

**IN THE COURT OF APPEALS OF IOWA**

No. 2-184 / 11-1683  
Filed March 28, 2012

**IN THE INTEREST OF D.C.H. III,  
Minor Child,**

**K.J. and T.J.,**  
Petitioners,

**L.C.P., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Des Moines County, Michael Dieterich, District Associate Judge.

A mother appeals the juvenile court order terminating her parental rights in this private termination action brought by the child's guardians. **AFFIRMED.**

Andrew S. Hoth of Hoth Law Offices, Burlington, for appellant mother.

Scott E. Schroeder of Schroeder Law Office, Burlington, for appellees.

Rashawn Logan of Hirsch, Adams, Putnam, Cahill & Wiley, P.L.C., Burlington, for minor child.

Considered by Potterfield, P.J., Doyle, J., and Zimmer, S.J.\*

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

**ZIMMER, S.J.****I. Background Facts & Proceedings.**

Laci is the mother of D.C.H. III, who was born in December 2008.<sup>1</sup> Laci did not have a stable residence when she gave birth. When the child was just a few months old, Laci asked family friends, Kevin and Talisa, for help in caring for him. According to Laci's testimony, she asked for help because she "was having troubles, mentally." D.C.H. began living with Kevin and Talisa in March 2009.

In April 2009, Laci took the child to Ohio because of a pending investigation by the Iowa Department of Human Services. She left him there with her mother and sister. A short time later, Laci asked Kevin and Talisa for help in returning the child to Iowa. Talisa, Talisa's daughter, Fantasia, and Laci then drove to Ohio and picked up the child and one of Laci's other children. After returning to Iowa, Laci left her son in Kevin and Talisa's care. He has resided with Kevin and Talisa ever since.

After the child was returned to Iowa, Laci exercised visitation every week or two. Kevin and Talisa provided the transportation for the visits. Laci has never paid any financial assistance for the child. She provided a few items, including a pair of pajamas, an outfit, some diapers, some baby formula, a toy car, a toy fire engine, and an ice cream dish. In August or September 2009, Laci moved to Ohio. In October 2009 she was married to her husband, DesJohn.

On October 15, 2009, Kevin and Talisa were appointed legal guardians of D.C.H. After the guardianship was established, Laci attempted to take the child

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<sup>1</sup> The father of D.C.H. consented to termination of his parental rights. He is not a party to this appeal.

to Ohio without the guardians' permission. A law enforcement officer contacted Laci and her sister, who were in Illinois with the child on their way to Ohio, and persuaded Laci to return him to Kevin and Talisa. After that incident, Kevin and Talisa restricted Laci's visitation to their home. Laci had some visits with the child from March or April 2010, when she returned to live in Iowa, until July 16, 2010. In August 2010, she moved back to Ohio.

On February 25, 2011, Kevin and Talisa filed a petition seeking to terminate Laci's parental rights on the ground of abandonment under Iowa Code section 600A.8(3)(b) (2011). At that time, Laci had not had a personal visit with the child since July 16, 2010. A visit had been scheduled for December 23 or 24, 2010. Although Laci was in Iowa at that time, she returned to Ohio without seeing the child. She did not have any telephone contact with the child or send him any cards or letters. Laci's only contact had been to send numerous text messages to Talisa. The guardian ad litem filed a written consent to the termination of parental rights.

The termination hearing was held on May 17, 2011.<sup>2</sup> Talisa testified she was forty-three years old. She lived with her husband and three other children in addition to D.C.H. Talisa was employed as an activity specialist at a mental health institute. Kevin, who was thirty-five years old, was a residential treatment worker at the mental health institute. Kevin and Talisa both testified they were interested in adopting the child. Laci, who was twenty-four years old, lived in Ohio with her husband, a child who was four years old, and another child who

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<sup>2</sup> The evening before the termination hearing Laci had a visit with the child. The child did not recognize her.

was nine months old. Neither Laci nor her husband were employed when the termination hearing was held. Laci testified she did not intend for the child to permanently live with Kevin and Talisa and she wished for the child to be returned to her care.

