

IN THE COURT OF APPEALS OF IOWA

No. 7-519 / 07-0965

Filed July 25, 2007

**IN THE INTEREST OF T.C. and J.C.,
Minor Children,**

**D.M.C., Mother,
Appellant,**

**J.E.C., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

Parents appeal from the order terminating their parental rights.

AFFIRMED.

Aaron Ginkens of Ginkens Law Firm, P.L.C., West Des Moines, for appellant mother.

J. Michael Mayer, Des Moines, for appellant father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Kevin Brownell, Assistant County Attorney, for appellee State.

Jessica Miskimins of the Youth Law Center, Des Moines, for minor children.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MAHAN, P.J.

Joseph and Dawn appeal the trial court's order terminating their parental rights to their two children, J.C. and T.C. We affirm.

I. Background Facts and Prior Proceedings

Joseph and Dawn had an intimate relationship for a number of years before they were married in 2003. Two children were born to the couple: a son, J.C., in April 1998, and a daughter, T.C., in July 2003. The family also included S.D., a daughter born to Dawn in 1988 from a previous relationship. The entire family moved from Ohio to Iowa in July 2004 when Dawn accepted a position as a loan underwriter.¹

The Iowa Department of Human Services (DHS) became involved in 2005 when Joseph physically assaulted Dawn in front of the children. Allegations soon arose that Joseph was also having sex with S.D. on a regular basis. Dawn agreed to keep Joseph out of the home and away from the children, but reneged on this agreement and lied to DHS to hide the fact that Joseph was once again living in the family home. S.D. eventually left Iowa to live with her maternal aunt and uncle in Ohio. On April 5, 2006, Joseph and Dawn were extradited to Ohio to face sex-abuse and child endangerment charges.

On April 27, 2006, both J.C. and T.C. were adjudicated children in need of assistance (CINA) and placed in foster care. They were eventually released to the care of Dawn's sister and brother-in-law in Ohio.

¹ Dawn was the primary breadwinner for the family. Joseph worked, but he was primarily responsible for the children's care.

Upon entering foster care, J.C. and T.C. exhibited numerous behavioral problems. J.C. was medicated for ADHD, he was reading below grade level, and he was suspended from school for acting aggressively with other children. His foster mother reported that he was wetting the bed, urinating on the floor and furniture, and indiscriminately masturbating. He was also placed in an intervention classroom at school.

T.C. had an exaggerated pre-occupation with her own genitalia and other people's genital regions. She was prone to frequent emotional outbursts and would cry with little provocation.

J.C. began therapy when he entered foster care. In therapy, he described Joseph beating him with a belt and one specific occasion where he watched Joseph rape S.D.

Many of the children's behavioral issues have subsided since they were removed from their parents' care. J.C. is now in a regular classroom, and his teachers describe him as a well-behaved student and a pleasure to have in class. He is off all medications, and his doctor has removed his ADHD diagnosis. T.C. is in preschool and is described as creative and kind. She has also begun to understand appropriate sexual boundaries.

In September 2006 Joseph was brought to trial for numerous counts of rape, gross sexual imposition, and kidnapping. The State of Ohio presented evidence that Joseph began raping S.D.² in 1998 when she was ten years old. The sexual assaults continued for more than five years. As a result, S.D. allegedly had two abortions before she was sixteen years old. The jury ultimately

² S.D. was nineteen years old at the time of the termination hearing and living in Ohio.

found Joseph guilty of forty-two counts of rape and gross sexual imposition. He was designated as a sexual predator and sentenced to forty-two five-year terms of imprisonment. The court ordered that these sentences be served consecutively, for a total sentence of 210 years of imprisonment.

Dawn pled guilty to the felonious charges of obstruction of justice and endangering children. The Ohio court imposed two concurrent, three-year prison sentences. Her sentences will expire on October 19, 2009, but she contends she will be released in either the spring or summer of 2007.

The State of Iowa filed a petition to terminate both parents' parental rights in February 2006. Dawn testified at the termination hearing while Joseph did not. When describing what happened to her children, Dawn said the situation was "very unfortunate"; however, she also told the court her "babies" were "never in danger."

On May 18, 2007, the court entered an order terminating both parents' parental rights under Iowa Code sections 232.116(1) (d), (e), (f), (h), (i), (j), and (m) (2007). In doing so, the court found the parents' positions at the termination hearing were "chilling." The court stated the "children have been through things that we will never be able to document" and then went on to list additional instances of abuse in the household.

Joseph and Dawn separately appeal the court's decision.

II. Standard of Review

We review the termination of parental rights *de novo*. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). The grounds for termination must be proven by clear and convincing evidence. *Id.* We give weight to the district court's factual

findings, but are not bound by them. *Id.* Our first and primary concern is the best interests of the child. *Id.*

III. Merits

A. Joseph

Joseph claims there was no statutory basis for terminating his parental rights, the court should have granted him additional time “to place himself in a position to parent these children,” and that termination was not in the best interests of the children.

Statutory Basis and Additional Time. Joseph contends there is not clear and convincing evidence to support termination of his parental rights under any of the seven statutory grounds listed by the court. In order to affirm a termination of parental rights, we need only find grounds sufficient to terminate under one of the statutory grounds listed by the district court. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa 1999). Therefore, in this case we will only analyze whether clear and convincing evidence supports the district court’s decision to terminate Joseph’s parental rights under Iowa Code sections 232.116(1)(f) and (h).³

Section (f) provides that parental rights can be terminated if the State proves by clear and convincing evidence that the child is four years of age or older; the child has been adjudicated CINA; the child has been removed from the physical custody of the child’s parents for at least twelve of the last eighteen months or for the last twelve consecutive months and any trial period at home has been less than thirty days; and there is clear and convincing evidence that at the present time the child cannot be returned to the custody of the parents as

³ Because of their differences in age, the court applied section (f) to J.C. and (h) to T.C.

provided in section 232.102. Similarly, section (h) applies the same elements to children three years of age or younger and only demands proof of removal for six of the last twelve months.

