

**IN THE COURT OF APPEALS OF IOWA**

No. 6-1071 / 06-0627  
Filed January 18, 2007

**IN THE INTEREST OF B.G.F.,  
Minor Child,**

**L.L.M.,**  
Petitioner-Appellee,

**R.W.W., Father,**  
Appellant.

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Appeal from the Iowa District Court for Polk County, Robert B. Hanson,  
Judge.

A father appeals from an order terminating his parental rights.

**AFFIRMED.**

Christopher Kragnes, Sr. and Tiffany Koenig of Kragnes, Tingle & Koenig,  
P.C., Des Moines, for appellant father.

L.L.M., West Des Moines, as custodian.

Craig Long, Des Moines, for mother.

Catherine C. Dietz-Kilen of Harrison & Dietz-Kilen, Des Moines, for minor  
child.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

**HUITINK, J.**

Ronald appeals from the termination his parental rights pursuant to Iowa Code section 600A.8(3) (2005). We affirm.

**I. Background Facts and Proceedings**

Danielle gave birth to B.G.F. in May 2005. At the time of the child's birth, and at all times relevant to this appeal, Danielle was incarcerated on drug charges. Prior to the child's birth, Danielle had been introduced to a couple interested in adopting the child. Together, they came up with an adoption plan. Danielle assured the contemplated adoptive parents that Ronald, the putative father, would consent to termination of his parental rights. Indeed, Ronald had expressed his support for Danielle's decision in letters written to her. Ronald was incarcerated on drug-related charges at the time of the child's birth, and at all times relevant to this appeal. He has a lengthy criminal history, including charges for attempted murder, domestic assault, carrying weapons, and numerous drug-related charges, and has been incarcerated for much of his adult life.

Danielle executed a release of custody, pursuant to section 600A.4, six days after the child's birth.<sup>1</sup> The contemplated adoptive parents were present for B.G.F.'s birth, and the child has been in their care ever since. Two home studies concluded they are an appropriate adoptive placement for B.G.F. The child's guardian ad litem arrived at the same conclusion.

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<sup>1</sup> Danielle later sought to revoke her release of custody, but the district court determined she had failed to show good cause for revocation. See Iowa Code § 600A.4(4). The court terminated her parental rights; Danielle has not appealed.

The child's custodian filed a petition for termination of parental rights on June 6, 2005, alleging that Ronald had abandoned the child. See Iowa Code § 600A.8(3). Ronald filed an answer on July 11, making known for the first time his resistance to the termination of his parental rights. One month later, he asked for paternity testing, a request the court denied.

A hearing on the termination petition was held in September 2005. At the hearing, Ronald testified his current prison sentence would expire in August 2007. He admitted he could not personally assume custody of B.G.F. at the present time. He further admitted he had not made an effort to contact or communicate with the child or arrange to see her, although he blamed his inability to do so on his incarceration. Ronald admitted he could not personally provide any financial or emotional support for the child while incarcerated. He requested that B.G.F. be placed with his relatives.

The district court filed an order terminating Ronald's parental rights pursuant to section 600A.8(3)(a).<sup>2</sup> Ronald appeals, arguing the court erred in terminating his parental rights because relatives were available to take custody of the child, and termination was not in the child's best interests.

## **II. Standard of Review**

Our review of this private termination of parental rights proceeding is de novo. *In re R.K.B.*, 572 N.W.2d 600, 602 (Iowa 1998). The grounds for termination must be proven by clear and convincing evidence. Iowa Code

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<sup>2</sup> The court's initial order was entered on October 18, 2005, but was subsequently vacated after the clerk's office failed to mail copies to the parties and counsel in a timely manner. The court entered an amended order terminating parental rights on March 16, 2006. Ronald filed a timely notice of appeal from this order.

§ 600A.8. Our primary interest in termination proceedings is the best interests of the child. *Id.* § 600A.1; *see also In re R.K.B.*, 572 N.W.2d at 602.

### III. Discussion

Section 600A.8(3), which allows for termination of parental rights based upon abandonment of a child, provides as follows:

The parent has abandoned the child. For the purposes of this subsection, a parent is deemed to have abandoned a child as follows:

a. (1) If the child is less than six months of age when the termination hearing is held, a parent is deemed to have abandoned the child unless the parent does all of the following:

(a) Demonstrates a willingness to assume custody of the child rather than merely objecting to the termination of parental rights.

(b) Takes prompt action to establish a parental relationship with the child.

(c) Demonstrates, through actions, a commitment to the child.

(2) In determining whether the requirements of this paragraph are met, the court may consider all of the following:

(a) The fitness and ability of the parent in *personally* assuming custody of the child, including a personal financial commitment which is timely demonstrated.

(b) Whether efforts made by the parent in *personally* assuming custody of the child are substantial enough to evince a settled purpose to *personally* assume all parental duties.

(c) With regard to a putative father, whether the putative father publicly acknowledged paternity or held himself out to be the father of the child during the six continuing months immediately prior to the termination proceeding.

(d) With regard to the putative father, whether the putative father paid a fair and reasonable sum, in accordance with the putative father's means, for medical, hospital, and nursing expenses incurred in connection with the mother's pregnancy or with the birth of the child, or whether the putative father demonstrated emotional support as evidenced by the putative father's conduct toward the mother.

(e) Any measures taken by the parent to establish legal responsibility for the child.

(f) Any other factors evincing a commitment to the child.

(Emphasis added.) A parent's subjective intent, unaccompanied by the actions outlined in section 600A.8(3), does not preclude a determination of abandonment. See *id.* 600A.8(3)(c).

On our de novo review of the record, we conclude there is clear and convincing evidence that Ronald has abandoned B.G.F. Ronald admitted he could not personally assume custody of the child. He has made no efforts to personally assume parental duties. He did not pay any part of the medical expenses arising from the child's birth; nor has he provided any other financial support for the child. Contrary to Ronald's assertions, the court need not consider alternative placement of the child with relatives under section 600A.8.<sup>3</sup> Cf. Iowa Code § 232.116(3)(a) (the court need not terminate parental rights if "[a] relative has legal custody of the child").

Ronald blames his incarceration on his failure to establish a relationship with B.G.F. However, "[t]he general rule is unavailability to parent as a result of being incarcerated is no excuse." *In re J.L.W.*, 523 N.W.2d 622, 624 (Iowa Ct. App. 1994). "An incarcerated parent must take full responsibility for the conduct which has resulted in his confinement." *Id.* Ronald has been incarcerated for most of his adult life. His criminal record includes drug-related offenses. There was no evidence offered at the hearing related to substance abuse treatment. The evidence of Ronald's past performance "may be indicative of the quality of future care he or she is capable of providing." *Id.* at 625. The evidence supports termination pursuant to section 600A.8(3)(a).

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<sup>3</sup> Even if the court were required to consider relative placement, the record supports the district court's finding that it was presented with "no independent objective evidence" to confirm placement with relatives would be appropriate in this case.

Termination is also in B.G.F.'s best interests. She has been in the care of the contemplated adoptive parents since her birth. She is happy, well cared for, and thriving. The adoptive parents can best offer her the stability she needs and deserves. Termination will facilitate her adoption into the only family she has known and one that can meet her needs.

We affirm the district court's order terminating Ronald's parental rights.

**AFFIRMED.**