

IN THE COURT OF APPEALS OF IOWA

No. 1-369 / 11-0184
Filed May 25, 2011

**IN THE INTEREST OF A.C.P.,
Minor Child,**

**J.A.P., Mother,
Petitioner,**

**E.S.B., Father,
Appellant.**

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

A father appeals from the order terminating his parental rights.

AFFIRMED.

Ryan J. Mitchell of Orsborn, Bauerly, Milani & Grothe, L.L.P., Ottumwa, for
appellant.

Michael O. Carpenter of Gaumer, Emanuel, Carpenter & Goldsmith, P.C.,
Ottumwa, for mother.

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

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

EISENHAUER, P.J.

A father appeals the termination of his parental rights to his child. He contends the juvenile court erred in finding he had abandoned the child pursuant to Iowa Code section 600A.8(3) (2011). He also contends termination is not in the child's best interests. We review his claims de novo. *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998).

A.C.P. was born in February 2007 and lived with the mother and father until the father returned to prison in November 2007 after his parole was revoked. The mother took the child to visit the father approximately every other weekend until September 28, 2008. On that date, the mother informed the father she was seeing another man, Mark. The father threatened to hurt her, hurt Mark, or take the child from her. Because of these threats and past threats of violence, the mother stopped taking the child for visits.

The father has not seen A.C.P. since September 2008. The only attempt he has made to contact the child since then was to send a Christmas card to him in December 2008. The father contacted the mother once by telephone in April 2009, but did not ask about the child. He left the mother a message on her Facebook account in August 2009 in which he asked to see the child. He has not contacted the mother since. The father was released from prison in May 2009 but his parole was again revoked in September 2009. He is not eligible for release until June 2012.

The mother and Mark have a daughter, M.P., who was born in February 2009. The mother married Mark in October 2009. Mark has been living with the

mother and A.C.P. since March 2008, and A.C.P. calls Mark "dad." Mark intends to adopt A.C.P.

On June 21, 2010, the mother filed a petition seeking to have the father's parental rights terminated pursuant to section 600A.8. A hearing was held in November 2010. On January 5, 2011, the juvenile court entered its order terminating the father's parental rights pursuant to section 600A.8(3). The father appeals.

Termination is appropriate under section 600A.8(3) where clear and convincing evidence shows the parent has abandoned the child. Where, as here, the child is six months of age or older,

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.

Iowa Code § 600A.8(3)(b).

We conclude the father has abandoned the child within the meaning of section 600A.8(3). The father has not seen the child since September 2008. Other than a Christmas card in 2008, he has made no genuine attempt to contact the child. Although the father claims he did not know the mother's location due to

numerous moves, he was aware of her telephone number—which has not changed—and her Facebook account. The father has not provided for the child’s maintenance or care since the child was approximately ten months of age. He did not provide money for his support even while released from prison in the summer of 2009.

Termination must also be in the child’s best interests. See *In re R.K.B.*, 572 N.W.2d 600, 602 (Iowa 1998). We conclude the mother has proved it is. See *id.* (noting the party seeking termination has the burden of showing termination is in the child’s best interests). The father has been incarcerated for the majority of the child’s life. He acknowledges using marijuana while living with A.C.P. and hitting the mother. He has not had a relationship with the child in over two years.

Meanwhile, the child has resided with his mother and Mark and his half-sister for the past two years. He identifies Mark as his dad. Mark has shown himself to be active and engaged as a father. He intends to adopt A.C.P. if the father’s parental rights are terminated.

Having found the grounds for termination proved and termination in the child’s best interests, we affirm.

AFFIRMED.