

**IN THE COURT OF APPEALS OF IOWA**

No. 3-1128 / 13-1611  
Filed December 18, 2013

**IN THE INTEREST OF A.B.-S., I.B.-S.,  
and M.B.-S.,  
Minor Children,**

**A.B.-S., Father,  
Appellant.**

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Appeal from the Iowa District Court for Lee (South) County, Gary R. Noneman, District Associate Judge.

A.B.-S. appeals the district court ruling terminating his parental rights.

**AFFIRMED.**

Jeanette E. Dennis of James F. Dennis Law Firm, Keokuk, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Michael Short, County Attorney, and Clinton Boddicker, Assistant County Attorney, for appellee.

Kimberly Auge of Napier, Wolf, Popejoy & Auge, L.L.P., Fort Madison, for mother.

Laura Krehbiel, Donnellson, attorney and guardian ad litem for minor children.

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

**BOWER, J.**

A.B.-S. appeals the district court ruling terminating his parental rights. A.B.-S. argues the long-term interests of the children do not warrant termination. We find A.B.-S. abandoned and deserted the children. As a result, the best interests of the children are served by terminating his parental rights. We affirm.

**I. Background Facts and Proceedings**

A.B.-S. is the biological father of three children ages seven, five, and three.<sup>1</sup> The children were removed from his care after they were found living with him and their biological mother in a hotel room in disturbing conditions. The children were discovered naked, eating soap and sugar packets while the parents were intoxicated from using illegal drugs. The mother was disorientated and non-communicative while A.B.-S. was hallucinating.

The children were initially placed with their paternal great-grandmother, who was unable to care for them. The children were then placed in temporary foster care until a removal hearing was held on December 15, 2011. A.B.-S. was notified of the hearing but did not attend or participate.<sup>2</sup> After the hearing the children were allowed to move to Cedar Rapids with their mother for participation in a mother-child treatment program.

On January 11, 2012, an initial family team meeting was held. A.B.-S did not participate. The mother admitted to having been under the influence of “bath

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<sup>1</sup> A.B.-S. has an additional child from a separate relationship who, though not a party to this proceeding, has also been adjudicated in need of assistance.

<sup>2</sup> A.B.-S. has failed to appear for a majority of the hearings. Only after he requested an attorney on February 10, 2013, fourteen months after the initial removal, did A.B.-S. begin regularly attending and participating in these matters.

salts”, a synthetic drug, for a period of ten days prior to the removal. She admitted she had been using the drugs with A.B.-S. causing both to be delusional. The mother made substantial progress in the mother-child treatment program and eventually returned, with the children, to her mother’s home. While there, however, she relapsed and admitted using cocaine, marijuana, and alcohol. Two months later she tested positive for methamphetamine. The children also tested positive for exposure to methamphetamine. A second removal hearing was held and the children were again placed in foster care. Attempts were made to contact A.B.-S., however he could not be located. He appeared telephonically for a family team meeting on August 8, 2012. He reported he had completed substance abuse and mental health evaluations and denied any knowledge of previous court proceedings.

During the family team meeting, relatives of the children from Oklahoma appeared indicating they would consider taking the children with the possibility of long-term placement and adoption. The children were subsequently placed with relatives in Oklahoma and have thrived. They consider their Oklahoma family to be their parents and have achieved a level of stability and safety as never before. A review hearing was held on February 7, 2013. Neither parent appeared. The children continue to thrive in Oklahoma and their family remains interested in adoption.

A.B.-S. first participated in these proceedings on February 13, 2013. The district court found the explanation for his lengthy absence to be incredible if not outright perjurious.

The district court terminated the parental rights of both parents in a September 23, 2013 ruling. The mother, following her relapse into substance abuse, did not contest the termination of her parental rights.<sup>3</sup> A.B.-S. appeared and resisted termination.

