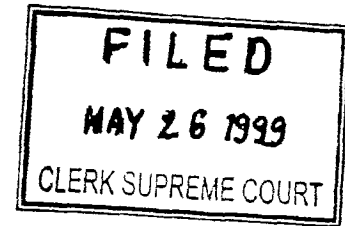


IN THE COURT OF APPEALS OF IOWA

No. 1999-73 (9-230) \ 98-2150

**IN THE INTEREST OF
S.S., Minor Child,**

**T.S., Father,
Appellant.**



Appeal from the Iowa District Court for Polk County, Karla J. Fultz, Associate Juvenile Judge.

Father appeals the termination of his parental rights to his daughter.

AFFIRMED.

Jeffrey T. Mains of the Benzoni Law Office, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General, and Jaki Livingston, Assistant County Attorney, for appellee-State.

Mark D. Reed of Reed & Epping, P.C., Des Moines, guardian ad litem for appellee-minor child.

Considered by Vogel, P.J., Zimmer, J., and Peterson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

PETERSON, S.J.

Thomas S. appeals the district court's decision to terminate his parental rights. He contends (1) he neither abandoned nor deserted his child; (2) the State presented no evidence that the circumstances which lead to physical neglect continued to exist; (3) he did maintain significant contact with the child; and (4) the record lacks evidence the child cannot be returned to his care. We affirm.

Thomas and Lindsay L. are the parents of Savannah S., born November 1997. The family came to the attention of the court on December 27, 1997, when Savannah was removed from the home. Police officers had been called to the scene of a possible domestic dispute. When they arrived, they found Lindsay sitting in a car with Savannah. Lindsay had bruises on her face, and the car was not started. When the police questioned Thomas, it appeared he was high on a stimulant. He had a warrant pending in another county for domestic abuse. Savannah was taken to her maternal grandmother.

Throughout the entire case, Thomas and Lindsay appeared at only one hearing involving their daughter. At the formal placement hearing on February 3, 1998, they appeared and were offered services which would allow for visitations. They waited almost a month before scheduling their first visitation, for which they were twenty-five minutes late. After this visitation, Thomas has only seen Savannah on one other occasion. Both parents were ordered to participate in DHS services, but by Thomas's own admission, "he never completed anything that they asked him to do." Thomas admitted he did not visit his daughter more because he was messed up on drugs. He

was in treatment at the time of the termination hearing. This is the first treatment that he remained in and he offered no guarantees he would be able to stay sober after completing the treatment.

The Department of Human Services (DHS) filed a child in need of assistance (CINA) petition alleging Savannah was in need of assistance pursuant to sections 232.2(6)(b), 232.2(6)(c)(2) and 232.2(6)(n). Savannah was adjudicated CINA on March 19, 1998. On May 12, 1998, Savannah was placed with relatives in Alaska pursuant to the Interstate Compact ordered by the district court. Thomas' attorney was aware of this transfer, but at no time contested the move to Alaska. On November 24, 1998, the district court filed a termination order terminating the rights of both parents pursuant to sections 232.116(1)(b), (1)(c), (1)(d) and (1)(g). Thomas is the only one to appeal the termination.

I. We review termination cases de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). The grounds for termination must be proven by clear and convincing evidence. *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa App.1995). We are primarily concerned with the best interests of the child. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App.1996).

II. Thomas contends the district court did not have clear and convincing evidence to find he abandoned his daughter. Abandonment is characterized as giving up parental rights and responsibilities accompanied by an intent to forego them. *In re D.M.*, 516 N.W.2d 888, 891 (Iowa 1994). Parental responsibilities include more than subjectively maintaining an interest in a child; it requires affirmative parenting

to the extent it is practical and feasible. *Id.* Thomas has only visited his daughter twice since her removal. He was late for one of these visits and failed to show up for several other scheduled visits. He used the excuse that he was high on drugs and did not want Savannah to see him in that condition. Thomas claims he is not able to see his daughter now because she is in Alaska; however the placement in Alaska came only after Thomas had stopped exercising his visitation rights. In addition, Thomas is not listed on Savannah's birth certificate and since her removal from his home he has not provided for her welfare, emotionally or financially. Thomas admits he did not participate in DHS services and he only attended one of the hearings involving his daughter. Thomas admitted he did not have the will power to stop using illegal drugs until he was arrested. We see little evidence in Thomas' actions to show his intent to be a father to Savannah. His current overdue attempt to get his life in order is not enough to outweigh his previous disregard for the life of his daughter. There is a long line of cases to support abandonment of this nature. *See In re A.B.*, 554 N.W.2d 291 (Iowa App. 1996) (Abandonment was found where a father had only two visits with his child, did not participate in services and did not provide financial support); *In re D.J.R.*, 454 N.W.2d 838 (Iowa 1990) (Abandonment was established where a father did not attend court hearings, did not participate in services and did not provide financial support). Thomas' conduct and actions demonstrate clear and convincing evidence of the abandonment of his daughter. We agree with the district court's finding of abandonment as grounds for the termination of Thomas' parental rights.

