

IN THE COURT OF APPEALS OF IOWA

No. 2-1101 / 12-1306
Filed February 13, 2013

**IN THE INTEREST OF A.M.L.,
Minor Child,**

**S.R.H., Mother,
Appellant.**

Appeal from the Iowa District Court for Linn County, Jane F. Spande,
Associate Juvenile Judge.

A mother appeals the termination of her parental rights to her child.

AFFIRMED.

Edward Crowell, Cedar Rapids, for appellant mother.

Mark D. Fisher and Patricia J. Meier of Nidey, Erdahl, Tindal & Fisher,
Cedar Rapids, for appellee father.

Carrie Bryner, Cedar Rapids, attorney and guardian ad litem for minor
child.

Heard by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

TABOR, J.

A.M.L.—who is now seven—has had no contact with her mother, Shawna, for more than three years. The juvenile court granted a petition filed by A.M.L.’s father, James, to terminate Shawna’s parental rights under Iowa Code section 600A.8 (2011). Shawna appeals, challenging the proof of abandonment, the court’s jurisdiction to consider her failure to pay court-ordered support, and whether the termination is in A.M.L.’s best interests.

Upon our de novo review, we find clear and convincing evidence supports the court’s decision to terminate for abandonment under section 600A.8(3). Because we also conclude severing the relationship with her biological mother serves A.M.L.’s best interests, we affirm the order terminating Shawna’s parental rights.

I. Background Facts and Proceedings

James and Shawna met in October 2004 and dated for approximately two weeks. Shawna became pregnant and gave birth to A.M.L. in August 2005. Shawna did not name James as the father on the birth certificate.

In June 2007, James married Amanda. They have two daughters together.

James learned A.M.L. might be his daughter in November 2008 when he was served with notice of a child support action filed by the State of Iowa. Paternity testing confirmed James was A.M.L.’s father. On March 17, 2009, one month after his paternity was confirmed, James filed a petition to establish paternity, custody, and visitation. At that time, Shawna was incarcerated on

pending charges of criminal mischief and aiding and abetting theft and burglary. The court granted James temporary custody of A.M.L.

A.M.L. had no relationship with James or his family when he assumed custody, and several uniformed law enforcement officers participated in the process of moving the child on March 23, 2009. Shawna's mother, Amy, received James's email address and cellular telephone number on that date. Amy used the information to contact James and Amanda about A.M.L. The grandmother did not provide the contact information to Shawna because she did not believe she had the authority to do so.

At the April 15, 2009 hearing on temporary custody, Shawna agreed A.M.L. should remain with James. A review hearing was set for July 22, 2009, but notice was sent to the wrong address for Shawna. The court continued the hearing until September 25, 2009, and both James and Shawna attended. Both parents were ordered to participate in mediation education classes, which they did on October 2, 2009.

The court held another review hearing on October 27, 2009. At that time, James was employed by Sears and the court ordered him to provide Shawna with his work schedule. James quit that job about one week later—before providing her with his schedule. At the review hearing, Shawna asked to see A.M.L. the following weekend. James told her to call to make arrangements, but Shawna failed to call.

When the court first placed A.M.L. with James, several circumstances indicated the girl had suffered neglect in Shawna's care. The juvenile court

noted that in March 2009, A.M.L. was “still very small and, although three years of age, was regularly using diapers” because Shawna made “no effort to toilet train” her. Her speech was severely delayed. The child’s medical records show she suffered a number of respiratory infections and at the age of two, ingested flea and tick medication. A.M.L. also had suffered a second-degree burn to her hand when she fell on an open oven door. In September 2007, a friend of Shawna brought A.M.L. in for a doctor’s appointment; the doctor’s notes stated, “I am worried about her speech and language development. I am worried about her overall physical development, and I am worried about her eating and sleeping as well.” In January 2009, Shawna suspected her boyfriend had sexually abused A.M.L.

Immediately after A.M.L. was placed in his care, James took her to counseling where she was diagnosed with post-traumatic stress disorder (PTSD). Her counselors suspected she had reactive attachment disorder and referred her to a specialist, Dr. Beth Troutman. A.M.L. met with Dr. Troutman daily at first. Shawna attended two of her daughter’s therapy sessions. A.M.L. became very upset at Shawna’s presence at the first therapy session so Shawna observed the second session from behind glass in an adjoining room. Dr. Troutman recommended Shawna attend individual therapy sessions with her, but Shawna did not follow through. A.M.L. progressed with therapy and eventually graduated to in-home services. It was not expected she would need additional services following June 2011.

Aside from attending those two therapy sessions, Shawna has seen A.M.L. twice since the child was placed in James's custody. When A.M.L. was four years old, the parents agreed to meet at a park in Cedar Rapids. When A.M.L. saw Shawna, she began crying and grabbed James's leg hard enough to cause bruises. Due to A.M.L.'s reaction, James loaded the child back in the car and left after five minutes. On another occasion, in April 2009, A.M.L. was shopping at Wal-Mart with her stepmother when the girl spotted Shawna. A.M.L. appeared frightened and hid behind Amanda. A.M.L. told Amanda she was scared and did not want to see Shawna again, cried all the way home, soiled her pants in the evening, and was very clingy.