The juvenile court granted the petition to terminate Laci's parental rights.

The court found Laci had abandoned the child, stating:

[Laci] espouses an interest in parenting said child, but has made virtually no effort to support the child or communicate with the child. She has not visited the child on a monthly basis, or made any meaningful effort to do so. She has had very nominal direct communication with the Child In Interest, and has only communicated with the Guardians of the child by text messages. She has not resided with the child for six months within the past year preceding the hearing.

The court concluded termination of Laci's parental rights was in the child's best interests. Laci appeals the decision of the juvenile court.

## **II. Standard of Review.**

Termination proceedings under chapter 600A are reviewed de novo. *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998). 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). Our primary interest in termination proceedings is the best interests of the child. Iowa Code § 600A.1; *R.K.B.*, 572 N.W.2d at 601.

## **III. Abandonment.**

Iowa Code section 600A.8(3)(b) provides:

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 the

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.

The phrase "to abandon a minor child," has been defined to mean:

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).

There are two elements necessary to show abandonment, the giving up of parental rights and responsibilities accompanied by an intent to forego these rights. *In re Burney*, 259 N.W.2d 322, 324 (Iowa 1977); *In re C.A.V.*, 787 N.W.2d 96, 101 (Iowa Ct. App. 2010). "[P]arental responsibilities include more than subjectively maintaining an interest in a child. The concept requires affirmative parenting to the extent it is practical and feasible in the circumstances." *In re Goettsche*, 311 N.W.2d 104, 106 (Iowa 1981). A party is not required to show total desertion in order to prove abandonment. *In re M.M.S.*, 502 N.W.2d 4, 8 (Iowa 1993).

Laci contends she did not abandon her child. She states she attempted to make contact with her child and be involved in his life to the extent Kevin and Talisa would allow it. She claims they were obstructive and interfered with

allowing her to exercise visitation with her child. She asserts she attempted to remain a part of her child's life to the best of her ability by sending text messages, buying him gifts, and exercising visitation.

Upon our de novo review of the record, we find there is clear and convincing evidence to support the juvenile court's conclusion Laci abandoned the child. Laci did not visit him, even when physically and financially able to do so. Lacy was offered visitation on Mother's Day in 2010, but elected not to see her son. In December 2010 when Laci was in Iowa, another visit was scheduled, but she did not visit the child. The evidence presented to the juvenile court did not support a finding that Kevin and Talisa had interfered with Laci's visitation. To the contrary, they were willing to provide visitation at their home for Laci, but she did not always avail herself of these opportunities. We note Laci did not request Kevin and Talisa bring the child to Ohio to for a visit, or offer to meet them half-way so that she could spend time with her child. Prior to the visit on the eve of the termination hearing, Laci had not seen D.C.H. since July 16, 2010, a period of ten months.

Additionally, Laci did not engage in regular communication with the child. We recognize Laci sent numerous text messages to Talisa. The evidence shows, however, she did not attempt to communicate with the child through telephone calls, cards, or letters. We conclude Kevin and Talisa sufficiently established the grounds for termination of Laci's parental rights on the ground of abandonment under section 600A.8(3)(b).

#### **IV. Best Interests.**

“Once the court has found a statutory ground for termination under a chapter 600A termination, the court must further determine whether the termination is in the best interest of the child.” *In re A.H.B.*, 791 N.W.2d 687, 690 (Iowa 2010). In considering chapter 600A, the Iowa Supreme Court has determined the best-interest statutory framework found in section 232.116(2) and (3) is a useful point of analysis. *Id.* In this statutory framework, we consider the child’s emotional and psychological health, the physical, mental, and emotional condition and needs of the child, and the closeness of the parent-child bond. *Id.* at 690-91.

Section 600A.1 provides:

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 of 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.

We conclude termination of Laci’s parental rights is in the child’s best interests. Laci has done very little to establish or maintain a place of importance in the child’s life. In addition, she has not demonstrated a genuine effort to maintain communication. After a period of ten months with no visitation, the child did not recognize Laci.

We affirm the decision of the juvenile court terminating Laci’s parental rights under chapter 600A.

**AFFIRMED.**