

**IN THE COURT OF APPEALS OF IOWA**

No. 1-831 / 11-0775  
Filed November 23, 2011

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

**H.M.H., Mother,**  
Petitioner,

**D.T.M., Father,**  
Appellant.

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Appeal from the Iowa District Court for Keokuk County, Crystal S. Cronk,  
District Associate Judge.

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

Jeffrey L. Powell of Tindal Law Office, P.L.C., Washington, for appellant.

Amber L. Thompson of Stravers Law Firm, Oskaloosa, for petitioner.

Katherine Lujan of Lloyd, McConnell, Davis & Lujan, L.L.P., Washington,  
attorney and guardian ad litem for minor children.

Considered by Sackett, C.J., and Vogel and Eisenhauer, JJ.

**VOGEL, J.**

Donara (Tate) appeals the termination of his parental rights to his two children, M.M. and D.M. We agree with the district court that clear and convincing evidence demonstrated Tate abandoned the children under Iowa Code section 600A.8(3)(b), as by his own actions, he absented himself from the children's lives. Therefore, we affirm.

**I. Background Facts & Proceedings**

M.M. was born in 2001, and D.M. in 2004, to Hayley and Tate, who were married in February 2004. Hayley and Tate separated in 2005. In December 2005, Tate was placed on probation after convictions for third-degree sexual abuse and attempted burglary. He was incarcerated from October 2006 to June 2008 for violating the terms of his probation. While in prison, Hayley brought the children to visit Tate three or four times, and Tate wrote a few letters to the children. Following Tate's release from prison in June 2008, he lived with his cousin, but Hayley also allowed him to stay with her as the cousin's residence was not suitable for the children.

At the termination hearing, Hayley testified to events that occurred on August 30, 2008. Tate was watching the children while Hayley went out with a friend. Tate called Hayley several times during the evening, relaying that he was angry with his cousin. The children were asleep when Hayley returned home to appease Tate. When Hayley's phone rang and Hayley told Tate it was "some guy that [she] met at the bar," Tate grew very angry and threw nachos all over the floor. Hayley went upstairs, and took D.M. to bed with her as he had

awakened. Tate went upstairs shortly thereafter, and began to assault Hayley—picking her up and throwing her to the floor, grabbing her neck, moving first to D.M.’s bedroom and then to M.M.’s bedroom, where Tate threw Hayley against M.M.’s bedroom dresser, causing her to fall onto M.M. Both children witnessed the abuse, and both pleaded for Tate to stop. Neighbors called 911, but by the time police arrived Tate had fled the scene.

Tate relayed the events of the night in less violent terms. He testified, “I didn’t like punch her and just beat her. I did grab her around the neck. . . . Maybe twice.” He also admitted to pushing Hayley into a dresser and that “[o]nce [Hayley] hit the dresser, she came off the dresser and then hit M.M.” He further acknowledged that during his relationship with Hayley he had been very manipulative and mentally abusive to her.

Following the August 2008 incident, Tate’s location remained elusive to Hayley and the authorities. It was not until June 2010 that Tate was finally located by the police and arrested. He pleaded guilty to domestic abuse with intent to inflict serious injury under Iowa Code section 708.2A(2)(c), and on November 30, 2010, was sentenced to one year of imprisonment, with all but ninety days suspended.<sup>1</sup> After serving ten days, he could be considered for the Electronic Monitoring System release; he was also ordered to complete a thirty-six week Batterer’s Education Program. In addition, Tate was ordered to comply with a no-contact order, which was to remain in effect for five years, and listed Hayley as the protected party, along with M.M and D.M. as “other protected

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<sup>1</sup> The sentencing order indicates this sentence is to run consecutive to another conviction. At the termination hearing, Tate also stated he is on probation for failing to register as a sex offender.

persons.” The order stated: “Order regarding contact with children shall be consistent with any civil order.”

## II. Standard of Review

Our review of termination of parental rights cases is de novo. *In re A.H.B.*, 791 N.W.2d 687, 688–89 (Iowa 2010). While we are not bound by the district court’s findings of fact, we do give them weight, particularly in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010).

## III. Analysis

Tate asserts the district court erred in finding abandonment, as Hayley obstructed his efforts to maintain a parental relationship. Iowa Code section 600A.8(3) states, in pertinent part:

b. If the child is six months of age or older when the termination hearing is held, 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.*

Iowa Code § 600A.8(3)(b)(1), (2) (2009) (emphasis added). 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). However, where a person having lawful custody of the child prevents the

contesting parent from either (1) visiting the child at least monthly when physically and financially able to do so, or (2) having regular communication with the child or the child's caregiver or custodian when the parent is physically and financially unable to visit the child, the grounds for abandonment are not satisfied. Iowa Code § 600A.8(3)(b)(1), (2).

