

**IN THE COURT OF APPEALS OF IOWA**

No. 3-947 / 13-0248  
Filed December 5, 2013

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

**A.L., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Robert A. Hutchison,  
Judge.

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

**AFFIRMED.**

Tammi M. Blackstone of Harrison & Dietz-Kilen, P.L.C., Des Moines, for  
appellant mother.

Karen A. Taylor of Taylor Law Offices, Des Moines, for appellee father.

Jessica Chandler of Chandler Law Office, Des Moines, attorney and  
guardian ad litem for minor child.

Considered by Vaitheswaran, P.J., and Doyle and Danilson, JJ.

**DOYLE, J.**

A mother appeals from the termination of her parental rights, challenging the grounds for termination found by the district court. Upon our de novo review, we find clear and convincing evidence supports termination under Iowa Code section 600A.8(3) (2011), and we conclude severing the child's relationship with his biological mother serves the child's best interests. We therefore affirm.

***I. Background Facts and Proceedings.***

A.L. is the mother and P.J.A. is the father of E.L.A., born in 2004. Following a 2006 contested-custody trial, an order was entered awarding the father sole legal and physical custody of the child. The mother was awarded "reasonable visitation rights" as could be agreed between the parties. In a follow-up order entered in October 2006, the mother was awarded limited visitation.

In 2012, the father filed his petition for termination of the mother's parental rights. The mother resisted. Following a trial, the district court entered its order terminating the mother's parental rights, finding (1) she abandoned the child by failing to maintain substantial and continuous contact with the minor child (600A.8(3)(b)); (2) she failed to provide financial support for the child (600A.8(4)); and (3) the termination of her parental rights was in the child's best interests (600A.1).

The mother now appeals. She contends the district court erred in determining that there was sufficient evidence to establish she abandoned the child in accordance with Iowa Code section 600A.8(3)(b).<sup>1</sup> Our review is de

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<sup>1</sup> The mother also argues the trial court erred in determining that the mother failed to support the child financially without good cause. See section 600A.8(4). Since we find

novo. *In re M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993). While the court is not bound by the district court's factual findings, we give weight to them, especially when considering credibility of witnesses. *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998).

## ***II. Discussion.***

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). If termination is founded upon more than one statutory ground, we will affirm if one ground has been proven by clear and convincing evidence. *In re B.L.A.*, 357 N.W.2d 20, 22 (Iowa 1984). The best interests of the child "shall be the paramount consideration" while also giving "due consideration" to "the interests of the parents." Iowa Code § 600A.1.

### ***A. Abandonment.***

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." *Id.* § 600A.2(19). A parent is deemed to have abandoned a child who is six months or older

unless the parent maintains substantial and continuous or repeated contact with the child as demonstrated by contribution toward

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termination was proper under section 600A.8(3)(b), we need not consider whether termination was proper under section 600A.8(4).

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.

*Id.* § 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). A showing of abandonment does not require total desertion; feeble contacts can also demonstrate abandonment. *M.M.S.*, 502 N.W.2d at 7.

We adopt as our own the findings of the district court:

Following the entry of the [visitation] order, visitation with the mother was fairly consistent in the beginning. As time went on, there became more and more frequent periods of time in which [the mother's] visitation was sporadic or non-existent. After November 2010, there was virtually no visitation between the mother and the child. Prior to that point in time, there were periods of time in which the visitation would not occur due to cancellations by the mother as well as lack of contact or requests by [the mother]. [The mother] has an extensive criminal history. Much of the time during which she failed to exercise her visitation was time she was incarcerated.

[The mother] contends that she has failed to maintain contact with the child because [the father] has interfered with her relationship with the child and denied her requested visitation. The court does not accept these explanations for [the mother's] almost total lack of contact with [the child] over the past thirty months. After the entry of the [visitation] order, [the father] was supportive of the relationship, even providing transportation when [the mother] moved . . . , creating over an hour drive for [the father] to facilitate the visitation. According to [the mother's] testimony she moved to Ames shortly after getting out of jail in November 2011. However, she did not inform [the father] of her address at that time. [The

father] did not know where [the mother] was residing even at the time the petition to terminate parental rights was filed as she failed to keep him informed of her whereabouts.

