

**IN THE COURT OF APPEALS OF IOWA**

No. 3-315 / 12-2160  
Filed May 15, 2013

**IN THE INTEREST OF D.M.M.,  
Minor Child,**

**H.M., Mother,**  
Petitioner,

**D.G., Father,**  
Appellant.

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Appeal from the Iowa District Court for Polk County, Terry R. Rickers,  
Judge.

A father appeals from the termination of his parental rights. **AFFIRMED.**

Zoshua Z. Zeutenhorst of Elverson, Vasey & Peterson, L.L.P., Des  
Moines, for appellant.

Ryan A. Genest of Culp, Doran, Seidlin & Genest, P.L.C., Des Moines, for  
appellee.

Jesse Macro, West Des Moines, attorney and guardian ad litem for minor  
child.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

**BOWER, J.**

A father appeals the termination of his parental rights to his child pursuant to Iowa Code chapter 600A (2011). He contends the mother failed to prove by clear and convincing evidence that he failed to maintain substantial and continuous contact with the child or that he was ordered to contribute to the child's support and failed to do so without good cause.

Because clear and convincing evidence establishes the father has failed to maintain substantial and continuous contact with the child as provided in Iowa Code section 600A.8(3)(b), we affirm the termination of the father's parental rights.

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

The child at issue, D.M.M., was born in 2008. The child's parents are both drug addicts who met at a Narcotics Anonymous meeting in 2006. The father was born addicted to heroin and has struggled with addiction issues his entire adult life. The mother ended her relationship with the father because he was unable to maintain sobriety.

The father had sporadic contact with the child after birth and did not provide support for the child. In November 2008, the mother and father agreed to an informal visitation schedule whereby the father would have three two-hour, supervised visits with the child per week. In January 2009, the father filed a petition for temporary visitation, but failed to attend the May 2009 hearing on his petition.

In June 2009, the mother and father entered into a stipulated temporary visitation agreement. The father agreed to supervised visitation and was ordered to pay \$126.68 per month in child support. The visitation was contingent upon the father testing negative for drugs within twenty-four hours of the visitation. Between the entry of the visitation agreement and April 2010, the father did not have regular contact with the child due to drug relapses or arrests.

In April 2010, the mother filed an application for a rule to show cause because of the father's failure to pay child support. The father was found in contempt for failing to pay child support.

In October 2010, the mother married. The mother and father entered a stipulated custody agreement, which provided the child would reside with the mother in Colorado. The father's visitation rights were contingent upon his sobriety, with his visitation increasing after every six months of demonstrated sobriety. The father would achieve maximum visitation rights after demonstrating two years of continuous sobriety. The father's child support obligation was set at \$100 per month.

The father saw the child in November and December of 2010 and made child support payments those months. But while in Colorado for his visit, he was arrested for possession of a controlled substance. He was jailed during his scheduled visit in January 2011. The father contacted the mother on March 27, 2011, stating he was out of jail and that day was his new "sobriety date." The father relapsed and contacted the mother on May 21, 2011, giving her a new "sobriety date" of May 19, 2011. He did not visit the child until July 2011. The

father also had a visit with the child in August 2011. He has not seen the child since that date.

The father did not make any child support payments after December 2010. The mother moved back to Iowa in April 2011, and in June 2011 she requested a sentencing hearing on the 2010 contempt finding against the father for his failure to pay child support.

The father, in response, filed a petition seeking to have the mother found in contempt for allegedly depriving him of visitation and communication with the child. A consolidated hearing was held in April 2012 on the mother's request for imposition of the suspended jail sentence for the father's prior contempt and the father's contempt application. The court found the father failed to purge the contempt and ordered the father to be jailed for thirty days, with twenty days suspended. The court also dismissed the father's contempt action, finding the father failed to establish that the mother had a duty to provide telephonic or Skype contact between the father and the child.

On January 26, 2012, the mother filed a petition to terminate the father's parental rights under Iowa Code chapter 600A. In April 2012, the court granted the mother's request to suspend the father's visitation during the pendency of the termination action. Trial on the termination action was held in June and August of 2012. The guardian ad litem recommended termination. In the court's November 6, 2012 ruling, it terminated the father's parental rights pursuant to Iowa Code sections 600A.8(3)(b) and .8(4).

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

We review private termination proceedings de novo. *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998). We give weight to the juvenile court's fact-findings, even though we are not bound by them. *Id.* This is especially true with regard to witness credibility. *Id.* The paramount consideration in a private termination action is the child's best interests. Iowa Code § 600A.1.

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

The father contends the juvenile court erred in terminating his parental rights under both section 600A.8(3)(b) and .8(4). When a juvenile court relies on multiple statutory grounds for terminating parental rights, we can affirm by finding clear and convincing evidence to support any one of the grounds cited in the order. *Cf. In re S.R.*, 600 N.W.2d 63, 64 (Iowa 1999) (terminating under section 232.116(1)).

Iowa Code section 600A.8(3) allows the court to terminate parental rights where the parent has abandoned the child. Where a child is six months of age or older, the court may terminate parental rights where clear and convincing evidence establishes the parent has failed to

maintain 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). The subjective intent of the parent unsupported by the acts specified above will not preclude a determination the parent has abandoned the child. *Id.* § 600A.8(3)(c).

We find clear and convincing evidence establishes the father has failed to maintain substantial and continuous contact with the child. The evidence shows the father's contact with the child has been sporadic, in large part due to his ongoing struggles with addiction. Despite his claims to the contrary, clear and convincing evidence shows the father has failed to maintain six months of sobriety at any point during the child's four years of life. When the father is abusing drugs, he disappears from the child's life. His drug abuse has also led to his incarceration, which prevents him from visiting the child.

The father visited the child in December 2010. He did not see the child again until July 2011 due to drug relapses and incarceration. The father visited with the child for three days in July 2011 and had one overnight visit in August 2011. He has not visited with the child in person since. The father disappeared during the month of September 2011, calling once to tell the mother he was sober; he did not speak with the child. He was also arrested for fifth-degree theft. In October 2011, the father was arrested for driving while suspended. He failed to appear at the contempt hearing on October 18, 2011. The father then began another drug rehabilitation program in New Mexico. He did not have contact with the child for the remainder of the year.

Although the father is consistent with his visitation when sober, the prospect of his future sobriety is tenuous given his history. See *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993) (a parent's past performance gives insight into the future). The father has enrolled in more drug treatment programs than he could recall and still struggles to maintain sobriety. His past relapses have removed him from the child's life such that the child has no real bond with the father. The mother estimates that if added together, the time the father has spent caring for the child would amount to roughly one month of the child's four years of life.

The evidence supports termination of the father's parental rights under section 600A.8(3)(b). Clear and convincing evidence also establishes that termination is in the child's best interests given the child's lack of relationship with the father and the prospects for the father's future sobriety. Accordingly, we affirm the order terminating the father's parental rights to the child.

**AFFIRMED.**