

**IN THE COURT OF APPEALS OF IOWA**

No. 2-1145 / 12-1921  
Filed January 24, 2013

**IN THE INTEREST OF B.L.S.,  
Minor Child,**

**M.S., Father,  
Appellant.**

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Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

A father appeals the termination of his parental rights to his child.

**AFFIRMED.**

Jeffrey L. Powell of The Law Office of Jeffrey L. Powell, Washington, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Alan Ostergren, County Attorney, and Kevin McKeever, Assistant County Attorney, for appellee.

Considered by Doyle, P.J., and Mullins and Bower, JJ.

**BOWER, J.**

A father appeals the termination of his parental rights to his child. He contends the State failed to prove the grounds for termination by clear and convincing evidence. He also contends termination is not in the child's best interests.

Because clear and convincing evidence shows the father has abandoned the child, and termination is in the child's best interests, we affirm.

***I. Background Facts and Proceedings.***

The child was born in March 2007 and resided with the mother. Although the exact dates are in dispute, the father had custody of the child for a period of months in 2009 before the child was returned to the mother following a custody dispute.

The child came to the attention of the Department of Human Services (DHS) in November 2009. The child was removed from the mother's care in June 2010. The father was never served with notice of the child in need of assistance (CINA) proceedings, but spoke to the mother in September 2010 and knew the child was in a family placement—although the father thought the child was with a different relative. The father did not have contact with the child thereafter.

The father is currently incarcerated in Mississippi for possession of cocaine with intent to deliver; his date of discharge was unknown at the time of the hearing. He was contacted by the DHS in February 2012. He sent one letter

to the DHS worker in February 2012 but did not contact the DHS thereafter. Nor did the father contact the child.

The State filed an amended petition seeking to terminate the father's parental rights on July 23, 2012. The termination hearing was held in August 2012. The father testified by phone. On October 19, 2012, the juvenile court filed its order terminating the father's parental rights.

## ***II. Scope and Standard of Review.***

We review termination of parental rights proceedings de novo. *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011). While we are not bound by the juvenile court's fact-findings, we do give them weight, especially when assessing witness credibility. *Id.*

We will uphold a termination order if clear and convincing evidence supports the grounds for termination under section 232.116. *Id.* Evidence is "clear and convincing" where there are no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.*

## ***III. Analysis.***

The father's parental rights were terminated pursuant to Iowa Code section 232.116(1)(b) (2011). Termination is appropriate under this section where "[t]he court finds that there is clear and convincing evidence that the child has been abandoned or deserted."

Abandonment is characterized as a giving up of parental rights and responsibilities accompanied by an intent to forego them. Two elements are involved in this characterization. First, the giving up of parental rights and responsibilities refers to conduct. Second, the intent element refers to the accompanying state of mind. Parental responsibilities include more than subjectively maintaining

an interest in a child. The concept requires affirmative parenting to the extent it is practical and feasible in the circumstances.

*In re A.B.*, 554 N.W.2d 291, 293 (Iowa Ct. App. 1996) (citations omitted).

Clear and convincing evidence shows the father has abandoned the child. The father has not had contact with the child since the child was removed from his care in 2009. Although the father claims he did not know the child's whereabouts, the juvenile court found his claim was not credible. We defer to this finding. See *In re D.S.*, 806 N.W.2d at 465. Furthermore, the father did not maintain contact with the DHS or the child in the six months following being contacted by the DHS in February 2012. There is no objective evidence that the father has maintained any interest in the child.

We also find termination is in the child's best interests. In making this determination, we "give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child." *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). The child has no relationship with the father, and the father made no effort to contact the child in the six months preceding the termination hearing. The father is incarcerated and unable to care for the child. In contrast, the child is in a placement with a relative who is willing to adopt. All of the child's needs are being met in this placement. When contrasting the child's current placement with the father, who has abandoned the child, we find termination is in the child's best interests. Accordingly, we affirm.

**AFFIRMED.**