In January 2011, the clerk of court dismissed the custody action pursuant to Iowa Rule of Civil Procedure 1.944. The court later set aside the dismissal for good cause because James had not received notice. On February 24, 2011, the court entered a default decree placing A.M.L. in James's custody. The decree noted that the Shawna failed to appear despite being sent notice. The court also found:

There has been no meaningful contact by the Respondent with the child or attempts to participate in this child's life, by the Respondent. She has not meaningfully attempted to visit the child, write to the child, or be involved with the child's therapy. She has not even kept the Petitioner apprised on her address. The Respondent has further failed to provide any financial support for the minor child since the child has been in the care of the Petitioner.

The court ordered Shawna to pay James \$120 per month in child support and contribute \$24.79 per month toward her daughter's medical care expenses.

Shawna's counsel asserted at oral argument that Shawna did not receive actual notice of that order.

On February 10, 2012, James and Amanda filed a petition to terminate Shawna's parental rights pursuant to Iowa Code sections 600A.8(3)(b) and (4). The same day, the court appointed a guardian ad litem to represent A.M.L. The court also appointed counsel to represent Shawna at the May 2012 hearing.

At the time of the May 18, 2012, termination hearing, Shawna had only paid ten dollars toward A.M.L.'s support; she made that payment approximately one week before the termination hearing.

On June 29, 2012, the juvenile court entered its order terminating Shawna's parental rights pursuant to sections 600A.8(3)(b) and (4). The court cited the February 2011 custody order's finding that Shawna had abandoned A.M.L. and found Shawna's failure to maintain regular contact with A.M.L. between April 2009 and February 2011 could not be attributed to interference by James. The court noted Shawna's lack of participation in A.M.L.'s therapy was "very telling." The court also found that although Shawna's criminal history impairs her ability to find employment, it did not excuse her failure to provide A.M.L. with support between March 2009 and February 2012. Finally, the court found termination was in A.M.L.'s best interests, highlighting the following concerns about the mother's caregiving:

The extent of emotional harm for which [A.M.L.] has been in therapy is far greater than is realistically attributed to the circumstances of her removal from her mother's custody and grandmother's home. By Shawna's own admission to Dr. Troutman, Shawna was overwhelmed with the care of a young child and often defaulted that responsibility to family and friends, the

latter including a boyfriend who Shawna later feared may have molested [A.M.L.]. [A.M.L.] still has a clear but unexplained terror of having her hair combed. [A.M.L.]’s physical condition alone evidenced her neglect as of March 2009. No effort had been made for toilet training. She seldom talked. Although born premature she remained remarkably small for her age. There is no evidence her “well child” check at 2 was completed despite concerns made by the doctor initially observing her for that appointment.

The court found James’s intervention resolved concerns about A.M.L.’s well-being, but that her progress would be at risk if Shawna’s parental rights were not terminated. Shawna timely appealed from the termination order.

II. Standard of Review

Our review of private termination proceedings is *de novo*. *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998). While the court is not bound by the juvenile court’s factual findings, it gives weight to them, especially when considering witness credibility. *Id.* The paramount consideration in a private termination action is the child’s best interests. Iowa Code § 600A.1; see *In re A.H.B.*, 791 N.W.2d 687, 690 (Iowa 2010) (finding child’s emotional and psychological health is an important factor in determining best interests).

III. Analysis

Shawna contends the juvenile court erred in terminating her parental rights because James failed to prove the grounds for termination by clear and convincing evidence. Shawna also contends termination is not in A.M.L.’s best interests.

A. Grounds for termination.

Iowa Code section 600A.8(3) allows the court to terminate parental rights where the parent has abandoned the child. For purposes of chapter 600A, the

phrase “to abandon a minor child” means “that a parent . . . rejects the duties imposed by the parent-child relationship, . . . which may be evinced by the person, while being able to do so, making no provision or making only a marginal effort to provide for the support of the child or to communicate with the child.” Iowa Code § 600A.2(19).

For a child who is six months of age or older at the time of the termination hearing, abandonment can be established by showing a parent has not

maintain[ed] 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.

(3) Openly living with the child for a period of six months within the one-year period immediately preceding the termination of parental rights hearing and during that period openly holding himself or herself out to be the parent of the child.

Iowa Code § 600A.8(3)(b).

The subjective intent of the parent unsupported by the acts specified above will not preclude a determination the parent has abandoned the child. *Id.* § 600A.8(3)(c).

The record in this case offers clear and convincing evidence that Shawna has abandoned A.M.L. She has only seen A.M.L. four times since the court placed the girl in James’s custody in March 2009. Shawna attended two of A.M.L’s counseling sessions but failed to pursue individual counseling as

recommended. She had one visit set with A.M.L. at a park, but because A.M.L. was distraught, the visit was cut short. Shawna also had an awkward chance encounter with A.M.L. at a Wal-Mart in April 2009. Shawna has not seen her daughter since then. Shawna has not called or sent letters or gifts, and has contributed a total of ten dollars to A.M.L.'s financial support.

