

IN THE COURT OF APPEALS OF IOWA

No. 1-905 / 11-0965
Filed December 21, 2011

**IN THE INTEREST OF E.M.O.,
Minor Child,**

A.M.F., Mother,
Petitioner-Appellant,

M.A.O., Father,
Appellee.

Appeal from the Iowa District Court for Linn County, Jane F. Spande,
District Associate Judge.

A mother appeals from the order denying her petition to terminate the
father's parental rights to their child pursuant to Iowa Code chapter 600A (2011).

AFFIRMED.

Edward F. Crowell, Cedar Rapids, for appellant mother.

Henry M. Keyes, Cedar Rapids, for appellee father.

Angela Railsback of Railsback Law Office, Cedar Rapids, for minor child.

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

EISENHAUER, J.

A mother appeals from the order denying her petition to terminate the father's parental rights to their child pursuant to Iowa Code chapter 600A (2011). She contends termination is warranted because the father has abandoned the child within the meaning of section 600A.8(3)(b). She also contends termination is in the child's best interests. We review her claims de novo. *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998).

The mother and father, who were never married, have one child together who was born in October 2006. Although the mother and father lived together briefly following the child's birth, the child has lived with the mother since the parent's separation in March 2007. The relationship between the mother and father has been tumultuous; the mother has twice obtained protective orders against the father. The first domestic abuse filing in July 2007 resulted in a six-month period of one visit per week at the maternal grandmother's home. The father attended seventy to eighty percent of the times permitted.

Since July 2007, the father has had all visits with the child at the maternal grandmother's home. Visitation initially took place there on Thursday nights but was later moved to Sunday. In December 2008, the father filed a custody action, seeking to have the location of the visitation changed from the grandmother's home to another location because he believed unfair restrictions were being placed on his visitation by the mother and grandmother. By the time of the hearing on temporary custody and visitation, the father indicated he had not seen the child for six months. The March 2009 temporary custody and visitation order provided for two supervised visits per week at the home of the maternal

grandmother. However, when the father went for his first visitation after the temporary order was entered, he was told the visit would not take place because he had not called on Friday to inform the mother of the visit. No provision in the temporary order required the father to confirm his visits.

The final custody decree entered in September 2009 placed the child in the joint legal custody of the parents and in the physical care of the mother. Visits with the father were ordered supervised and to take place “at the location the parties presently have agreed upon or at new locations agreed upon by them.” The father was ordered to contact the mother at least forty-eight hours in advance of visits with notice of his intent to visit the child. The court in its order stated:

The irony is of course, that her [mother's] actions and attitude are part of the reason [the father] is not seeing more of [the child]. Having helped create the difficult situation, she now asserts it as a basis for, in effect, terminating [the father]'s parental rights.

The court predicted the mother would effectively deny the child from having any meaningful relationship with her father.

Visitations between the father and child were plagued with difficulties. In April 2009, the grandmother wrote the father an angry note implying he should relinquish his rights as a parent and allegedly told the father she would rather stick a knife in his throat than look him in the face. The mother accused the father of having angry outbursts and mentally abusing her and the child. Frustrated by the allegations made against him, the father sought to bring third-party witnesses to visitations and was denied by the mother and grandmother. Law enforcement was called to the grandmother's house on several occasions,

and there was an allegation the father damaged property at the grandmother's home.

In November 2009, the father filed a contempt action based on the difficulties with the visitation schedule. That same month, the mother obtained a temporary protective order against the father based on threats the father allegedly made to kidnap and kill her and the child. Both matters came on for hearing on December 8, 2009. A final domestic abuse protective order was entered prohibiting any contact between the father and the mother and child from December 8, 2009, and December 8, 2010. The father complied with the order. The contempt action was not addressed because mother had not been personally served with notice of the action. The contempt action was dismissed in January 2010 when the father failed to attend the hearing, but the evidence indicates the father never received notice of the hearing.

On January 6, 2011, the mother filed a petition to terminate the father's rights under chapter 600A. The petition alleged abandonment pursuant to section 600A.8(3) and failure to pay support pursuant to section 600A.8(4) as grounds for termination. Following a hearing, the court denied the petition and dismissed the action in May 2011. The mother filed a motion to enlarge or amend, which the court denied.

The mother appeals, contending the court erred in finding she failed to prove the grounds for termination by abandonment. Iowa Code section 600A.8(3)(b) states a parent is deemed to have abandoned a child over six months of age

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.

We conclude the mother has failed to prove the grounds for termination by clear and convincing evidence. The father has contributed to the child's support. In June 2007, the father was ordered to pay support, and between that time and the time of trial in this matter, the father had paid \$17,778.33 of the \$18,492.00 of supported ordered. The arrearage occurred when the father was unemployed and a smaller amount of support was withheld from his unemployment benefits.

Although the father was legally barred from visiting the child during a one-year period due to a protective order obtained by the mother, at other times the father made efforts to establish and effectuate visitation with the child. These efforts include filing the custody action and filing the contempt action. The mother and grandmother sought to interfere with his legal rights to see his child by placing extra restrictions on his visits. The father's inability to visit with the child on these occasions was due to the mother preventing the visits, not because of any action on the father's part. The trial court accepted Michael's explanation for not seeing the child after the expiration of the protective order in December 2010; he was faced with complaints to law enforcement and threats to

be charged with trespass if he came to the grandmother' home. He was seeking counsel to assist in enforcing his visitation rights when the mother filed this termination action in January 2011.

Because the father has visited 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, we conclude the mother has failed her burden of proving the grounds for termination under chapter 600A. We affirm the order denying and dismissing her petition to terminate the father's parental rights.

AFFIRMED.