properly concluded Jamie had abandoned the children under section 600A.8(3)(a).

#### **IV. Best Interests.**

Jamie contends termination of his parental rights is not in the children's best interests. "At this step of the analysis, the paramount consideration is [the children's] best interests." *J.L.W.*, 523 N.W.2d at 625. We look to the children's long range, as well as their immediate best interests. *In re K.R.*, 737 N.W.2d 321, 323-24 (Iowa Ct. App. 2007). We determine that termination of Jamie's parental rights is in the children's best interests. Jamie has not demonstrated any interest in meeting the children's needs. The children should not be required to wait for their father to be able to become a responsible parent. *See id.* at 324.

#### **V. Hearsay.**

Finally, Jamie contends the juvenile court improperly considered his criminal record, which he objected to on the grounds of hearsay. Section 600A.7(2) provides:

Relevant information, including that contained in reports, studies or examinations and testified to by interested persons, may be admitted into evidence at the hearing and relied upon to the

extent of its probative value. When such information is so admitted, the person submitting it or testifying shall be subject to both direct and cross-examination by a necessary party.

Under this section, the court may admit evidence based on its probative value.

*State ex rel. Leas in re O'Neal*, 303 N.W.2d 414, 421 (Iowa 1981). We conclude the juvenile court could properly consider Jamie's criminal history under section 600A.7(2).

We affirm the decision of the juvenile court terminating Jamie's parental rights.

**AFFIRMED.**