

IN THE COURT OF APPEALS OF IOWA

No. 9-163 / 08-1487

Filed May 29, 2009

**IN THE INTEREST OF B.W.G., N.J.G., and T.W.G.,
Minor Children,**

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

Appeal from the Iowa District Court for Pocahontas County, Kurt John Stoebe, District Associate Judge.

A father appeals from the district court's order terminating his parental rights to his three children. **AFFIRMED.**

Carol Hallman of Hudson Law Firm, Pocahontas, for appellant father.

Katherine Evans of Iowa Legal Aid, Mason City, for appellee mother.

Dennis Fitzgerald of Crotty & Fitzgerald, Pocahontas, for minor children.

Heard by Sackett, C.J., and Vogel, J., and Nelson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

VOGEL, J.

Richard appeals from the district court's order terminating his parental rights to B.G., N.G., and T.G. pursuant to Iowa Code sections 600A.8(3) and 600A.8(9) (2007). Richard asserts that (1) the district court did not give enough weight to his testimony; (2) his parental rights to B.G. should not have been terminated because B.G. was not present when T.G. was shot; and (3) termination is not in the best interests of the three children. Upon our de novo review of the record, we conclude the district court's findings are supported by clear and convincing evidence and termination is clearly in the children's best interests. *In re R.S.N.*, 706 N.W.2d 705, 707 (Iowa 2005) (de novo review). We affirm.

I. Background Facts and Proceedings

Richard and Holly are the parents of B.G. (born 2001), N.G. (born 2003), and T.G. (born 2003). On August 9, 2005, Richard, who had a history of domestic violence and child abuse, fired a shotgun into a car occupied by Holly, Holly's friend, Scot, N.G., and T.G. Prior to the shooting, Richard saw Holly driving and followed her vehicle. He rammed Holly's vehicle and eventually caused her to stop. Richard then exited his vehicle, approached the front of Holly's vehicle, and shot Holly in the right arm. Richard went to the driver's side window where he put the gun into the vehicle, and shot Scot in the head. Holly testified that she "remembered looking to Scot and seeing the whole top of his head flying against the passenger window and seeing his scalp falling down off

the window on to his lap and his head just falling forward and blood pouring out.”¹

Richard then pointed the shotgun into the backseat and shot T.G., striking both his right hand and face. After Richard stopped shooting, Holly quickly checked on the children, finding N.G. passed out on the floor, with blood and brain matter on her face, and T.G. bleeding profusely from his eye.

As a result of the shooting, T.G. had seventy percent of the right side of his brain removed. He is blind in his right eye, has reduced vision in his left eye, deaf in his right ear, and has reduced hearing in his left ear. T.G. will likely never be able to live independently. Although N.G. did not suffer any physical injuries, she has suffered severe psychological trauma. All three children, including B.G. who was not present at the time of the shooting, have needed counseling as they all were diagnosed with posttraumatic stress disorder.

Following a jury trial, Richard was convicted of assault with intent to inflict serious injury in violation of Iowa Code section 708.2 (2005), two counts of attempted murder in violation of Iowa Code section 707.11, intimidation with a dangerous weapon in violation of Iowa Code section 708.6, child endangerment in violation of Iowa Code section 726.6, two counts of willful injury causing serious injury in violation of Iowa Code section 708.4, and willful injury causing bodily injury in violation of Iowa Code section 708.4. The district court sentenced Richard to a total of 97 years in prison, with some of the sentences to run concurrently resulting in a sentence of a maximum 65 years in prison. His convictions were affirmed on direct appeal.

¹ Scot suffered severe brain damage and is confined to a wheelchair.

In February 2008, Holly petitioned for the termination of Richard's parental rights to B.G., N.G., and T.G. On September 2, 2008, the district court granted the petition, terminating Richard's parental rights to all three children pursuant to Iowa Code sections 600A.8(3) and 600A.8(9) (2007). Richard appeals.