[The mother] provided evidence of text messages allegedly showing her attempts to obtain visitation in connection with her efforts to show that [the father] refused the visitation. However, these messages are from late 2009. [The father] admitted that he had denied a visitation request from [the mother] after she was released from jail in November 2010. However, the requested visitation was not in accord with the [visitation] order's schedule, and was relatively last-minute. [The father] already had plans for the weekend in question. He offered a later time but did not hear again from [the mother] for many months.

[The mother] was unable to provide any evidence of any meaningful attempts to obtain visitation with the child after November 2010. She asks the court to believe that the only reason that she did not exercise any visitation for almost two years was the fault of the [father]. [The father] had no ability to contact the mother after December 2011 as [she] changed residences, and did not provide [him] with an address whereby he could have arranged visitation, even if it were his responsibility. [The mother] did take action to lower her child support, but took no action to enforce her visitation until after the termination petition was filed. No attempts were made by [the mother] to obtain visitation from November 2010 until after the filing of the petition to terminate in April 2012. There is clear and convincing evidence that [the mother] abandoned the child by failing to maintain substantial and continuous contact with the minor child from August 2010 until the termination trial.

Furthermore, in addressing the section 600A.8(4) issue (failure to support the child without good cause), the district court found:

[The mother] was ordered to pay child support by way of the order entered in the Story County matter on August 19, 2006. The mother was ordered to pay \$255.00 per month beginning September 1, 2006. [The mother] filed a request for review and adjustment of the child support in approximately November 2011. As a result, she was ordered to pay child support of \$50.00 per month beginning in approximately April 2012. The records show that [the mother] is delinquent in her child support under both the original and modified order. The child support has only been paid during those times that she has been employed, which has been sporadic and usually for short periods of time. [The mother] has not provided any support since October 2011, although she admitted being employed at the time of the trial and having received at least two paychecks. [The mother] acknowledged that she has not made

any voluntary payments. In addition, [the mother] admitted that she quit at least one prior employment because she felt all of earnings were going to child support. [The mother] has not provided the financial support even within her limited means to do so. Furthermore much of her inability to work has been due to incarcerations which were themselves the results of her extremely poor decision-making.

Upon our de novo review, we find there is clear and convincing evidence to support the district court's conclusion the mother abandoned the child within the meaning of section 600A.8(3)(b) because she has not maintained "substantial and continuous or repeated contact with the child." Because we agree with the district court's termination of the mother's parental rights based on abandonment under section 600A.8(3), we need not consider the mother's argument contesting the termination for failure to pay court-ordered support under section 600A.8(4). See *B.L.A.*, 357 N.W.2d at 22.

***B. 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 of 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 interests "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.* Additionally, our supreme court has borrowed from section 232.116(2) and (3) to

flesh out the contours of the best-interest framework in private terminations. See *In re A.H.B.*, 791 N.W.2d 687, 690-91 (Iowa 2010) (considering child's "physical, mental, and emotional condition and needs" and the "closeness of the parent-child bond").

In concluding that termination of his biological mother's parental rights are in the child's best interests, the district court found:

At this time, [the child] is in a stable home. He views . . . [the father's fiancée] as his mother, and she treats him as her son. [The father and his fiancée] plan to marry in September 2013, and [his fiancée] wishes to adopt [the child]. [The child] has indicated to the guardian ad litem his excitement over the upcoming marriage of [the father and his fiancée]. This child deserves stability, and based upon the parties' history over the past eight years it is unlikely that he will receive that if [the mother's] parental rights are not terminated.

We agree with the district court that termination of the mother's parental rights is in the child's best interests.

#### ***IV. Conclusion.***

Upon our de novo review, we find the father presented clear and convincing evidence of the mother's failure to parent, visit, or maintain contact with her child, and terminating the mother's parental rights is in the child's best interests. Accordingly, we affirm the district court's termination of the mother's parental rights.

**AFFIRMED.**