

IN THE COURT OF APPEALS OF IOWA

No. 3-385 / 12-2161
Filed June 26, 2013

**IN THE INTEREST OF M.B.W., I.M.W.,
and J.L.W.-S.,
Minor Children,**

**E.A.W., Mother,
Petitioner,**

**B.M.S., Father of J.L.W.-S.,
Appellant.**

Appeal from the Iowa District Court for Wapello County, William S. Owens,
Associate Juvenile Judge.

A father appeals the termination of his parental rights under Iowa Code
chapter 600A (2011). **AFFIRMED.**

Mary Baird Krafka of Krafka Law Office, Ottumwa, for appellant.

Heather M. Simplot of Harrison, Moreland, Webber & Simplot, P.C.,
Ottumwa, for appellee.

Jeffrey Logan of Curran Law Office, Ottumwa, attorney and guardian ad
litem for minor children.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

TABOR, J.

After maintaining only “sporadic” contact with his three children and failing to fulfill his financial obligation to them, Brian appeals the juvenile court’s termination of his parental rights. He claims insufficient evidence supports the finding of abandonment under Iowa Code section 600A.8(3) (2011). He also alleges termination runs counter to the children’s best interests.

Because Brian does not challenge the court’s second basis for termination—his failure to pay court ordered support under section 600A.8(4)—we affirm on that ground. We also believe the children’s best interests are served by severing their legal ties to Brian.

I. Background Facts and Proceedings.

Elizabeth and Brian were married in September 2006 and divorced about fifteen months later, in December 2007.¹ They are the parents of three children: M.W. born in 2004, J.W.-S. born in 2007, and I.W. born in 2008. The divorce decree granted Elizabeth physical care of the children and ordered Brian to pay \$408.47 per month in child support beginning in January 2008.²

Brian has a history of substance abuse, mental illness, and incarceration. His criminal record includes felony convictions for conspiracy to commit willful injury and burglary. In 2008, his probation was revoked and he was assigned to a halfway house. He was released in December 2008, but was re-arrested that same month.

¹ Both parties have remarried. Brian’s wife, Angel, is a convicted felon with a lengthy criminal record. She was incarcerated at the time of the termination order.

² Elizabeth did not know she was pregnant with I.W. at the time of the divorce proceeding. Accordingly, the decree does not mention the youngest child.

Elizabeth described Brian's contact with the children in 2009 as "very sporadic" because he was in and out of "[j]ail and town, and he wasn't around a whole lot." Brian returned to prison in August 2009. At that time, he asked that his child support obligation be reduced to \$30 per month, \$10 for each child. The court modified the child support order on January 25, 2010. At the time of the termination hearing, Brian's outstanding child support obligation was \$9392.79.

When Brian was released from prison in May 2010, he did not establish regular contact with his children. Brian's last visit with his children was in July 2010. Brian returned to prison again in August 2010, where he remained until April 2012. Brian sent the children four or five letters while incarcerated; they received the last letter in December 2010.

On February 10, 2012, Elizabeth filed a petition seeking to terminate Brian's parental rights under Iowa Code chapter 600A. Four days later, the juvenile court appointed a guardian ad litem for the children. The court held a termination hearing in June 2012. Elizabeth moved to reopen the record in July 2012, asserting Brian had been returned to custody. But the juvenile court denied the request, finding "ample evidence in the record" to support termination of Brian's parental rights under sections 600A.8(3) and (4).

II. Analysis

Brian advances two arguments against termination of his parental rights. First, he contends the record contains insufficient evidence to support the juvenile court's finding that he abandoned his children. Second, he insists it is in the children's best interest to retain a relationship with their biological father.

A mother or father may petition the juvenile court to terminate the rights of the other parent. Iowa Code § 600A.5(1)(a). Following a hearing, the juvenile court may terminate parental rights on any of the grounds listed in the statute. *Id.* §§ 600A.8, .9. Here, the juvenile court found clear and convincing evidence supported termination under section 600A.8(3) (“The parent has abandoned the child.”) and section 600A.8(4) (“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.”). If—in our *de novo* review—we find one of the grounds for termination is established by clear and convincing evidence, we will uphold the termination order. *In re B.L.A.*, 357 N.W.2d 20, 22 (Iowa 1984).

Because Brian, who was more than \$9000 behind in his child support payments at the time of the juvenile court hearing, does not challenge the termination of his parental rights for failure to pay court-ordered support, we affirm on that ground.

We next consider whether termination of Brian's parental rights is in the children's best interests. See *In re R.K.B.*, 572 N.W.2d 600, 602 (Iowa 1998). In making the best-interests determination,

[w]e look to the child's long-range, as well as immediate, interests. We consider what the future holds for the child if returned to his or her parents. Insight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care the parent is capable of providing.

Id. at 601.

We find terminating Brian's parental rights serves the children's best interests. Brian has not seen the children since July 2010. Although Brian sent

four or five letters from prison, the correspondence stopped in December 2010. Brian's absence from the children's lives is due largely to his repeated stints in prison. Brian's incarceration does not excuse his negligible relationship with his children. See *In re C.A.V.*, 787 N.W.2d 96, 101 (Iowa Ct. App. 2010). His conscious choice to engage in misconduct, resulting in two felony convictions, and six probation violations since he became a parent, suggests the children have not been his priority and he does not promise to be a positive influence on their futures.

Brian also failed to maximize his opportunities to interact with his children when he was free. The youngest child has only seen Brian a few times in her life; the middle child would not recognize him; and the oldest child refers to Brian as their "old dad." Brian has not cared for the children for more than a few hours at a time and has never had them for an overnight visit. Given his minimal participation in their early lives and his total absence over the past several years, the children have not developed an enduring bond with Brian.

In addition to his minimal contacts with and support for the children, other factors influence our finding that termination of Brian's parental rights is in the children's best interests. The record includes convincing evidence that Brian has not adequately addressed his substance abuse and mental health issues. He has demonstrated violent tendencies, gang affiliations, and continued to associate with individuals having criminal backgrounds.

The children would not benefit from retaining the parent-child relationship. Brian's history of inattention to his children, failure to support them, criminal

activity, and substance abuse is likely to continue. See *R.K.B.*, 572 N.W.2d at 601 (holding a parent's past performance may be indicative of the future). And in exchange for continued exposure to their father's misdeeds and misfortunes, the children do not gain financial or emotional support. Rather, the experience is damaging. Elizabeth testified that M.W., who was seven years of age at the time of the termination hearing, "understands everything going on. And he does not understand why his Dad continues to get in trouble instead of being with him. And it hurts him."

Regardless of whether the children are adopted by Elizabeth's new husband, the heartache inflicted by Brian's sporadic contact and failure to support them will be ended by the termination of his parental rights. Because these children do not enjoy a significant bond with their biological father, termination simply erases Brian's legal title of parent. Accordingly, we affirm.

AFFIRMED.