

IN THE COURT OF APPEALS OF IOWA

No. 2-1037 / 12-1161
Filed January 9, 2013

**IN THE INTEREST OF B.B, A.B., AND J.B.,
Minor Children,**

**M.M.B., Grandmother,
Petitioner/ Appellee,**

**J.B., Father,
Respondent/ Appellant.**

Appeal from the Iowa District Court for Warren County, Peter A. Keller,
Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Amy Pellegrin (Roller) of Hopkins & Huebner, P.C., Des Moines, for
appellant father.

Cathleen J. Siebrecht of Siebrecht Law Firm, Des Moines, for appellee
grandmother.

Brent M. Pattison of Drake Legal Clinic and Shannon Schuehle, Student
Attorney, Des Moines, attorneys and guardians ad litem for minor children.

Considered by Doyle, P.J., and Mullins and Bower, JJ.

DOYLE, P.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 children's best interests. Because we find the father has abandoned the children and the children's best interests are served by termination of the father's parental rights, we affirm.

I. Background Facts and Proceedings.

J.B. is the father of the three children at issue in this case born in 2002, 2003, and 2005, respectively.¹ The father noticed the mother was distant with the children after each child's birth, and he at times was the sole caregiver for the children. Despite his observations of the mother's relationship with the children, the father left the children in the care of the mother when he was working.

The family moved numerous times. In 2005, the parents lived with the father's brother, who had a known history of sexual child abuse. The father stated he believed the children were safe with his brother because his brother had completed a sex-offender program and because he believed the mother was supervising the children. Tragically, they were not safe; two of the children were sexually abused by their uncle.

The family again moved in early 2006. The father took a job that required him to travel for varying amounts of time, sometimes up to a week. Although he

¹ The children's biological mother voluntarily consented to the termination of her parental rights in 2012. Her rights are not at issue in this appeal.

knew the mother was abusing alcohol and substances at that time, he continued to allow the children to remain her care.

In December 2006, the Iowa Department of Human Services (Department) became involved with the family after it made a finding of physical abuse against the mother for punching one of the children in the nose. The father stated he only learned of this incident after a Department worker arrived at the family's home to make an inspection.

Thereafter, the father was laid off from his employment, and he decided to pursue his commercial driver's license at a three-month program in Utah. About that time, the mother entered a substance abuse treatment facility that permitted the children to live with her. The father then relocated to Utah in September 2007. He later learned the mother had been kicked out of the treatment program, and he returned to Iowa in November 2007 for one week. At that time, the maternal grandmother agreed she would care for the children while the father returned to Utah to finish his program. The children have remained in her care since.

In January 2008, the father voluntarily agreed to a legal guardianship of the children by the maternal grandmother in a mediation facilitated by the Department, and the grandmother was appointed guardian of all three children by the district court two months later. The father stated he was unhappy with the amount of visitation allowed by the grandmother, and in early 2009, the parents filed a motion to terminate the grandmother's guardianship. The district court denied the parents motion, but an agreement was made allowing for supervised visitation by the parents. Although the father attended his scheduled visits for

four months, his visitation ended after he was arrested and charged with conspiracy following an incident where he and the mother assaulted a relative of the father. In May 2009, the district court determined the parents could have contact with the children but only in a therapeutic setting. The father has made a few attempts since that time to visit the children, but he failed to follow-up with the children's therapist. The father has not seen the children since 2009.

In 2012, the grandmother filed her petition for termination of the parents' parental rights. The father resisted. Following a trial, the district court entered its order terminating the father's parental rights, finding he abandoned the children and the termination of his parental rights was in the children's best interests.

The father now appeals.

II. Standard of Review.

Termination proceedings under chapter 600A are reviewed de novo. *In re M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993). A petition for termination of parental rights under this chapter must be established by clear and convincing proof. Iowa Code § 600A.8; *In re Kelley*, 262 N.W.2d 781, 784 (Iowa 1978). The best interests of the child "shall be the paramount consideration" while also "giving due consideration" to "the interests of the parents." Iowa Code § 600A.1.

III. Discussion.

A. Abandonment.

The father contends the district court erred in determining that he abandoned the children in accordance with Iowa Code section 600A.8(3). A parent is deemed to have abandoned a child unless the parent 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. *Id.* § 600A.8(3)(b). A showing of abandonment does not require total desertion; feeble contacts can also demonstrate abandonment. *M.M.S.*, 502 N.W.2d at 7.

