

**IN THE COURT OF APPEALS OF IOWA**

No. 3-036 / 12-1687  
Filed February 13, 2013

**IN THE INTEREST OF C.M.F.,  
Minor Child,**

**E.M.C., Mother,  
Appellant,**

**J.J.F., Father,  
Appellee.**

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Appeal from the Iowa District Court for Benton County, Russell G. Keast,  
District Associate Judge.

A mother appeals from the denial of her petition to terminate the father's  
parental rights. **AFFIRMED.**

Amy L. Reasner and Emily K. Ellingson of Lynch Dallas, P.C., Cedar  
Rapids, for appellant.

J.J.F., Cedar Rapids, appellee pro se.

Caitlin L. Slessor of Nazette, Marner, Nathanson & Shea, L.L.P., Cedar  
Rapids, for minor child.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

**DANILSON, J.**

**I. Background Facts and Proceedings.**

The child, C.M.F., was born in October 2008. The mother and father were never married. The father resided with the child and the mother for the first three months of the child's life and then did not see the child between December 2009 and April 2010. A support and visitation order was entered in April 2010. The father did exercise visits for a few months and then did not see the child between December 2010 and March 2011. The father then saw the child for one week per month in June, July, and August 2011.

The mother sought the termination of the father's parental rights, and at the time of the June 2012 termination trial, the father had not seen his child since August 2011. The guardian ad litem recommended termination of the father's parental rights, as did the father's own mother.

The father resisted the termination petition. He appeared at the termination hearing and testified he had recently had emotional difficulties due to past trauma, but was attempting to address those difficulties; he loved his child; and he was working to pay off past financial obligations and to obtain a suitable residence. Two years before the trial in this action, the father initiated an action to establish joint custody, visitation and reduce his child support. Until his emotional difficulties, he was visiting the child. He also continued to pay child support to the date of the trial. We affirm as there is not clear and convincing evidence that termination is in the child's best interests at this time.

## II. Scope and Standard of Review.

“We review de novo termination proceedings under chapter 600A.” *In re C.A.V.*, 787 N.W.2d 96, 99 (Iowa Ct. App. 2010). We give weight to the factual findings of the juvenile court, but are not bound by them. *Id.*

## III. Analysis.

A district court is empowered to terminate parental rights upon a petition by a parent. Iowa Code §§ 600A.5(1)(a), 600A.9 (2011); see *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998). Abandonment provides grounds for ordering the termination of parental rights:

b. If the child is six months of age or older when the termination hearing is held, 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.

c. The subjective intent of the parent, whether expressed or otherwise, unsupported by evidence of acts specified in paragraph “a” or “b” manifesting such intent, does not preclude a determination that the parent has abandoned the child. In making a determination, the court shall not require a showing of diligent efforts by any person to encourage the parent to perform the acts specified in paragraph “a” or “b”.

Iowa Code § 600A.8(3) (2011).

The district court found that the father had abandoned the child within the meaning of section 600A.8, and thus the mother had proved by clear and convincing evidence that grounds for termination existed.

Nonetheless, the court concluded it was in the child's best interests not to terminate the father's parental rights. See *In re R.K.B.*, 572 N.W.2d 600, 602 (Iowa 1998) (noting that in addition to grounds for termination, the petitioner must also show termination is in the child's best interests).

Iowa Code section 600A.1, provides:

This chapter shall be construed liberally. The *best interest of the child subject to the proceedings of this chapter shall be the paramount consideration* in interpreting this chapter. However, the interests of the parents of this child or any natural person standing in the place of the parents to this child shall be given due consideration in this interpretation.

The best interest of a child requires that each biological parent affirmatively assume the duties encompassed by the role of being a parent. In determining whether a parent has affirmatively assumed the duties of a parent, the court shall consider, but is not limited to consideration of, the fulfillment of financial obligations, demonstration of continued interest in the child, demonstration of a genuine effort to maintain communication with the child, and demonstration of the establishment and maintenance of a place of importance in the child's life. Application of this chapter is limited to termination of parental rights proceedings and shall not apply to actions to establish paternity or to overcome established paternity.

(Emphasis added.) This statutory provision explicitly includes a parent's "fulfillment of financial obligations" in the best interest analysis.<sup>1</sup> "[O]ur appellate courts have repeatedly recognized child support generally as a valid

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<sup>1</sup> Our supreme court compared the role a parent's financial actions played in termination of parental rights under chapters 232 and 600A in *In re H.S.*, 805 N.W.2d 737, 748 (Iowa 2011):

While taking child support directly into account under chapter 600A makes sense because that is a private termination statute, and thus a component of our domestic relations law, section 232.116 addresses the typically more urgent situation in which a child is at a high degree of risk.

consideration in termination proceedings under chapter 600A.” *H.S.*, 805 N.W.2d at 746.

The district court found:

Even though [the father] has chosen to absent himself as an active parent to [the child], he has continued to maintain regular financial support for [the child’s] benefit. . . .

For the most part, [the father] has fulfilled his financial obligations to the child. He has demonstrated an interest in the child by exercising visitation during extended periods of [the child’s] life, initiating a court action to obtain joint legal custody and visitation and resisting this action. On the other hand, he has failed to demonstrate a genuine effort to continually maintain communication with the child as well as the establishment and maintenance of a place of importance in the child’s life.

In light of the current lack of legal and long-term parental security without [the mother’s] actual marriage to [her fiancé], the proposed length of time before that security will be addressed, and the uncertainty of it ever being addressed . . . , the Court cannot deem that termination of the parental rights of the father would benefit the child at this time . . . .

We find no reason to interfere with the district court’s ruling. We therefore affirm.

**AFFIRMED.**