

**IN THE COURT OF APPEALS OF IOWA**

No. 1-508 / 11-0060  
Filed July 13, 2011

**IN THE INTEREST OF M.J.K.,  
Minor Child,**

**J.N.W., Mother,  
Petitioner,**

**J.A.K., Father,  
Appellant.**

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

A father appeals the termination of his parental rights to a child under Iowa  
Code chapter 600A (2009). **AFFIRMED.**

Stephen R. Smith, Ottumwa, for appellant father.

Michael J. Moreland and Heather M. Simplot of Harrison, Moreland &  
Webber, P.C., Ottumwa, for appellee mother.

Steven Gardner of Kiple, Deneffe, Beaver, Gardner & Zingg, L.L.P.,  
Ottumwa, for minor child.

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

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

**VAITHESWARAN, J.**

In this private termination action, a father appeals the termination of his parental rights to his son, born in 2009. He contends (1) he did not abandon the child as found by the juvenile court pursuant to Iowa Code section 600A.8(3) (2009), and (2) termination was not in the child's best interests.

*l.* The phrase “[t]o abandon a minor child” means that a parent “rejects the duties imposed by the parent-child relationship” and makes “no provision” or “only a marginal effort to provide for the support of the child or to communicate with the child.” Iowa Code § 600A.2(19).

[A] parent is deemed to have abandoned the child 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.

*Id.* § 600A.8(3)(b).

The record reflects the mother and father had a short relationship, which culminated in the mother's pregnancy. During the pregnancy, the father was on probation, violated his probation, was sent to a halfway house, ran away from the halfway house, and was subsequently jailed and imprisoned. When the child was born in early 2009, the father was still incarcerated and he remained incarcerated through the termination hearing. Although he earned a small

amount of money through prison employment, he did not remit any of that money to the mother for the child's support.

Eventually, the mother filed a petition to terminate the father's parental rights. Following a hearing in which the father participated by telephone, the juvenile court granted the petition.

On appeal, the father asserts that the mother interfered with his efforts to maintain a relationship with the child. Reviewing the record de novo, we disagree. See *In re C.A.V.*, 787 N.W.2d 96, 99 (Iowa Ct. App. 2010) (setting forth the standard of review).

Initially, mother and child made six-hour round-trip journeys to visit the father in prison. After twenty-three such trips, the mother questioned whether the father was interested in developing and maintaining a relationship with the child. To test her concern, she decided to see how long it would take before the father asked about the child. After two weeks of conversations during which the father made no mention of his son, the mother concluded that he was not serious about fostering a relationship with him. She made two additional trips to the prison and then curtailed the visits. She also contacted the prison and told officials she did not wish to receive any letters from him.

We agree with the juvenile court that the mother only discontinued contacts with the father after it became apparent that the father had abdicated his role as a parent. As the juvenile court stated,

In this case, [the father] has never seen his child in any setting other than when he was required to wear a jail or prison uniform. [The father] certainly cannot complain about [the mother] not attempting to foster a relationship between him and [the child]. There is no dispute in the record that [the mother] brought [the

child] to see [the father] in prison on multiple occasions. It was only after [the mother] believed [the father] was under the influence during a visit that she realized he would never be serious about being a parent to her son. After coming to that realization, [the mother] chose not to bring [the child] to the prison for further visits.

While [the mother] did notify prison officials early this year she no longer wanted contact from [the father], he has no one to blame but himself for being unavailable as a parent to his son. At the time [the father] and [the mother] found out they were expecting a child, [the father] was in the halfway house and was employed. In addition, [the mother's] parents had purchased a home for the couple to live in with their son after he was released from the halfway house. Like perhaps no other time in his life, [the father] was given an opportunity to grow up, take responsibility like an adult, and succeed. Sadly, he threw all of that away when he chose to walk away from the halfway house, quit his job, commit yet another felony, and ultimately be sentenced to prison. So, it is as a result of [the father's] own actions he has been unavailable for his son.

We fully concur in the court's findings and conclusions. *C.A.V.*, 787 N.W.2d at 101 (stating a parent "cannot use his incarceration as a justification for his lack of relationship with the child" (citation omitted)).

*II.* "Once we determine a ground for termination under 600A.8 has been established by clear and convincing evidence, we must next determine whether it is in the child's best interests to order termination of parental rights." *In re J.L.W.*, 523 N.W.2d 622, 625 (Iowa Ct. App. 1994). The "paramount consideration" at this point in the analysis is the best interests of the child. *Id.*

The father showed virtually no willingness to support the child financially and even less willingness to assist the mother with parenting. For these reasons, we conclude termination of the father's parental rights was in the child's best interests.

**AFFIRMED.**