II. Analysis

Richard first asserts that his parental rights to B.G. should not have been terminated pursuant to section 600A.8(9). Section 600A.8(9) provides two alternative grounds for termination: (1) if the parent is imprisoned for a crime against the child, the child's sibling, or another child in the household; or (2) if the parent is imprisoned for any other reason and is unlikely to be released for a period of five or more years. In this case, the district court found the grounds for termination of Richard's parental rights to all three children were proved under both alternatives of this section.²

² Richard also asserts that his parental rights to all three children should not have been terminated pursuant to the second alternative of section 600A.8(9) because he has not fully exhausted all appeals and postconviction relief proceedings. He asserts that at trial, he "noted that if his post conviction appeal proceedings were successful, it is possible that he could be released from prison sooner than the five year period as provided for in Iowa Code section 600A.8(9)." However, the State argues that this issue is not preserved. The State also asserts that Richard's convictions were affirmed on appeal and Richard did not testify to "any alternative explanation of the events" and did not present any evidence "about what further appellate remedies he was pursuing." It is doubtful that Richard has preserved this issue and we find the district court properly terminated Richard's parental rights pursuant to the first alternative of section 600A.8(9), therefore it is not necessary to reach this issue. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) ("When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm."). Regardless, we view Richard's arguments as unconvincing. His convictions were upheld on direct appeal and if we would allow him to exhaust all avenues of postconviction relief prior to termination, the ensuing litigation could be protracted for many years. The children's best interests outweigh waiting for years for Richard to pursue further litigation. Cf. *In Interest of J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997) ("At some point, the rights and needs of the child rise above the rights and needs of the parents.").

Richard specifically claims that his parental rights to B.G. should not have been terminated pursuant to the first alternative of section 600A.8(9) because B.G. was not present at the time of the shooting.³ However, section 600A.8(9) does not require that B.G. be present. Rather it provides for termination because Richard is imprisoned for a crime against B.G.'s sibling, which in this case Richard was convicted of several crimes, including child endangerment, willful injury, and attempted murder of T.G. The district court properly terminated Richard's parental rights to all three children under this subsection.

Richard next asserts that the district court should not have terminated his parental rights to B.G., N.G., and T.G. pursuant to section 600A.8(3). This subsection provides for termination of parental rights for abandonment of the children. Richard specifically asserts that the district court did not give sufficient weight to his testimony in finding that he abandoned the children. We do not need to reach this issue because we found termination was clearly proved under section 600A.8(9). See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) ("When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm."). However, upon our de novo review of the record, we conclude there was clear and convincing evidence to find that Richard abandoned the children. See *In re M.M.S.*, 502 N.W.2d 4, 8 (Iowa 1993) (stating that a parent "cannot use his incarceration as a justification for his lack of relationship with the child"); *In re J.L.W.*, 523 N.W.2d 622, 624 (Iowa Ct. App.

³ Richard does not claim that his parental rights to N.G. and T.G. should not have been terminated pursuant to the first alternative of section 600A.8(9).

1994) (discussing that a parent must take full responsibility for conduct that resulted in his incarceration).

Finally, Richard asserts that termination of his parental rights is not in the children's best interests. Since the shooting, all three children have been in counseling to cope with the enormous pain inflicted upon them by their father. B.G. who was not present during the shootings, has been confused by what has happened to his family and Holly described him as "extremely torn." She stated that he did not see what his father did and asks where he is, but yet is fearful that his father will hurt him next. N.G. and T.G. have frequent nightmares and have expressed fear that Richard will kill them. A therapist, who mainly worked with B.G. but had contact with all three children, testified that if Richard's parental rights were not terminated the children would continue to be traumatized and termination was in the children's best interests because they need closure.

We conclude that there was clear and convincing evidence for the district court to terminate Richard's parental rights. Further, termination of Richard's parental rights to B.G., N.G., and T.G. is in the children's best interests. Therefore, we affirm the district court.

AFFIRMED.