

IN THE COURT OF APPEALS OF IOWA

No. 1-403 / 11-0035

Filed June 29, 2011

**IN THE INTEREST OF T.R. and M.R.,
Minor Children,**

D.L., Mother,
Petitioner,

T.M.R., Father,
Appellant.

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

A father appeals from the district court's order terminating his parental
rights to his two children. **AFFIRMED.**

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

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

Jeffrey R. Logan, Ottumwa, attorney for minor child.

Considered by Vogel, P.J., Vaitheswaran, J., and Huitink, S.J.*

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

VOGEL, P.J.

Thomas appeals the termination of his parental rights to his two children, T.R. and M.R. Because we agree with the district court that clear and convincing evidence demonstrated he abandoned the children under Iowa Code section 600A.8(3) (2009), and that termination is in the children's best interests, we affirm.

Our review is de novo. *In re M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993). When the district court terminates on more than one ground, we only need to find evidence supporting one of those grounds to affirm the termination. *In re B.L.A.*, 357 N.W.2d 20, 22 (Iowa 1984).

I. Background Facts and Proceedings.

T.R. was born in 2003, and M.R. in 2005, to Desiree and Thomas, who were married in December 2002. Desiree and Thomas separated in 2008, after Desiree suspected Thomas of relapsing into drug use. A decree of dissolution of marriage granted Desiree physical care of the children and Thomas visitation. Desiree married Darrell¹ in January 2010, and the children reside with them.

Following Desiree and Thomas's divorce, Desiree offered Thomas visitation, but found him often lacking in stable housing, money, beds, and clothing for the children. Thomas had visitation approximately every other weekend from December 2008 through February 2009. Desiree testified she gave Thomas multiple opportunities to have the children for a week or more at time, but he declined.

¹ There is a discrepancy in the spelling of this name: "Darrell" is the spelling used in the trial transcript, and "Daryl" is used in the district court order.

Thomas has a long criminal history, including multiple felony convictions. He testified that he had been using methamphetamine since he was nineteen years old, and was thirty-six at the time of trial.² He also testified he could not recall the number of times he had been incarcerated because it was too many to recall. He had his probation revoked in August 2009, and has been incarcerated since that time. Although Thomas saw the children briefly in May or June of 2009, his last visit of any duration was in February 2009. He admitted his last attempt to contact the children was when he sent them Christmas cards in December 2009. He testified he “quit trying” shortly thereafter because he received a letter from Desiree’s attorney “that they were trying to terminate my parental rights . . . and it was a lost cause for me to go any further trying to have contact.” In response, Thomas enrolled in a six-week class, called “Dads Make A Difference.” He is expected to discharge his current sentence in October 2011. To date, he has paid only \$3696 of the \$11,636 he owes in child support.

After hearing the evidence presented, including the testimony of both Desiree and Thomas, the court terminated Thomas’s parental rights on December 7, 2010, under Iowa Code sections 600A.8(3) (abandonment) and (4) (failure to provide financial support). Thomas appeals.

II. Abandonment.

Thomas first asserts the court erred in finding he abandoned T.R. and M.R. A parent is deemed to have abandoned the child unless the parent

² Thomas was incarcerated for second degree theft at the time of trial, and participated in the termination hearing via telephone. During Desiree’s testimony, he was warned not to use abusive language, but when he persisted, the court terminated his phone call. He was later allowed to rejoin the hearing so that he could testify.

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. Iowa Code § 600A.8(3)(b). A parent's conduct in rejecting parental duties demonstrates an intent to abandon a minor child. Iowa Code § 600A.2(19). A showing of abandonment does not require total desertion; feeble contacts can also demonstrate abandonment. *In re M.M.S.*, 502 N.W.2d 4, 7 (Iowa 1993).

Thomas asserts he made efforts to communicate with the children, but Desiree would not bring the children to visit him in prison. From the record, it appears that Thomas had visits with the children immediately following the dissolution of marriage in December 2008, but then relapsed in his drug use and did not have a meaningful visit after February 2009. Desiree testified Thomas never requested additional visits nor attempted to communicate with the children. The district court found,

[T]he evidence establishes [Thomas] has abandoned or deserted his children by failing to maintain substantial and continuous contact with them, by failing to regularly communicate with the children, and by failing to visit the children at least monthly when he was otherwise able to do so during periods he was not incarcerated. By [Thomas's] own admission he has made no effort to contact the children in the last six months, and has not seen them at all for more than a year. According to the most credible evidence presented, his last real visit with the children was in February 2009 or about Valentine's day. He was offered an opportunity to have the children with him for a visit in March while [Desiree] went out of state, but he chose not to. He saw them one other time in about June 2009, but [Desiree] indicated his demeanor during the visit was very upsetting to the children.

“An abandoned child is no less abandoned because the parent can rationalize a reason for the abandonment.” *Id.*

At the time of trial, Thomas had not been a significant part of T.R. and M.R.’s lives in nearly two years. See *In re C.A.V.*, 787 N.W.2d 96, 101 (Iowa Ct. App. 2010) (explaining that minimum contact, including extended periods of time without inquiry from a parent, has been deemed to constitute abandonment). He acknowledged that since August 2008, he has spent most of his time in jail, substance abuse treatment, or prison, and his children have not been central to his life. Under our case law, a parent “cannot use his incarceration as a justification for his lack of relationship with the child.” *Id.* Thomas made a conscious choice to engage in criminal activities, resulting in his multiple convictions and incarcerations, and by failing to maintain meaningful communication and association with the children, he relinquished his parental rights and privileges. See *In re Goettsche*, 311 N.W.2d 104, 107 (Iowa 1981). The district court terminated Thomas’s parental rights in part on the ground of abandonment, and we agree with its finding under Iowa Code 600A.8(3).

III. Best Interests.

Thomas next contends termination of his parental rights is not in the children’s best interests. Iowa Code section 600A.1 states “[t]he best interest of the child subject to the proceedings of this chapter shall be the paramount consideration in interpreting this chapter.” We look to the children’s long range, as well as their immediate best interests. *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998). The district court found, “Given the long history of [Thomas’s] drug use, and his long persistent history of criminal conduct it is unlikely he will ever

be available to parent these children for any length of time.” Evidence of the parent’s past performance may be indicative of the quality of future care he is capable of providing. *In re J.L.W.*, 523 N.W.2d 622, 625 (Iowa Ct. App. 1994). We agree with the district court that termination of Thomas’s parental rights is in the children’s best interests. Thomas has not demonstrated he has the ability or consistent desire to be a part of the children’s lives. T.R. and M.R. should not be required to wait for their father to be able to become a responsible parent. See *id.*

Further, Desiree’s husband, Darrell, seeks to adopt these children if Thomas’s rights are terminated. Darrell has become a stable and reliable fixture in the children’s lives, and has taken an active interest in them, participating in their school and other activities.

We affirm the termination of Thomas’s parental rights under Iowa Code section 600A.8(3), and agree with the district court that termination is in T.R. and M.R.’s best interests.

AFFIRMED.