

**IN THE COURT OF APPEALS OF IOWA**

No. 7-291 / 06-1675

Filed June 27, 2007

**IN THE INTEREST OF M.M.C., Minor Child,**

**S.J.J., Mother,**  
Petitioner,

**D.M.C., Father,**  
Appellant.

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Appeal from the Iowa District Court for Webster County, James A. McGlynn, Associate Juvenile Judge.

A father appeals from a chapter 600A juvenile court order terminating his parental rights to one child. **AFFIRMED.**

Derek Johnson, Fort Dodge, for appellant-father.

Dan McGrevey, Fort Dodge, for appellee-mother.

Kurt Pittner, Fort Dodge, for minor child.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

**MILLER, J.**

Stacy is the twenty-eight-year-old mother, and Dan the thirty-year-old father, of Makayla, who was just short of her seventh birthday at the time of a termination of parental rights hearing. Dan appeals from a juvenile court order granting Stacy's petition for termination of Dan's parental rights pursuant to Iowa Code chapter 600A (2005). He raises as issues on appeal the following two claims:

THE JUVENILE COURT ERRED IN FINDING CLEAR AND CONVINCING EVIDENCE OF ABANDONMENT.

THE JUVENILE COURT ERRED IN FINDING THE BEST INTERESTS OF THE CHILD WERE SERVED BY TERMINATION OF HER FATHER'S PARENTAL RIGHTS.

**I. BACKGROUND FACTS.**

Stacy and Dan began living together in early 1998, but were never married. They lived together through Makayla's September 1999 birth and thereafter until about February 2000, when they separated. Makayla remained with Stacy. Dan moved into his parents' home.

For a period of about the next one and one-half years Dan had visits of some four to six hours per visit with Makayla once each month or two. Thereafter he began to show somewhat more interest in Makayla, and for a period of a couple of months visited her for four to six hours two to three times per month. Those visits decreased when he was charged with a drug crime or crimes and ended when he was imprisoned in April 2002. He attempted to maintain some contact by an occasional card or phone call.

Dan was released on parole in May 2004. Between then and September 2004 he visited Makayla on four or five occasions for brief periods of time, always

with a parent or sister present. By September 2004 Dan was again involved in drugs. As a result Stacy restricted or denied visitation for a period of time. Dan was subsequently returned to prison in June 2005. At the time of the late July 2006 termination of parental rights hearing he had been paroled to work release, and would be transferred to a community-based correctional facility for a period of some four months, but only when bed space became available.

Since Makayla was about one year of age Daniel has had no overnight visitation with her, unless the visitation occurred with his parents or sister, who usually picked Makayla up for visitation and returned her after visitation. He has not visited Makayla since September 2004.

Stacy began dating Jeremy in about 2003. Jeremy is two years older than Stacy. They began living together in mid-2004, and married in May 2005. They have a son, born in late February 2006. Jeremy has been employed nine years in a family business owned by his uncles. He earns about \$35,000 to \$40,000 per year. Jeremy and Stacy own the home they live in, are selling it, and are purchasing another home. Stacy is employed providing day care in their home.

Following hearing the juvenile court found Stacy had proved the grounds for termination pursuant to Iowa Code sections 600A.8(3) (abandonment) and 600A.8(4) (parent ordered to contribute to support of child and failed to do so without good cause), and that termination was in Makayla's best interest. Dan appeals.

## **II. 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 interest is the best interest 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. *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 child's best interests to terminate parental rights. *In re J.L.W.*, 523 N.W.2d 622, 625 (Iowa Ct. App. 1994).

### **III. MERITS.**

#### **A. Statutory Grounds.**

Either of the two statutory grounds relied on by the juvenile court is sufficient to support termination. See Iowa Code § 600A.8 ("The following [subsections 1 through 8] shall be, either separately or jointly, grounds for termination of parental rights:"); *In re Voeltz*, 271 N.W.2d 719, 723 (Iowa 1978) (holding that if one of two statutory grounds alleged was established, the termination would be upheld). Here, the juvenile court found both the section 600A.8(3) (abandonment) and the section 600A.8(4) (non-support) grounds proven. On appeal Dan challenges only the finding of abandonment. We therefore deem any issue concerning statutory grounds for termination pursuant to section 600A.8(4) waived, and affirm the juvenile court's finding that Stacy proved grounds for termination under that provision. See Iowa R. App. P.

6.14(1)(c) (“Failure in the brief to state . . . an issue may be deemed waiver of that issue.”).

We need not, however, rely on section 600A.8(4) alone as a statutory ground for termination. Section 600A.8(3)(b) provides:

*b.* If the child is six months of age or older when the termination hearing is held, a parent is deemed to have abandoned the child 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.

Stacy did briefly prevent Dan from visiting with Makayla, but only for a period beginning in September 2004 when he had again become involved in drugs. At other times when Dan was not imprisoned he only occasionally visited her, and then only for a few hours. Dan had not visited Makayla in the two years preceding the termination hearing. He acknowledged that his few visits of a few hours each constituted total visitation time of no more than just over two days in the period of over four years since April 2002. Even when not imprisoned, Dan did not have regular communication with Makayla and at best made only a marginal effort to communicate with her. Neither did he have, or make a serious effort to have, regular communication with Stacy concerning Makayla. Daniel

last lived with Makayla on a regular basis some six years before the termination hearing.

We fully agree with the juvenile court that Stacy proved section 600A.8(3)(b) abandonment.

**B. BEST INTEREST.**

Dan acknowledges he has no present relationship with Makayla. It is apparent he has no bond with her.

Stacy and Jeremy have been together three years. They have an infant son. Makayla is fully integrated in their family and has a close relationship with Jeremy and with her little brother.

Jeremy has stable, secure employment and good income. He is willing to support Makayla, and has in fact been a primary source of her support for the past two years. Jeremy attends Makayla's school events and is heavily involved in both her organized and family recreational activities. He has been for the past three years the male role model in her life.

Stacy and Jeremy's relationship and marriage appear positive and stable. Jeremy is a source of security to Makayla. He wishes to adopt her if Dan's parental rights are terminated, and he and Stacy intend that he will do so. Makayla wishes to have Jeremy's surname.

We agree with the juvenile court that termination of Dan's parental rights is in Makayla's best interest.

**IV. CONCLUSION.**

Any issue concerning section 600A.8(4) grounds for termination is waived. Based on our de novo review we conclude Stacy proved by clear and convincing

evidence that Dan abandoned Makayla. We further conclude termination of Dan's parental rights is in Makayla's best interest. We therefore affirm the juvenile court order terminating Dan's parental rights.

**AFFIRMED.**