

IN THE COURT OF APPEALS OF IOWA

No. 9-404 / 09-0621
Filed June 17, 2009

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

D.H., Mother,
Appellant,

J.C., Father,
Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Charles D. Fagan, District Associate Judge.

A mother and father appeal the termination of their parental rights.

AFFIRMED.

Kristina M. Kaeding, Council Bluffs, for appellant father.

William F. McGinn, Council Bluffs, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Matthew Wilber, County Attorney, and Eric Strovers, Assistant County Attorney, for appellee State.

Phil Caniglia, Council Bluffs, for minor child.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

M.M.C. is the child of D.R.H. and J.H.C. This case came to the attention of the Iowa Department of Human Services (DHS) on October 31, 2004, when M.M.C. was placed in protective custody after D.R.H., her mother, was arrested for disorderly conduct and found to be in possession of cocaine. On November 2, 2004, M.M.C. was placed with her aunt. On December 3, 2004, M.M.C. was transferred from this aunt to a different aunt and uncle. M.M.C. was adjudicated a child in need of assistance on March 8, 2005. At the adjudication hearing, the juvenile court found that D.R.H. was having difficulty due to her alcohol abuse, which continued to be a problem during the course of these proceedings. M.M.C.'s father, J.H.C., was incarcerated when M.M.C. was removed from her mother's care, and he was released in May 2007. In September 2007, M.M.C.'s care was continued with only her uncle, as her aunt and uncle had separated. In December 2007, the juvenile court transferred custody of M.M.C. to DHS for placement in foster care.

On May 22, 2008, the juvenile court transferred M.M.C.'s custody from a foster home to her mother, D.R.H. M.M.C. was six years old. She had not lived with her mother for three and one-half years. Less than five months later, on October 14, 2008, the DHS caseworker assigned to M.M.C.'s case, Staci Machmueller, filed an application for ex-parte order of temporary removal. The juvenile court ordered removal because of D.R.H.'s noncompliance with substance abuse treatment and court-ordered services. After a hearing on the matter, on October 22, 2008, the juvenile court continued M.M.C.'s custody with

DHS. The next day, M.M.C. was placed with a foster family and remained with that family at the time of trial.

After being released from prison, J.H.C. refused to participate in DHS services, despite being asked to do so. On June 30, 2008, J.H.C. spent time with his daughter while she was in the custody of D.R.H. Upon discovering that J.H.C. was with the child, Machmueller informed J.H.C. that he must arrange contact with his child through DHS. J.H.C. never arranged for contact with the child through DHS.

On January 20, 2009, the State filed a petition for termination of parental rights of both D.R.H. and J.H.C. After trial, the juvenile court issued an order on April 13, 2009, terminating D.R.H.'s parental rights pursuant to Iowa Code section 232.116(1)(d), (f), and (l) (2009) and terminating J.H.C.'s parental rights pursuant to Iowa Code section 232.116(1)(b), (d), and (f).

D.R.H. and J.H.C. appeal, arguing that they were not given adequate time to work toward reunification with their child and that termination of parental rights was not in the best interests of the child.

II. Standard of Review

We review proceedings to terminate parental rights *de novo*. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). Grounds for termination must be proved by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Though the juvenile court terminated J.H.C.'s and D.R.H.'s parental rights on three 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).

III. Termination of Mother's Parental Rights

Clear and convincing evidence supports the district court's finding that termination of D.R.H.'s parental rights is appropriate under Iowa Code section 232.116(1)(f). This section provides that termination is appropriate when: (1) the child is four years of age or older; (2) the child has been adjudicated a child in need of assistance; (3) the child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months; and (4) there is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents. Iowa Code § 232.116(1)(f). The first three elements are not disputed.

As to the fourth element, the State presented clear and convincing evidence that the child cannot be returned to D.R.H.'s custody at this time. D.R.H.'s alcohol use has been an issue during the more than four years since M.M.C. was first removed from her mother's care. D.R.H. failed to submit drug screens on a regular basis as ordered by the court. D.R.H. admitted at trial that she had an alcohol problem and that she was not at a point where M.M.C. could be returned to her care. She admitted to drinking as recently as six weeks before trial when she was arrested for operating a motor vehicle while intoxicated. D.R.H. also admitted to a drug relapse within the last two years. Machmueller testified that she believed D.R.H.'s alcohol use continued to be a problem. "A parent does not have an unlimited amount of time in which to correct his or her deficiencies." *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997). We agree with the juvenile court that there "was no evidence that giving [D.R.H.] additional time to address her problems would be fruitful in the near future."

M.M.C. cannot be returned to her mother's care at this time, and permanency should not be delayed. "A child should not be forced to endlessly suffer parentless limbo." *In re L.M.F.*, 490 N.W.2d 66, 68 (Iowa Ct. App. 1992).

IV. Termination of Father's Parental Rights

Clear and convincing evidence supports the district court's finding that termination of J.H.C.'s parental rights is appropriate under Iowa Code section 232.116(1)(b). This section provides that termination is appropriate when a child has been abandoned or deserted. Iowa Code § 232.116(1)(b).

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).

J.H.C. had no contact with M.M.C. for roughly one year after he was released from prison. J.H.C. testified he had "no good reason" for not seeing the child during that time period. Machmueller testified J.H.C. informed her that he did not seek visitation with M.M.C. because he "thought [D.R.H.] had her act together." Machmueller testified that J.H.C. failed to participate in any court-ordered services, despite being asked to do so, since his release from prison. J.H.C. refused to provide DHS with information necessary to contact him, making it impossible for the State to serve him with the petition for termination. However, J.H.C.'s attorney was served with the petition, and notice was published in the

newspaper. J.H.C. appeared at trial with counsel and did not request a continuance.

Machmueller testified that J.H.C. had no relationship with M.M.C. due to his failure to participate in services and visitation. J.H.C. admitted at trial that he did not have a bond with M.M.C. J.H.C.'s efforts at parenting consist of attending two family team meetings and eventually having sporadic unsupervised visits with M.M.C. in violation of the juvenile court's orders. Clear and convincing evidence supports termination of J.H.C.'s rights due to abandonment.

V. Best Interests of the Child

In addition to meeting the statutory requirements, termination must be in the best interests of the child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). We determine the best interests of the child by looking at the child's long-range as well as immediate interests. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). The parents' past performance is "indicative of the quality of future care the parents are capable of providing." *Id.*

We agree with the district court's finding that a termination of both parents' parental rights was in the best interests of the child. At the time of the trial, the child had been out of the care of either parent for over four years, except for a less than five-month return to her mother. The evidence establishes that D.R.H. has an alcohol problem that prevents her from caring for M.M.C. at this time. This issue has been unresolved since M.M.C. was removed from D.R.H.'s care in 2004. J.H.C. has not been involved in M.M.C.'s life and has not developed a bond with her. He has refused to participate in DHS services that would allow

him to visit his child. The little contact J.H.C. may have had with M.M.C. was in violation of the supervision requirements of the court.

“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). After being shuffled between family members and foster care for over four years, M.M.C. needs permanency now. Because we find neither J.H.C. nor D.R.H. can provide M.M.C. with such permanency at this time, we believe termination of both parents’ parental rights is in the child’s best interests.

AFFIRMED.