

**IN THE COURT OF APPEALS OF IOWA**

No. 7-037 / 06-1306  
Filed February 14, 2007

**IN THE INTEREST OF C.K.S.,  
Minor child,**

**J.S.W., Father,  
Appellant.**

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Appeal from the Iowa District Court for Black Hawk County, Daniel L. Block, Associate Juvenile Judge.

A father appeals from the order terminating his parental rights.

**AFFIRMED.**

John W. Hofmeyer III, Oelwein, for appellant.

Linda A. Hall of Gallagher, Langlas & Gallagher, P.C., Waterloo, for appellee.

Tammy Banning, Waterloo, guardian ad litem for minor child.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

**BAKER, J.**

A father appeals the order of termination of parental rights due to abandonment based on his failure to maintain substantial and continued or repeated contact with C.K.S., as demonstrated by his contribution toward her support and his failure to have any meaningful contact with the child.

**I. Background and Facts**

C.K.S. was born in 1999, to Melissa and Joshua. Melissa and Joshua were never married. They lived together during Melissa's pregnancy and until C.K.S. was approximately three months old. At trial, Melissa testified that Joshua was physically abusive toward her during their relationship.

Joshua has been incarcerated for a substantial portion of C.K.S.'s life. He has a history of illegal drug use. Since she was an infant, he has seen C.K.S. approximately seven times, including the five times Melissa brought her to visit him in prison. Until the termination petition was filed, he had never sent a card or present or called C.K.S. on her birthday or at Christmas. Joshua has never been current on his child support obligations.<sup>1</sup> He was aware of the hearing but did not appear because of an outstanding warrant on a probation violation.

Melissa married Shane on October 8, 2005. Shane has known C.K.S. since she was three years old. He has assumed the role of C.K.S.'s father, has taken on parenting responsibilities, and is willing to adopt C.K.S. if Joshua's parental rights are terminated.

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<sup>1</sup> Between 1999 and 2006, Joshua paid a total of \$1,706.34 in child support. Joshua has never paid for any of C.K.S.'s medical bills or insurance. At the time of trial, Joshua owed back child support in excess of \$14,000.

On February 22, 2006, C.K.S. was seen by Carroll Roland, Licensed Psychologist, for an evaluation of her psychological bonding with Joshua and Shane. The evaluation indicated a preference for Shane as the parent of choice and very little if any bonding with Joshua. Additionally, the psychologist noted C.K.S experienced some somatic manifestations of stress when thinking of having contact with Joshua.

C.K.S.'s guardian ad litem believes that termination of Joshua's parental rights is in the child's best interests.

On December 30, 2005, Melissa petitioned for the termination of Joshua's parental rights under Iowa Code section 600A.8 (2005). Following a trial, the juvenile court terminated Joshua's parental rights. The court concluded that Joshua had abandoned C.K.S. within the scope and meaning of Iowa Code sections 600A.8(3) and 600A.8(4)(b). This conclusion was based upon Joshua's failure to maintain substantial and continued or repeated contact with C.K.S., as demonstrated by his contribution toward her support and his failure to have any meaningful contact with the child. Joshua appeals from this order.

We review matters pertaining to termination of parental rights *de novo*. *In re D.E.E., Jr.*, 472 N.W.2d 628, 629 (Iowa Ct. App. 1991). We give weight to the juvenile court's findings of fact, especially concerning the credibility of the witnesses. *Id.* Termination of parental rights must be based on clear and convincing proof. *In re M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993). While the juvenile court terminated Joshua's parental rights on more than one statutory ground, we will affirm if at least one ground has been proved by clear and convincing evidence. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

Our primary concern in termination proceedings is the best interests of the child. *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998). Because past performance may be indicative of the quality of the care the parent is capable of providing, we consider evidence of the parent's past performance in determining whether it is in the child's best interests to terminate parental rights. *Id.*

## **II. Merits**

The juvenile court concluded that Joshua had abandoned C.K.S. within the scope of Iowa Code sections 600A.8(3) and 600A.8(4)(b). Joshua contends that the record does not establish that he intentionally abandoned C.K.S., especially because Melissa prevented and interfered with the relationship. Upon our careful de novo review of the record, we disagree.

Melissa took C.K.S. to visit her father in prison five times between 2002 and 2003. She sent him cards and letters in prison, urging him to change his ways in order to have a parental relationship with C.K.S. She attempted to schedule times for Joshua to visit with C.K.S. When visits were scheduled, he would fail to show up. Rather than interfering with the relationship, Melissa made an early attempt to promote a relationship between C.K.S. and Joshua.<sup>2</sup>

At the time of trial, Joshua had recently sent a card and balloons to C.K.S. on her birthday and had made unsuccessful attempts to contact C.K.S. Melissa had not allowed Joshua to see C.K.S. since she filed the petition.

Prior to the time the petition for termination was filed, Joshua could have made meaningful contact with C.K.S., but he did not. His incarcerations did not

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<sup>2</sup> Melissa testified that she had wanted C.K.S. to have a relationship with Joshua, "I tried and tried and tried, and one day, I just woke up and he's not changing . . . she's going to be 8 years old, and nothing has changed since day one."

justify his failure to maintain a relationship with C.K.S. See *M.M.S.*, 502 N.W.2d at 8 (noting incarceration is not a justification for the lack of relationship with the child, especially “when the incarceration results from a lifestyle that is chosen in preference to, and at the expense of, a relationship with a child”). We do not believe that Melissa’s refusal to allow Joshua to see C.K.S. *after the filing of the petition* precludes a finding of abandonment.

We agree with the juvenile court that Joshua had not made any attempt to have meaningful contact with C.K.S. until the petition for termination of parental rights was filed. Abandonment was established by clear and convincing evidence. See *id.* (noting parent’s “feeble contacts must be viewed in the light that total desertion is not required for a showing of abandonment”).

Because we will affirm if at least one ground has been proved by clear and convincing evidence, we need not reach the issue of whether the record supports termination for nonsupport. See *R.R.K.*, 544 N.W.2d at 276.

In addition to meeting the statutory grounds for termination, the termination must benefit C.K.S. *In re B.L.A.*, 357 N.W.2d 20, 23 (Iowa 1984). Evidence of the parent’s past performance is considered in determining whether it is in the child’s best long-range and immediate interests to terminate parental rights. *R.K.B.*, 572 N.W.2d at 601. Joshua’s past performance supports our conclusion that termination is in C.K.S.’s best interest. See *In re J.S.*, 470 N.W.2d 48, 51 (Iowa Ct. App. 1991) (holding where the parent had repeatedly engaged in irresponsible behavior resulting in his absence from his children’s lives due to incarceration, his “past performance provides insight for his potential future performance as a parent and that potential does not bode well”).

Moreover, the record indicates that her guardian ad litem has recommended termination of Joshua's parental rights so that Shane can adopt her, as being in C.K.S.'s best interests. We agree with the juvenile court's conclusion that the termination of Joshua's parental rights is in C.K.S.'s best interests.

### **III. Conclusion**

We find the abandonment ground was established by clear and convincing evidence. Additionally, the juvenile court correctly concluded that termination is in C.K.S.'s best interests. We concur in the juvenile court's judgment that Joshua's rights to C.K.S. should be terminated. We therefore affirm.

**AFFIRMED.**