

IN THE COURT OF APPEALS OF IOWA

No. 2-520 / 12-0134
Filed July 11, 2012

**IN THE INTEREST OF J.M.S.,
Minor Child,**

K.M.C., Mother,
Petitioner-Appellee,

S.L.S., Father,
Respondent-Appellant.

Appeal from the Iowa District Court for Jackson County, Phillip J. Tabor,
District Associate Judge.

A father appeals the juvenile court decision terminating his parental rights
in this private termination action. **AFFIRMED.**

Les M. Blair III of Blair & Fitzsimmons, P.C., Dubuque, for appellant.

Bradley L. Norton of Bradley L. Norton, P.L.C., Clarence, for appellee.

Considered by Eisenhauer, C.J., Potterfield, J., and Mahan, S.J.* Tabor,
J., takes no part.

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

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

Steven and Kelli are the parents of a child who was born in 2007. The parents were never married. They lived together until the child was about nine months old. According to Kelli, Steven last had contact with the child in September or October 2008.¹ In 2009, through the action of the Child Support Recovery Unit, Steven was ordered to pay child support of fifty dollars per month. He has never paid any financial support for the child.

On July 8, 2011, Kelli filed a petition seeking to terminate Steven's parental rights under Iowa Code chapter 600A (2011) on the grounds of abandonment and failure to pay support. A hearing was held on January 5, 2012. Steven testified he had spent "a couple years in and out of jail." He was not currently facing any criminal charges. He admitted he previously had problems with drug and alcohol use. Steven stated the last time he saw the child was in February 2009. He testified he had not attempted further contact because he was told by the sheriff he would be charged with harassment if he attempted to contact Kelli. He stated he had never received a copy of the child support order. Steven worked on and off packing semitrailers and earned \$7.75 per hour.

Steven's fiancée, Gina, testified that in 2009 Steven tried to call Kelli to set up visitation, but Kelli would hang up the telephone. She testified Steven was

¹ Kelli testified that after the parties separated Steven came over on one occasion to visit the child and she felt he was very intoxicated, so she asked him to leave. She testified he did not have visitation with the child or contact the child since that time.

staying sober and trying to get a full-time job. Kelli's mother testified Steven contacted her in 2009 or 2010 asking if he could drop Christmas presents off for the child, but he never brought the presents over. Kelli was called in rebuttal, and she denied hanging up on Steven when he called her. She also denied telling Steven he could not see the child.

The juvenile court entered an order on January 5, 2012, terminating Steven's parental rights on the grounds of abandonment, under section 600A.8(3), and failure to contribute to the support of the child, under section 600A.8(4). The court found the testimony of Steven and Gina about attempts to contact the child was not credible. The court concluded termination of Steven's parental rights was in the child's best interests. Steven appeals the juvenile court order.

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. Sufficiency of the Evidence.

Steven contends there is not clear and convincing evidence in the record to support termination of his parental rights. He claims he did not abandon the child but was prevented from visiting the child by Kelli. He also claims he did not willfully fail to pay child support because he was unaware of the order requiring

him to pay child support. He also asserts he never had sufficient income to pay support.

A parent's rights may be terminated under section 600A.8(4) when, "[a] parent has been ordered to contribute to the support of the child or financially aid in the child's birth and has failed to do so without good cause." In considering whether a failure to pay child support is "without good cause," the key factual consideration is whether a parent has the ability to pay the ordered child support. *In re B.L.A.*, 357 N.W.2d 20, 22 (Iowa 1984). The parent seeking termination of parental rights has the burden to show the other parent had the ability to pay child support. *In re D.E.E.*, 472 N.W.2d 628, 630 (Iowa Ct. App. 1991). "Although it is not necessary for the petitioner to show that the parent was willful in failing to pay, the parent's intent is clearly tied to an ability to pay." *R.K.B.*, 572 N.W.2d at 602.

On April 21, 2009, Steven was ordered to pay fifty dollars per month in child support. We do not find credible Steven's claim that he was not aware of the child support order. Although Steven was in jail part of the time, both Steven and Gina testified that he had been sporadically employed since April 2009. Steven, however, had not paid anything towards his child support obligation. We conclude the juvenile court properly terminated Steven's parental rights under section 600A.8(4).

Because we affirm on the ground of failure to financially support the child, we do not need to address the ground of abandonment. We note, however, the evidence presented at the hearing also supports termination of Steven's parental rights on the ground of abandonment under section 600A.8(3)(b).

IV. Best Interests.

Steven asserts termination of his parental rights is not in the child's 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).

On our de novo review of the record, we conclude termination of Steven's parental rights is in the child's best interests. Steven's conduct shows limited interest in the child. Kelli testified her fiancé was willing to take the place of a father to the child.

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

AFFIRMED.