

**IN THE COURT OF APPEALS OF IOWA**

No. 2-095 / 11-0760  
Filed February 29, 2012

**IN THE INTEREST OF R.L.H.,  
Minor Child,**

**MAXINE M. BUCKMEIER,**  
Petitioner,

**A.T.M., Father,**  
Appellant.

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Appeal from the Iowa District Court for Woodbury County, Mary Jane Sokolovske, Judge.

A father appeals from the termination of his parental rights. **AFFIRMED.**

Patrick Thomas Parry of Forker & Parry, Sioux City, for appellant father.

David L. Gill of Baron, Sar, Goodwin, Gill & Lohr, Sioux City, for appellee mother.

Maxine M. Buckmeier of Maxine M. Buckmeier, P.C., Sioux City, for appellee petitioner.

David Dawson, Sioux City, for minor child.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

**EISENHAUER, C.J.**

A father appeals from the termination of his parental rights pursuant to Iowa Code section 600A.8 (2011). He contends the grounds for termination were not proved by clear and convincing evidence and termination is not in the child's best interests. Because we find the father has abandoned the child and the child's best interests are served by termination of the father's parental rights, we affirm.

The mother gave birth to R.L.H. in December 2010 and executed a release of custody three days later. She identified A.T.M. as the putative father, indicating they were not married. She released custody of the child to the petitioner to permit her to file a petition to terminate parental rights. The termination petition was filed when the child was nine days old, alleging the putative father had abandoned the child. The father was appointed counsel to contest the termination at the hearing held on February 22, 2011. The court entered its ruling terminating parental rights on April 22, 2011.<sup>1</sup>

We review the termination order de novo. See *In re C.A.V.*, 787 N.W.2d 96, 99 (Iowa Ct. App. 2010) (holding review of proceedings under chapter 600A is de novo). We give weight to the juvenile court's fact findings, especially those regarding witness credibility, but are not bound by them. *Id.* Our overarching concern in termination proceedings is the child's best interest. *Id.*

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<sup>1</sup> The mother's rights were terminated based on her consent, and she has not appealed.

Termination is appropriate under section 600A.8(3) where a parent has abandoned the child. By statute, a parent is deemed to have abandoned a child under the age of six months unless the parent has done 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.

Iowa Code § 600A.8(3)(a)(1). In making this determination, the court may consider:

- (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.
- (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 parental 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.

*Id.* § 600A.8(3)(a)(2). The subjective intent of the parent unsupported by evidence of the foregoing acts does not preclude a finding of abandonment. *Id.*

§ 600A.8(3)(c). We may also consider the conduct of a putative father toward the mother during the pregnancy. *Id.*

The mother and putative father began living together in late 2008. The mother did a home pregnancy test in March 2010 when she and the putative father were living together and he saw the positive test results. The father is now thirty years old. Clear and convincing evidence establishes the father has a lengthy history of domestic abuse. This pattern of behavior extended through the mother's pregnancy. In May 2010, the father was charged with third-degree harassment after sending the mother text messages threatening to beat her up. He pled guilty to the charge in July 2010. Contact between the mother and father ended on August 26, 2010, when the father kicked down the door to the mother's home while drunk. The pair argued over the child's adoption, with the father tearing up the adoption papers. After that date, the mother changed her phone number and moved to avoid contact with the father, whom she begged to stay away from her. The father threatened to kill the mother in a message he sent to her.

The father also has a long history of abusing alcohol and drugs. He was arrested in September 2010 and charged with possession of marijuana with intent to deliver, possession of marijuana—second violation, and a drug tax stamp violation. At the time of the termination, he was awaiting trial on these charges and faced a possible ten-year prison term if convicted. The father was also jailed from January 4, 2011, until February 9, 2011, while serving sentences for driving while barred, driving under the influence, contempt, and possession of marijuana. He had not completed any substance abuse treatment at the time of the termination hearing.

The father's paternity has not been established. He stated at the termination hearing he was eighty percent sure the child was his. He later stated his certainty had increased to ninety percent. He has not held himself out as the father of the child and failed to provide the mother with any emotional or financial support during her pregnancy. At the time of the termination hearing, the father did not have a job or a residence of his own. He testified he was unable to care for the child at the present time. The guardian ad litem advocated for termination.

Upon our de novo review, we find clear and convincing evidence establishes the father has abandoned the child within the meaning of Iowa Code section 600A.8(3). The statute clearly expects a parent to assume the parental role when he learns he is the father of a baby. Although he became aware of the mother's pregnancy in March 2010, he has not taken prompt action to establish a parental relationship with the child nor has he demonstrated, through actions, a commitment to the child. He has ongoing, unaddressed issues with substance abuse and domestic abuse and was facing criminal charges at the time of termination. He failed to hold himself out as a father to the child, and rather than supporting the mother during the pregnancy, he abused her and threatened her, endangering both the mother and his unborn child. He has never seen the child. The mother testified as to her belief the father only wished to retain parental rights to hurt her.

We likewise find termination is in the child's best interests. The evidence shows terminating the father's parental rights so the child can be adopted gives primary consideration to the child's safety and is the best placement for furthering

his long-term nurturing and growth, as well as the placement that will cater to the child's physical, mental, and emotional needs. See *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010) ("In considering whether to terminate, 'the court shall give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child.'"). Accordingly, we affirm.

**AFFIRMED.**