Shawna claims she tried to contact A.M.L., but that James interfered. She contends scheduling problems thwarted her attempts to visit her daughter. She also claims James passively prevented her from reaching A.M.L. by failing to share his contact information. She argues it was "pointless" to pursue further contact with A.M.L. when she had no reasonable belief the situation would change.

The evidence presented at the termination hearing shows Shawna knew James's cellular phone number and email address, which had been unchanged for five years, and that Shawna was able to contact him through Facebook, a social media website. Shawna did not pursue legal action to ensure visitation with A.M.L. In fact, she failed to attend a hearing in February 2011, leading to a default order granting James custody. The juvenile court found Shawna's claims that James prevented her from visiting A.M.L. were not credible. It found Shawna was responsible for the lack of contact with A.M.L. between April 2009 and February 2011 "since a legal forum was then readily available to establish a plan of visitation." We give deference to the court's credibility assessment.

Shawna also contends the juvenile court improperly relied on the February 2011 custody order's finding that she has abandoned A.M.L. because the court

was not then determining abandonment within the meaning of chapter 600A. She also argues that she was not afforded proper legal protections because the order was entered in default. Finally, Shawna takes issue with the juvenile court's finding that "[t]he most reasonable explanation for her failure to appear for the January 2011 trial-setting conference was not lack of notice of it or a belief that the matter had been dismissed but rather her conscious awareness that she had not done what had been required by the court." She argues this is speculation and insufficient evidence supports the finding.

Because our review is de novo, we need not consider the February 2011 abandonment finding. Even when we exclude that finding and the fact Shawna failed to appear for the hearing, the record still contains clear and convincing evidence that Shawna abandoned A.M.L. Shawna did not have monthly visits or other regular communication with her daughter—and the record did not show that James prevented her from doing so. She did not contribute toward her daughter's support. Termination was proper under section 600A.8(3).

When a juvenile court relies on multiple statutory grounds for terminating parental rights, we can affirm by finding clear and convincing evidence to support any one of the grounds cited in the order. *Cf. In re S.R.*, 600 N.W.2d 63, 64 (Iowa 1999) (terminating under section 232.116(1)). Because we agree with the juvenile court's termination of Shawna's parental rights based on abandonment

under section 600A.8(3), we need not consider Shawn's arguments contesting the termination for failure to pay court-ordered support under section 600A.8(4).¹

B. Best Interests.

Shawna also contends termination of her parental rights is not in A.M.L.'s best interests. Once a ground for termination under section 600A.8 has been established by clear and convincing evidence, the court turns to the question whether termination is in the child's best interests. *In re J.L.W.*, 523 N.W.2d 622, 625 (Iowa Ct. App. 1994). The child's best interest requires that "each biological parent affirmatively assume the duties encompassed by the role of being a parent." Iowa Code § 600A.1. In determining best interests, this court shall consider, among other things, "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.* Our supreme court also has borrowed from section 232.116(2) and (3) to flesh out the contours best interest framework in a private termination. *A.H.B.*, 791 N.W.2d at 690-91 (considering child's "physical, mental, and emotional condition and needs" and the "closeness of the parent-child bond").

The evidence reveals Shawna did not provide A.M.L. with optimal care. A.M.L. suffered a second-degree burn to her hand after falling on an oven door at

¹Shawna's counsel raised a new claim at oral argument, asserting the juvenile court lacked subject matter jurisdiction to consider her failure to pay court-ordered child support. While we have serious doubts regarding the merits of her jurisdictional argument, we can resolve this appeal without addressing the new claim.

the age of two, ingested flea and tick medication, was behind in her language development, was not toilet trained by the age of three, and appeared to be undernourished in March 2009. Shawna also suspected her boyfriend had sexually abused A.M.L. A friend of the mother was concerned enough about A.M.L. that the friend took the girl to a well-child check-up, but the doctor was unable to complete the exam due to a lack of information about A.M.L.

The juvenile court also reached a fair inference that A.M.L. suffered trauma while in Shawna's care, given the child's PTSD diagnosis and other emotional difficulties requiring therapy. A.M.L.'s frightened reactions to seeing Shawna at therapy, at a scheduled visitation, and unexpectedly at the store, suggest—at a minimum—the lack of a warm mother-child bond. These contacts with her mother had a negative impact on the child's behavior, well after the encounters. Evidence of a parent's past performance may be indicative of the quality of future care she is capable of providing. *J.L.W.*, 523 N.W.2d at 625.

In contrast, James and Amanda have provided A.M.L. with a safe home where she can interact with her two half-siblings. James and Amanda sought therapy to address A.M.L.'s emotional needs and she has made great strides while in their care. The juvenile court found this progress would not continue if contact with Shawna resumed. The evidence supports this finding.

Because termination of Shawna's parental rights is in A.M.L.'s best interests, we affirm the juvenile court order.

AFFIRMED.