This case requires us to examine both Hayley and Tate's actions as they pertain to the statute. We must determine whether Hayley—after suffering serious abuse, prevented Tate from having contact with the children, or whether Tate—in keeping his whereabouts unknown for nearly two years after the abuse, abandoned the children.

At the termination hearing, Hayley freely testified as to the various efforts she made to keep Tate away from herself and the children. About two weeks after the 2008 incident, Hayley and the children moved from Des Moines to Oskaloosa, as Hayley feared for both her safety and that of the children. To protect her whereabouts, Hayley told several people that she and the children were living in Kansas City. She changed her phone number and refused to have any contact with Tate or anyone he may have asked to contact her on his behalf. Tate attempted one phone call in November 2008, and one in 2009, with no success. In December 2009, Tate sent Christmas gifts to the children to Hayley's parents' house, but Hayley chose to donate the gifts to a local crisis center rather than give them to the children.

Hayley testified that she kept her whereabouts secret on the advice of the police and the Iowa Department of Human Services (DHS). It was Hayley's understanding,

They actually told me, because at that point I felt like I was the one being punished for all of this, and they said to me, you know, you're not the one being punished for this, but if you allow any contact with [Tate] and your children, then they could be possibly taken away from you.

Moreover, the DHS worker who interviewed Hayley and both children in late 2008 testified at the termination hearing:

Q: After you met with Haley and the two children, did you make any recommendations to Haley? . . . A: [I] recommended that she doesn't allow any contact with the father that's not been authorized by the Department . . . .

Q: Did you and Hayley have any conversation about what might happen if she allowed contact between the children and [Tate]? A: If she allowed unauthorized contact between the father and the children, it could result in us re-assessing the children's safety.

With this information, Hayley continued to elude any of the infrequent contact by Tate or his family or friends on his behalf. In February 2009, Hayley obtained a dissolution of marriage decree, but with no provision for custody, child support, or visitation.<sup>2</sup> In April 2010, Hayley married a long-time friend who stands ready to adopt the children.

While Tate did not vigorously pursue contact with Hayley, he did on occasion put out feelers to his family and friends in hopes of finding Hayley and the children. He admitted that he always knew where Hayley's parents lived and had their phone number. On a few occasions between 2009 and mid-2010, Tate and Hayley corresponded by e-mail. In May 2010, Tate found where Hayley was

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<sup>2</sup> Service was accomplished by publication and a default was entered against Tate.

living after searching on the internet and finding her name on what appeared to be a church's newsletter website. However, even with that information he did not attempt to contact Hayley or the children. Further, over the course of the nearly two years, Tate, knowing there was an outstanding arrest warrant for him, would not reveal his location to Hayley, in spite of her urging him to turn himself in to law enforcement.

During her testimony, Hayley repeatedly stated that she was trying hard to prevent Tate from knowing where she and the children were and to prevent any contact with him. The dilemma Hayley found herself in was how to protect herself and her children and follow the law, as she understood it to be. Tate was on the run from an outstanding arrest warrant for nearly two years. Hayley had a no-contact order to keep Tate away from her and the children and was advised she should not allow Tate to have any unauthorized contact, or fear repercussions. Hayley repeatedly tried to convince Tate to tell her his whereabouts and to turn himself in to law enforcement. Tate refused.

Hayley lived in fear of Tate and took protective actions to keep herself and the children safe, while abiding by the no-contact order. Because Tate did not come forward to face the likely criminal charges that would be filed against him, he now claims Hayley obstructed his meager efforts to maintain a relationship with his children. Tate correctly asserts the statutory elements of abandonment cannot be satisfied by clear and convincing evidence when one parent is prevented by the other from visiting or communicating with the children. Iowa Code § 600A.8(3)(b)(1), (2). However, what Tate overlooks in the statute is that

he is also required to put forth an effort to visit the children “at least monthly” and have “regular” communication with the children, when not prevented from doing so. His failure to let Hayley know of his whereabouts turns his claim that Hayley was not forthcoming with her location on its head. Hayley was obeying the no-contact order. Had Tate cooperated and come forward to law enforcement he could have been on course to regain contact with the children. As the district court stated, “Tate’s most consistent trait during his testimony was his ability to place blame for his situation on others.”

For those reasons, the district court’s conclusion that abandonment has been proved by clear and convincing evidence under the statute must be affirmed.

**AFFIRMED.**