

IN THE COURT OF APPEALS OF IOWA

No. 9-1029 / 09-1117
Filed December 30, 2009

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

**J.M., Father,
Appellant.**

Appeal from the Iowa District Court for Scott County, John G. Mullen,
District Associate Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Lauren M. Phelps, Bettendorf, and Patrick J. Kelly, Bettendorf, for
appellant father.

Timothy Tupper, Davenport, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Michael J. Walton, County Attorney, and Gerda Lane,
Assistant County Attorney, for appellee State.

Patricia Rolfstad, Davenport, for minor child.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

DOYLE, J.

A father appeals from the order terminating his parental rights. Upon our de novo review, we affirm.

I. Background Facts and Proceedings.

J.M. is the father and E.R. is mother of A.M., born August 2004.¹ When the child was born, the father was incarcerated, serving a federal sentence for a drug conviction. The father has a history of illegal substance use, and over the past twelve years, the father has been consistently incarcerated except for approximately a year-and-a-half. The father has not been involved in the child's life due to his incarceration, but the father has maintained involvement and interest in the child through contact with the Iowa Department of Human Services (Department).

The child came to the attention of the Department in August 2007 following an incident with the mother. The child was removed from the mother's care in June 2008 and placed in relative custody. The State subsequently filed a petition alleging the child to be a child in need of assistance (CINA). Following an uncontested hearing on the petition, the child was adjudicated to be a CINA by the juvenile court on August 12, 2008.

Ultimately, the mother was offered services but did not make any progress towards reunification with the child. The father remained incarcerated throughout the case, and he was not expected to be discharged from prison until 2012, though he hoped the date might be moved up in exchange for his testimony in

¹ This appeal concerns only the father's parental rights. The child's mother has not appealed from the termination of her parental rights.

another case. On May 21, 2009, the State filed a petition to terminate the parents' parental rights.

Following a trial on the termination petition, the juvenile court entered its order terminating the parents' parental rights on numerous grounds. Relevant here, the court determined the father's parental rights should be terminated pursuant to Iowa Code sections 232.116(1)(b) (abandonment), (e) (child CINA, child removed for six months, parent has not maintained significant and meaningful contact with the child), (f) (child four or older, child CINA, removed from home for twelve of last eighteen months, and child cannot be returned home), (k) (child CINA, parent has chronic mental illness, child cannot be returned within a reasonable time), and (l) (child CINA, parent has substance abuse problem, child cannot be returned within a reasonable time) (2009).

The father now appeals.

II. Scope and Standards of Review.

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). Although we give weight to the juvenile court's findings of fact, we are not bound by them. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). The grounds for termination must be supported by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Evidence is clear and convincing when it leaves "no serious or substantial doubt about the correctness of the conclusion drawn from it." *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). Our primary concern in termination cases is the best interests of the child. *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007).

III. Discussion.

On appeal, the father contends the juvenile court erred in concluding the father's parental rights should be terminated on several of the grounds for termination found by the court. Nonetheless, the father concedes "that grounds do exist which would allow for termination of the father's rights," but argues that because some of the grounds were not proved, this court should "review [the] case and determine whether termination is actually in A.M.'s best interests." The father also argues that termination was not in the child's best interests for other reasons.

A. Grounds for Termination.

Although the juvenile court terminated the father's parental rights on several statutory grounds, we need only find that termination is appropriate on one ground to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Upon our de novo review of the record, we find clear and convincing evidence supports termination of the father's parental rights under Iowa Code section 232.116(1)(f).

The legislature incorporated a twelve-month limitation for children in need of assistance aged four or older. Iowa Code § 232.116(1)(f)(3). Our supreme court has stated that "the legislature, in cases meeting the conditions of [the Iowa Code], has made a categorical determination that the needs of a child are promoted by termination of parental rights." *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990) (discussing Iowa Code § 232.116(1)(e)). The public policy of the State having been legislatively set, we are obligated to heed the statutory time periods for reunification.

Here, the child first came to the attention of the Department in August 2007. The child was removed from the mother's care and adjudicated CINA in June 2008. By the time of the termination hearing, the child had been out of the mother's custody for over a year and had never been in the father's care, as the father was incarcerated the entire time. The statutory period expired with no evidence that the father could safely parent the child, given his incarceration. It appears that the father will not be released from prison for another two to three years. We therefore find that termination was appropriate under Iowa Code section 232.116(1)(f) and affirm on that ground.

B. Best Interests.

However, even if the statutory requirements for termination of parental rights are met, the decision to terminate must be in the child's best interests. *A.S.*, 743 N.W.2d at 867; *see also In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). "A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests." *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially). Those best interests are to be determined by looking at the child's long-range as well as immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). We are to consider what the future likely holds for the child if the child is returned to their parents. *In re J.K.*, 495 N.W.2d 108, 110 (Iowa 1993). Insight for that determination is to be gained from evidence of the parents' past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493-94 (Iowa 1990); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

Additionally, termination may be avoided if “[a] relative has legal custody of the child.” Iowa Code § 232.116(3)(a). The factors in section 232.116(3) are permissive, not mandatory, and it is in the court’s discretion, based on the unique circumstances of the case and the best interests of the child, whether to apply such factors. *In re A.J.*, 553 N.W.2d 909, 916 (Iowa Ct. App. 1996).

On our de novo review of the record, we find termination of the father’s parental rights is in the child’s best interests, and we find no abuse of discretion in the circumstances before us. The record reveals that the child cannot be returned to the father at this time, and the child should not be forced to wait for permanency. See *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) (“[P]atience with parents can soon translate into intolerable hardship for their children.”). “At some point, the rights and needs of the child rise above the rights and needs of the parents.” *J.L.W.*, 570 N.W.2d at 781. The child should not be forced to endlessly suffer the parentless limbo of foster care. *In re J.P.*, 499 N.W.2d 334, 339 (Iowa Ct. App. 1993). The child is doing well in the placement of the relatives, and the relatives wish to adopt the child. We therefore conclude termination is in the children’s best interests and accordingly affirm the judgment of the juvenile court.

AFFIRMED.