

**IN THE COURT OF APPEALS OF IOWA**

No. 3-971 / 12-2276  
Filed November 6, 2013

**IN THE INTEREST OF J.O. JR.,  
Minor Child,**

**J.O. SR., Father,  
Petitioner,**

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

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Appeal from the Iowa District Court for Polk County, Eliza J. Ovrorn,  
Judge.

A mother appeals from the order terminating her parental rights.

**AFFIRMED.**

Cathleen J. Siebrecht of Siebrecht Law Firm, Des Moines, for appellant-  
mother.

Katherine Sargent, Des Moines, for appellee-father.

Penny Reimer, West Des Moines, guardian ad litem for minor child.

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

**BOWER, J.**

A mother appeals from the order terminating her parental rights. She contends the court erred in determining she abandoned her child and in finding termination was in the child's best interests. We affirm.

The child was born in 2006 to unmarried parents, who both were on parole. Within a month, the father's parole was revoked and he was incarcerated until June 2008. In June 2007 the mother filed a petition to establish custody and visitation. In August 2008 the mother was given temporary physical care of the child; the father was given temporary visitation and ordered to pay monthly child support of \$500. In October 2008 the mother's parole was revoked and she was incarcerated until May 2009. The mother's former stepmother was appointed temporary and later permanent guardian of the child. The guardianship proceeding was consolidated with the custody proceeding. In May 2009 the father's visitation was increased. In August the mother had a positive drug test during visitation. In September the decree concerning custody, visitation, and support provided the parents with joint legal custody, placed the child in the father's physical care, ordered the mother to pay monthly child support of \$170, and established visitation for the mother coordinated with her stay at the House of Mercy for substance abuse treatment.

The mother left treatment before the first scheduled visit. She was arrested for possession of methamphetamine in December and later entered a guilty plea to the charge. During late 2009 and early 2010, the mother spent

time, off and on, at the father's home. In April 2010 the department of human services issued a founded child abuse report for denial of critical care with both the mother and father as perpetrators because the father allowed the mother to care for the child while the father was at work, even though the mother was to have only supervised visitation. During the summer of 2010 the mother inconsistently exercised supervised visitation. After missing an appointment with her probation officer, the mother went to Kansas. She was arrested in October for violating her probation and spent about a month in jail. After her release, she continued to spend some time at the father's house. She last saw the child in May 2011. In August she was arrested for burglary. In October she entered a guilty plea and was sentenced to up to ten years in prison.

While in prison the mother wrote some letters to the child and sent some of them to the attorneys involved in the court proceedings. Also, for the first time, the mother paid child support because it was withheld from her prison wages. By the time of the termination trial in November 2012, the mother had paid about \$112 of an outstanding support debt in excess of \$6600. The mother participated in various programs in prison to address her criminal behavior, substance abuse, and parenting skills. In March 2012 the mother filed an application to modify the 2009 decree concerning custody, visitation, and support. In May the father, who had married, filed a petition to terminate the mother's parental rights, alleging abandonment and failure to pay court-ordered child support without good cause. See Iowa Code § 600A.8(3)-(4) (2011).

The petition was heard in November 2012. The court found the mother abandoned the child, describing the lack of contact the mother had with the child, as set forth above. The court noted the mother “loves the child, but she has not followed through with the opportunities to be involved in the child’s life. This evinces an intent to abandon the child.” The court further found the mother failed to pay child support without good cause, noting the mother had “paid zero child support” until it was withheld from her prison wages, even though she told a presentence investigator she earned \$10,000 in 2010. The court concluded termination was in the child’s best interests. The mother appeals.

We review termination proceedings under chapter 600A de novo. *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998). We give weight to the findings of the court, especially those regarding witness credibility, but we are not bound by them. *Id.* The paramount concern in termination proceedings is the best interest of the child. Iowa Code § 600A.1.

*Statutory Grounds.* The mother contends the court erred in determining she abandoned the child. She asserts she maintained contact with the child until the father prevented it, she provided financial support within her means, and her subjective intent was not to abandon the child. *See id.* § 600A.8(3)(b), .8(4).

When the court terminates a parent’s parental rights on multiple statutory grounds, we may affirm if any ground is supported by clear and convincing evidence. *See In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). Although the mother addresses support as part of her argument she did not abandon the child,

failure to support the child is a separate ground for termination, and the court expressly cited it as a separate ground. See *id.* § 600A.8(4). The statute provides the court may terminate a parent's rights when the parent "has been ordered to contribute to the support of the child. . . and has failed to do so without good cause." *Id.*

The mother admits she did not pay support "pursuant to the custody order" but argues she and the father were living together for extended periods of time and she assumed a share of the child's expenses. She also argues she "provided support within her means." Concerning the "extended periods of time" she claims she lived with the father and child and provided support, the court found the mother's and father's testimony conflicted and both parties exaggerated their sides of the story. However, the mother testified that from November 2010 until her arrest in 2011, she rented a room, paying for it from her weekly earnings of \$200 to as much as \$300. She further testified she stayed "maybe" thirty nights with the father and the child between November 2010 and August 2011. During that time, the mother paid no support as ordered by the court, even though her admitted weekly income was between \$200 and \$300. Any "contributions" to the child's care and support, either by giving money to the father or by spending money directly, do not satisfy the court-ordered support obligation. See Iowa Code § 598.22. The only support the mother paid was involuntary, when it was withheld from her prison earnings. We find clear and convincing evidence the mother "has been ordered to contribute to the support of

the child” and “has failed to do so without good cause.” See *id.* The father proved a statutory ground for termination.

A ground for termination under section 600A.8 has been established by clear and convincing evidence. We then turn to the question 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 require 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.* Our supreme court also has drawn from section 232.116(2) and (3) to flesh out the contours of the best interests framework in a private termination. See *In re A.H.B.*, 791 N.W.2d 687, 690-91 (Iowa 2010) (considering a child’s “physical, mental, and emotional condition and needs” and the “closeness of the parent-child bond”).

As discussed above, the mother has not fulfilled financial obligations to the child, having paid only about two percent of the child support ordered, and then only because it was withheld from her prison earnings. Although she expresses continued interest in the child and a desire to establish and maintain communication with the child and a place of importance in the child’s life, she has continued her substance abuse and criminal activity, resulting in her frequent unavailability to the child. See *In re M.M.S.*, 502 N.W.2d 4, 8 (Iowa 1993)

(finding parent cannot use incarceration to justify lack of relationship with child).

The child is in a secure, stable home with the father and step-mother.

Considering the statutory factors in section 232.116(2), we agree with the court termination of the mother's parental rights serves the child's best interests.

**AFFIRMED.**