## **II. Standard of Review**

Our review of termination proceedings is *de novo*. *In re A.B.*, 815, N.W.2d 764, 773 (Iowa 2012). We give weight to the factual findings of the juvenile court, particularly on matters of credibility, but we are not bound by them. *Id.* We will uphold the termination decision when supported by clear and convincing evidence, which is evidence raising no substantial or serious doubts as to the correctness of the determination. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). Where the district court has relied upon multiple bases for termination, we may affirm on any single ground for which we find clear and convincing evidence. *Id.*

## **III. Discussion**

The district court terminated A.B.-S.'s parental rights pursuant to Iowa Code sections 232.116(1)(b), (e) (2013); 232.116(1)(b), (e), (h), and 232.116(1)(f). A.B.-S. argues termination was not in the best interests of the children and there is insufficient evidence he abandoned the children.

Iowa Code section 232.116(1)(b) allows for termination when the court finds the children have been abandoned or deserted. Abandonment is found when the parent has relinquished or surrendered the "rights, duties, or privileges" of the parent-child relationship. Iowa Code § 232.2(1)(b). Proof is required both

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<sup>3</sup> The mother has not appealed the termination of her parental rights.

of intent, a mental element, and overt acts evidencing intent. *Id.*; *In re D.M.*, 516 N.W.2d 888, 891 (Iowa 1994). Desertion is found where the parent has relinquished or surrendered “for a period in excess of six months of the parental rights, duties, or privileges inherent in the parent-child relationship.” Iowa Code § 232.2(14). Unlike abandonment, however, there is no requirement the court find the mental element of intent. *Id.* Rather, the court may find desertion by the lack of attempts to contact the child. *Id.*

The district court ruling, scathing in its detailing of A.B.-S.’s actions, found A.B.-S. had deserted and abandoned the children. We agree. A.B.-S spent more than fourteen months failing to participate in any of the child-in-need-of-assistance proceedings despite having been present during their removal. He had no contact with the children and made no attempts to exercise any rights of a parent. His only involvement was during his lone participation in a family team meeting. Following this meeting, and despite his knowledge of the pendency of these proceedings, he failed to be an involved parent for several months. We find his limited participation in these proceedings, and virtually nonexistent relationship with the children, shows his intent to abandon his relationship with the children and demonstrates he deserted the children for a period in excess of six months.

We also find the requirements of section 232.116(e) have been satisfied with regards to the children. The children were adjudicated in need of assistance and have been removed from A.B.-S.’s care for more than six months. A.B.-S. has made minimal attempts to maintain contact with the children and has failed

to take any steps to resume their care. After submitting to drug testing, he participated in weekly phone calls with the children, however the calls had a negative impact on the children. A.B.-S. was ordered to participate in counseling before the phone calls could resume. His failure to do so shows a lack of effort to maintain contact with the children and resume his role as a father. The same is true with regards to the youngest child. There is no possibility the three year-old child can be returned to A.B.-S.'s care at this time.

Termination requires a three step process. *In re D.W.*, 791 N.W.2d at 706–07. Having found a ground for termination exists under section 232.116(1), we must also apply the best-interest framework as established by section 232.116(2). *Id.* Finally, we must also consider whether any exceptions set forth in section 232.116(3) should preclude termination. *Id.* at 707.

Considering the factors set forth in section 232.116(2), the best interests of the children require termination. Their time with A.B.-S. was traumatic and dangerous. The children have become integrated into their new home and view their new family as their own. They attend school and have formed close bonds with other children in the home. The Oklahoma family has taken on the role of parents to the point the children refer to them as their parents and the oldest child no longer has to parent the younger children. The children's placement in Oklahoma is a far better place for their physical, emotional, and mental wellbeing. Termination is warranted.

There is no meaningful parent-child relationship here for which termination would be detrimental. See Iowa Code § 232.116(3)(c). No other statutory

exceptions in section 232.116(3) apply to this case. Termination of A.B.-S.'s parental rights is necessary.

**AFFIRMED.**