III. Thomas contends the State did not present evidence to show the circumstances that lead to the physical neglect cited in the CINA petition continue to exist. We believe this claim to be without merit. Both parents were listed as perpetrators in the founded child abuse report for denial of critical care. Thomas refused to participate in DHS services because he was still involved with illegal drugs and the reason he was incarcerated at the time of the termination involved possession of methamphetamine. We agree with the district court that there is still concern with the neglect exhibited at the time of the adjudication; Thomas was still in drug treatment at the time of the termination hearing and there are no guarantees the treatment will be successful.

IV. Thomas asserts he had the necessary significant and meaningful contacts with his daughter as required under section 232.116(1)(d)(3). Our analysis is akin to the analysis of the abandonment issue already determined. In looking at the facts previously discussed, we find there have not been the necessary significant and meaningful contacts required. Thomas has only visited his daughter twice since her removal; he has refused to participate in DHS services; he has not attended the hearings and he has offered no financial or emotional support for his daughter. We believe the district did not err when finding insufficient contacts between Thomas and his daughter.

V. Thomas argues there is a lack of clear and convincing evidence to show Savannah cannot be returned to him at the present time. This argument is defeated by Thomas, himself. At the time of the termination hearing, Thomas was in a

treatment center and still had some time remaining before he would be released. In looking at Thomas' request to the court, he is not asking for immediate custody of Savannah, rather he wants additional time after he is released from treatment to prove he has made positive changes. He testified that he did not think another six months of her life was too much to ask when you are taking her away from her natural parent. We disagree. It is often disputed how long parents should be allowed to demonstrate they can develop the abilities to be parents. Accordingly the legislature, in Code section 232.116(1)(g)(3), has established a six-month standard. *See In re A.C.*, 415 N.W.2d 609, 614 (Iowa 1987) ("It is unnecessary to take from the children's future any more than is demanded by statute."). A child should not be forced to endlessly await the maturity of a natural parent. *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). Savannah has been in foster care for all but seven weeks of her young life; she deserves the security and stability her foster parents have offered. Her foster parents have expressed an interest in adopting her.

We affirm the termination of Thomas' parental rights on all grounds established by the district court.

AFFIRMED.

No. 98-2150. [1999-73 (9-230)] IN RE S.S.

Appeal from the Iowa District Court for Polk County, Karla J. Fultz, Associate Juvenile, Judge. **AFFIRMED.** Considered by Vogel, P.J., Zimmer, J., and Peterson, S.J. Opinion by Peterson, S.J. (6 pages \$2.40)

Thomas and Lindsay are the parents of Savannah S, born November 1997. The family came to the attention of the Department of Human Services in December 1997, when there was a report of domestic abuse in the home. Savannah was removed from the home and placed in foster care. Thomas and Lindsay attended only one hearing involving their daughter, and after being told they could see her they waited one month before setting up a visitation. Thomas admits he did not visit Savannah more often because he was on drugs. Savannah was adjudicated in need of assistance in March 19, 1998 and placed with relatives in Alaska in May 1998, pursuant to the Interstate Compact. In November 1998, the district court terminated the parental rights of Thomas and Lindsay; Thomas is the only one to appeal. **OPINION HOLDS: I.** The first argument presented by Thomas is that there was not clear and convincing evidence that he abandoned his daughter. We look at abandonment as giving up parental rights and

responsibilities accompanied by an intent to forego them. Thomas has only seen his daughter twice since her removal; her placement in Alaska occurred only after Thomas had stopped his visitation. His name is not on her birth certificate and he made no attempt to support her, financially or emotionally, at any time since her removal. By his own admission, Thomas did not participate in DHS services and only attended one hearing on Savannah's behalf. Thomas' conduct and actions demonstrate clear and convincing evidence of abandonment and we agree with the trial court that termination his parental rights is appropriate. **II.** Thomas also contends there is no evidence to prove the physical neglect cited in the CINA petition continues to exist. This argument is without merit. Both parents were listed as perpetrators in the child abuse report and Thomas refused to participate in DHS services because he admitted he was still on drugs. We agree with the district court that there still is the concern of physical neglect that existed at the time of the CINA petition. **III.** Thomas asserts he had the necessary significant and meaningful contacts with his daughter. We use the same analysis as for abandonment and believe there had not been the necessary contacts. Thomas displayed very little effort in being part of his daughter's life. We believe the district did not err when finding insufficient contacts between Thomas and his daughter. **IV.** Thomas' final argument is that there is a lack of clear and convincing evidence to show Savannah cannot be returned to him at the present time. He admitted to the court that he was not asking for his daughter to be returned at the present time; rather, he wanted more time to prove himself as an appropriate parent for Savannah. We have long held that it is unnecessary to take from the child's future more than is demanded by statute, in this case that is six months. Savannah had been in foster care for all but seven weeks of her young life, and she deserves the security and stability offered by her foster parents. We affirm the district court's termination order on all grounds.