

IN THE COURT OF APPEALS OF IOWA

No. 7-281 / 06-0729

Filed May 23, 2007

**IN THE INTEREST OF K.L.F.,
Minor Child,**

**T.R.F. and J.R.F.,
Petitioners,**

**M.M., Mother,
Appellant.**

Appeal from the Iowa District Court for Poweshiek County, Michael R. Stewart, Judge.

A mother appeals from the order terminating the parental rights to her son.

AFFIRMED.

Ron D. Danks and Phillip H. Myers of Myers, Myers & Danks, Pleasantville, for mother.

Brian Earley of the Earley Law Office, Montezuma, for appellee.

Terri Beukelman, Pella, guardian ad litem for the minor child.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

BAKER, J.

K.L.F. was born to M.M. and J.R.F., an unmarried couple, in August of 1993. The mother was the initial custodian of the child. Although the father initially had limited contact, he started having visitation with the child in 1994. In early 1995, the child's maternal grandmother took the child and delivered his care to the father.¹ On May 8, 1995, a stipulation was entered into placing the child in the joint legal custody of the parents, with the father maintaining his physical care. Per the stipulation, the mother was granted "reasonable and liberal visitation with the child as may be agreed upon by the parties."

The mother had her last visit with the child in May of 1995. In 1996, she sent child support checks to the father. In 1997, she sent letters to the father requesting visitation with the child; however, none ever took place. In 1998, the mother sent a birthday card to the child. In August of 1999, the mother had a chance meeting with the child at the state fair. This was the last contact between mother and child. Throughout the years, the mother requested visitation through the maternal grandmother, but not the father. In 2005, the mother learned the child was having some behavior problems, attempted to commence visitation, and sought his school records. These actions caused the father to commence these private termination proceedings.

Following a hearing on the father petition, the court granted his request and terminated the mother's parental rights under Iowa Code section

¹ When asked why she did this, the grandmother testified "[M.M.] was having a very, very down time. She was really not behaving rationally at the time, and the family just decided that she was just too young at the time and just wasn't responsible enough to raise [K.L.F.]"

600A.8(3)(b) (2005). The court found that the mother had failed to affirmatively assume the duties of being a parent to the child, and that such abandonment warranted termination of her parental rights. The mother appeals from this ruling.

Scope and Standards of Review.

A termination proceeding pursuant to chapter 600A is reviewed de novo. *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998). The statutory grounds for termination under chapter 600A must be proved by clear and convincing evidence. Iowa Code § 600A.8. Although not bound by them, we give weight to the district court's findings of fact, especially when considering the credibility of witnesses. Iowa R. App. P. 6.14(6)(g).

Our primary concern is the best interests of the child. Iowa R. App. P. 6.14(6)(o); *R.K.B.*, 572 N.W.2d at 601. The petitioner has the burden to prove a statutory ground for termination under Chapter 600A. See *R.K.B.*, 572 N.W.2d at 601-02. Proof of a statutory ground, however, is not dispositive. We must also determine whether it is in the children's best interests to terminate parental rights. *In re J.L.W.*, 523 N.W.2d 622, 625 (Iowa Ct. App. 1994).

Analysis.

The mother first maintains the intent and conduct elements of abandonment were not sufficiently clear to terminate her parental rights “in light of the nearly overwhelming evidence that she has been prevented from exercising” her parental rights. In particular, she maintains her own mother exerted undue influence on her in order to keep her away from her child.

Termination of parental rights is appropriate under chapter 600A where a parent has abandoned a child. Iowa Code § 600A.8(3). To establish

abandonment it must be shown that the parent has rejected the duties imposed by the parent-child relationship. *Id.* § 600A.2(18). Abandonment under section 600A.8(3) is characterized by the action of giving up parental rights and responsibilities, accompanied by a corresponding intent. *In re D.M.*, 516 N.W.2d 888, 891 (Iowa 1994). Intent can be shown by conduct. *J.L.W.*, 523 N.W.2d at 624. If, as here the child is older than six months of age, abandonment is deemed to have occurred unless the parent maintains substantial and continuous or repeated contact with the child as demonstrated by contribution toward 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.

Iowa Code § 600A.8(3)(b). A parent's subjective intent, whether expressed or otherwise, unaccompanied by evidence of the actions outlined above, does not preclude a finding of abandonment. Iowa Code § 600A.8(3)(c).

Between May of 1995 and the date of the hearing on the father's termination petition, the mother only had one chance meeting with the child. The mother blames the lack of contact both on her family and on the father's refusal to allow contact with the child. While the record reveals that the maternal grandmother did actively seek to thwart any contact between the

mother and child, any fault for the mother's failure to have contact with the child lies entirely with the mother and her mother. This is not a situation where the mother was prevented from visiting the child by the person having lawful custody of the child. The mother chose to not risk alienation from her own family, who had threatened to disown her should she seek contact with her son, rather than actively pursue a relationship with that son. In other words, the mother placed a higher degree of importance on maintaining peaceful relations with her mother and stepfather than having any relationship with her own son. These are not the actions of a mother pursuing the best interests of a child. We affirm the court's conclusion that the mother abandoned her child as contemplated in section 600A.8(3).

The mother next maintains the child's best interests are not served by terminating her parental rights. We disagree. A child's best interests are served by engaged, caring, and interested parents. A parent who has been almost totally foreign to her child for the better part of a decade and then attempts to inject herself into the child's life when the child is experiencing problems cannot be considered a positive development. As the code sets forth, in making the best interests determination, we look to whether the parent has fulfilled financial obligations, demonstrated continued interests, made a genuine effort to maintain communication, and maintained a place of importance in the child's life. Iowa Code § 600A.1. The mother fails on all of these grounds. Termination is in the child's best interests.

Finally, the mother assails the method by which the court ruled on the father's petition to terminate. Following the conclusion of testimony at the

termination hearing, the court stated on the record that it would be terminating the mother's parental rights. The court subsequently entered a written ruling to this effect. On appeal, the mother contends the court's on-the-record ruling prejudiced her, in that it was "inconsistent with the complexity of the matter and the severity of the results."

We initially conclude this contention has not been preserved for appellate review. This objection was not made contemporaneous to the on-the-record ruling; nor was it raised in a posttrial motion. See *DeVoss v. State*, 648 N.W.2d 56, 63 (Iowa 2002) (stating "we will not consider a substantive or procedural issue for the first time on appeal"); Iowa R. Civ. P. 1.904(2). Regardless, even the mother concedes this practice is not forbidden by rule and the court did issue a detailed, thoughtful written ruling. We find no error in this practice.

AFFIRMED.