Upon our de novo review, we find there is clear and convincing evidence to support the district court's conclusion the father abandoned the children within the meaning of section 600A.8(3)(b) because he has not maintained "substantial and continuous or repeated contact with the child[ren]." See Iowa Code § 600A.8(3)(b). Here, the father has not seen the children since 2009. Although it is true the grandmother held the father to the letter of the court's 2009 ruling for visitation by way of the children's therapist, she followed the court's ruling. The father not only failed to follow-up with the children's therapist for arranging for some sort of visitation with the children, he failed to request the district court change or modify the guardianship thereafter. Additionally, the father concedes he has provided no monetary support for the children. While he points out that the grandmother did not request support, section 600A.8(3)(b) is not limited to court-ordered support payments. Those types of payments are the subject of a separate provision. See *id.* § 600A.8(4). For these reasons, we agree with the court's conclusion that the father abandoned the children.

B. Best Interests.

Once we affirm the district court's finding that a ground for termination under Iowa Code section 600A.8 has been established by clear and convincing

evidence, we next consider whether termination is in the children's best interests. *In re R.K.B.*, 572 N.W.2d 600, 602 (Iowa 1998). The best interests of the children "shall be the paramount consideration" while also "giving due consideration" to "the interests of the parents." Iowa Code § 600A.1.

The best interest of a child requires that each biological parent affirmatively assume the duties encompassed by the role of being a parent. In determining whether a parent has affirmatively assumed the duties of a parent, the court shall consider, but is not limited to consideration of, the fulfillment of financial obligations, demonstration of continued interest in the child, demonstration of a genuine effort to maintain communication with the child, and demonstration of the establishment and maintenance of a place of importance in the child's life.

Id. We look to a child's long-range, as well as immediate, interests. *R.K.B.*, 572 N.W.2d at 601.

The district court considered these matters and found termination of the father's parental rights was in the children's best interests. Upon our *de novo* review, we agree. Here, the father has clearly not affirmatively assumed the responsibilities included in his role as the children's father. The father has not provided financial support, nor has he made a genuine effort to maintain contact with the children. Again, the father has not seen his children since 2009.

In addition to the factors cited above, the children's psychological issues in connection with their abuse militated in favor of termination. The children's therapist testified she believed the children were severely traumatized:

The kids have [gone] through a lot of trauma and abuse when they were youngsters living in the care of their parents. [A] lot of drugs and alcohol in the home or being used [F]requent arrests, frequent moves. The kids were locked in or shut in rooms without adult supervision for extended periods of time—I do not know how long—but extended periods of time to the point where there was a couple of incidents of the kids getting hurt, TV pulled

over on [one of the children's] head—and she would have been under two [years old].

[Another child] talks about the light bulb being [broken] too so they were in the dark. Those kinds of issues going on. The kids talk about how they witnessed violence between family members, and their mother [chasing] them with a knife and Jason mask after allowing them to watch horror movies

The therapist further testified she believed that if the children were to have any kind of contact with the parents at this point in time, their behavior would regress:

[E]very time we have a regression in their behavior it takes us longer to pull them back and get them back into a more age appropriate behavior. And so I believe any kind of contact with the parents would regress their behavior again and at some point it gets harder and harder for us to, again, bring them back into what we would consider normal behavior.

. . . .

While I believe that [the children] all in their own way love their parents, . . . [t]hey don't know their parents and so they would not have any secure attachment whatsoever at this point in time. [W]e have not talked about [the father] much—kids do not bring [the father] up. But they also fear—they have a lot of fears and they talk about a lot of fears. So I think they love their parents, they also fear the memories and the situations and what happened when they were with their parents.

. . . .

I believe that the children need a stable, safe home life and I believe that they need permanency in order to further move past their mental health issues. Instability that they have seems to make that worse in that they want to know where they are going to be. They don't want to have to worry. They don't want to have to wonder what's going to happen. And in my opinion they need stability and permanency.

Both the children's therapist and their guardian ad litem recommended the father's parental rights be terminated. The therapist stated her recommendation would be the same even if she were to assume, for the sake of argument, the father had not been using drugs or alcohol when the children were in his custody, because he did not protect them from their abuser.

Here, the father has been in and out of the children's lives. He left them in the mother's care even though he recognized severe problems concerning the mother's behavior and substance use. The children have had little to no stability in their lives until they were placed in the care of their grandmother. And once the children were securely in the grandmother's care, the father has left them there but for a few attempts to contact or see them. The children are currently thriving in the care of their maternal grandparents. They are doing well in school, they participate in activities, and they get the medical and mental health care they need. The grandparents wish to adopt them. For all of the above stated reasons, we agree that the termination of the father's parental rights is in the children's best interests.

Upon our de novo review, we find the grandmother presented clear and convincing evidence of the father's failure to parent, to visit, or to maintain contact with his children, and terminating the father's parental rights is in the children's best interests. Accordingly, we affirm the district court's termination of the father's parental rights.

AFFIRMED.