

IN THE COURT OF APPEALS OF IOWA

No. 8-998 / 08-1233
Filed January 22, 2009

**IN THE INTEREST OF T.L.B. and C.L.B.,
Minor Children,**

J.S., Petitioner,
Appellee,

L.D., Mother,
Appellant.

Appeal from the Iowa District Court for Wapello County, William S. Owens,
Associate Juvenile Judge.

A mother appeals the termination of her parental rights to her children, contending (1) the children's guardian failed to prove she abandoned the children, and (2) termination of her parental rights was not in the children's best interests. **AFFIRMED.**

Michael Carpenter of Webber, Gaumer & Emanuel, P.C., Ottumwa for appellant mother.

Joni Keith of Keith Law Firm, Ottumwa, for appellee.

Mary Krafka of Krafka Law Office, Ottumwa, for minor children.

Considered by Sackett, C.J., and Vaitheswaran and Potterfield, JJ.

VAITHESWARAN, J.

Lorraine appeals the termination of her parental rights to T.B., born in 1994, and C.B., born in 1998. She contends (1) the children’s guardian failed to prove she abandoned the children, and (2) termination of her parental rights was not in the children’s best interests. Our review of these issues is de novo. *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998).

I. “To abandon a minor child”

means that a parent, putative father, custodian, or guardian rejects the duties imposed by the parent-child relationship, guardianship, or custodianship, which may be evinced by the person, while being able to do so, making no provision or making only a marginal effort to provide for the support of the child or to communicate with the child.

Iowa Code § 600A.2(19) (2007). A parent is deemed to have abandoned a child who is six months or older

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). We agree with the juvenile court that abandonment occurred.

The children were removed from Lorraine's home in 2003 because she was living with a registered sex offender. They were placed with their paternal aunt, Jakki. The juvenile court adjudicated the children in need of assistance and continued their placement with Jakki. The court subsequently granted the district court concurrent jurisdiction to establish a guardianship.

Jakki was appointed guardian, subject to facilitating supervised visitation between the children and Lorraine "at the discretion of the Guardian." The guardianship order further stated, "[A]t such time that the mother achieves the steps set by the Iowa Department of Human Services, then the mother can petition the Court for further visitation with the children." The juvenile court terminated its jurisdiction and closed the child in need of assistance case.

Lorraine had no visits with the children after March 2004 and made only seven calls to Jakki's phone numbers between September 2004 and June 2007. One of those phone calls related to an older child who is not a subject of this proceeding. Lorraine admitted the remaining calls were on the children's birthdays. While she asserted that she did not call more often because Jakki would not allow her to speak to the children and she did not "want to be upset every day of [her] life," the record reveals that, for several years, she took no other action to foster or maintain a relationship with the children. For example, Jakki testified that Lorraine did not attempt to exchange gifts with the children after the guardianship order was entered, paid no child support until required to do so in 2007, and made no attempts to visit the children until May 2007. Finally, as the juvenile court noted, Lorraine "provided no proof that she had complied

with the District Court's Order that established conditions under which her visits could occur."

We recognize that Jakki did not facilitate contact between Lorraine and the children. She candidly admitted that she did not want Lorraine calling the children and she would not allow visits absent a court order requiring them. She testified, "[I]t'd been several years since [Lorraine's] seen the kids, and I don't think that it's in their best interest to just set up another visit, and not only that, but as far as I know, she hasn't done any of the things required by DHS." Under other circumstances, this conduct might warrant reversal. See *In re D.A.P.*, No. 04-0372 (Iowa Ct. App. Aug. 26, 2004). In this case, the guardianship order vested Jakki with discretion to deny visits and Lorraine did not proactively seek more contact with the children. Based on this record, we conclude Jakki satisfied her burden of establishing that Lorraine abandoned the children.

II. "Once we determine a ground for termination under 600A.8 has been established by clear and convincing evidence, we must next determine whether it is in the child's best interests to order termination of parental rights." *In re J.L.W.*, 523 N.W.2d 622, 625 (Iowa Ct. App. 1994).

The children were well-established in Jakki's home. As the juvenile court noted, they began living with her in July 2003, remained with her continuously from that point forward, and were doing well in her care. Under these circumstances, we conclude the children's best interests were served by termination of Lorraine's parental rights to them.

AFFIRMED.