The first three elements of these statutory grounds were clearly proven and are not in dispute. Joseph only claims there is not clear and convincing evidence that the children cannot be returned to his care “within a reasonable period of time after he resolves his current legal issues.”

We disagree. Joseph is sentenced to spend more than two hundred years in prison. While he has appealed his conviction, there is no evidence as to how long this appeal process will take and there is certainly no guarantee his appeal will be successful. Even if we ignore his present term of incarceration, we find Joseph’s past behavior makes it abundantly clear that he is in no position to resume care of J.C. and T.C. in the foreseeable future. Accordingly, we find the court properly terminated his parental rights under Iowa Code sections 232.116(1)(f) and (h) and properly refused to grant him additional time to put himself in a position to parent his children.

Best Interests. Joseph claims termination is not in the children’s best interests. In assessing the children’s best interests, we evaluate their long range as well as immediate interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). We must consider what the future likely holds for the children if they are returned to their parents. *Id.* We gain insight into their prospects by reviewing evidence of the parents’ past performance because it may be indicative of their future capabilities. *Id.*

Based on our de novo review of the record, we find these children would face a grim future if they were returned to Joseph's care. His past history as a parent gives us no reason to give him another chance to care for these children.

B. Dawn

Dawn contends termination was not in her children's best interests and argues the court should have utilized one of the statutorily based exceptions to preclude termination. She does not contend the State failed to prove by clear and convincing evidence any of the statutory grounds upon which termination was based. Therefore, she waives any claims of error concerning the statutory grounds for termination by failing to raise them on appeal. See Iowa R. App. P. 6.14(1)(c). Consequently, we affirm the termination of her parental rights on statutory grounds.

Best Interests. Dawn contends termination of her parental rights was not in the children's best interests. She points to her participation in parenting classes offered in prison as proof that she is taking steps towards reunification. The district court was firmly convinced that termination was in the best interests of the children because Dawn still does not comprehend how her actions placed her children in danger. In so ruling, the court stated

[Dawn's] inability after a year's time to even recognize the scope of the harm [to her children] and her part in it, demonstrates that the conditions that caused harm to her children still exist. To place her children back in her care when they have started to recover and she has not, would be to again place her interests above theirs. They have moved on and should not have to begin again with a caretaker who does not know how to care for them emotionally. They now have been given childhoods and it is way too late for them to have to start over. There is nothing in this record to demonstrate that she has even considered what she needs to change so that she could some day help them. She just wants to

pick up where the family left off, albeit without [Joseph], and seemingly ignore what has happened Whatever her reasons were, the operative fact is that her children spent their entire lives in a violent threatening environment where she was unable or unwilling to protect them.

We adopt this reasoning as our own and find it is not in the children's best interests to be returned to their mother's care. These children should not be forced to wait for their mother to be released from prison and for her to own up to her own problems. They deserve permanency now.

Exceptions. Dawn also contends the district court abused its discretion in terminating her parental rights because it failed to apply three exceptions to termination found in Iowa Code sections 232.116(3)(a), (c), and (e). Sections (a), (c), and (e) provide, in relevant part:

3. The court need not terminate the relationship between the parent and child if the court finds any of the following:

a. A relative has legal custody of the child.

. . . .

c. There is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.

. . . .

e. The absence of a parent is due to the parent's admission or commitment to any institution, hospital, or health facility or due to active service in the state or federal armed forces.

Specifically, she contends the juvenile court should not have terminated her parental rights because she was imprisoned, her children were placed with maternal relatives, and she has a close bond with the children.

Before we address her claims under each specific section, we note that section 232.116(3) does not contain mandatory language. See *In re J.V.*, 464 N.W.2d 887, 890 (Iowa Ct. App. 1990). The words "need not terminate" are

clearly permissive and it is within the sound discretion of the court, based upon the unique circumstances before it and the best interests of the child, whether to apply sections (a), (c), and (e) to save the parent-child relationship. *Id.*

Based on our review of the unique facts and circumstances in this case, we find the court properly exercised its discretion when it did not apply these exceptions. The children have made great strides in the care of their maternal aunt and uncle. However, they cannot wait indefinitely for their mother to prove she can be an effective parent. The statutory time period has elapsed, and Dawn still cannot comprehend why her past actions endangered her children. The aunt and uncle have expressed a willingness to adopt these children, and we find it would be improper to delay permanency in the hopes that Dawn would someday understand why her children were in danger. See *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) (“The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.”).

We also find her “close bond” to her children is not enough to preclude termination of her parental rights. While there is a bond between Dawn and her children, past history indicates this bond could pose a continuing threat to the children’s safety. Also, there is not enough evidence to conclude the termination would be detrimental to the children at this time.

Finally, we find section 232.116(e) is clearly inapplicable to this case. It is well-established that the word “institution” in the aforementioned section does not include a penal institution. *J.V.*, 464 N.W.2d at 890. Dawn’s absence from her

children's lives was a result of her imprisonment. Therefore, section 232.116(3)(e) has no bearing on this case.

IV. Conclusion

These two young children have lived most of their lives in a home filled with physical, sexual, and emotional abuse. We affirm the district court's decision to terminate their parent's parental rights so that they can spend their remaining formative years in a safe and secure environment.

AFFIRMED.