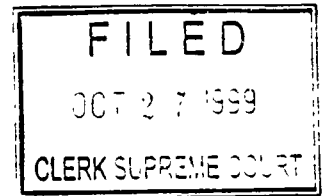


IN THE COURT OF APPEALS OF IOWA

No. 1999-171 (9-388) / 98-2217

Filed October 27, 1999



IN THE INTEREST OF N.M., JR.,
Minor Child,

N.M., Sr., Father,
Appellant.

Appeal from the Iowa District Court for Washington County, Lucy J. Gamon,
District Associate Judge.

Father appeals from a district court order terminating his parental rights.

AFFIRMED.

Leslie D. Lamping of Day, Meeker, Lamping, & Schlegel, Washington, for
appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman and Chris Odell,
Assistant Attorneys General, and Barbara Edmondson, County Attorney, for appellee-
State.

Lars G. Anderson of Holland Law Office, Iowa City, guardian ad litem for
minor child.

Heard by Streit, P.J., and Vogel and Zimmer, JJ.

000297

STREIT, P.J.

N.M., Sr. appeals the termination of his parental rights claiming the juvenile court should have granted him additional time to demonstrate stability and termination was not in his son's best interests. Additional time to show parental stability cannot be granted given Senior's panoply of parental deficiencies and his failed efforts to take advantage of provided services. Termination was in the best interests of the child. Since placement, the child's physical health improved, his development is normal, and he is an excellent candidate for adoption. The termination is affirmed.

I. Background Facts & Proceedings.

N.M., Jr. (Junior), born February 6, 1996, is the child of N.M., Sr. (Senior) and D.S. Junior has no special needs, but does suffer from chronic ear infections and respiratory ailments. On July 24, 1997, Junior was adjudicated a child in need of assistance based on his parents' failure to supervise. The CINA proceedings arose out of a founded child abuse report in May of that year as well as a chaotic home visit by social services. Junior was placed in foster care for one month and then returned to the custody of his father.

On January 7, 1998, Senior voluntarily placed Junior in foster care, because he had lost both his home and his job. On September 8, 1998, a petition was filed to terminate both parents' parental rights—alleging abandonment, physical abuse, failure to maintain contact, and failure to provide suitable custody. On November 20, 1998,

the juvenile court terminated both parents' parental rights. The court terminated Senior's parental rights pursuant only to Iowa Code section 232.116(g). The juvenile court found clear and convincing evidence Junior was under three years of age, was previously adjudicated CINA, had been removed from the home for at least six of the last twelve months, and Senior could not provide suitable custody for his son. The court pointed to Senior's instability in housing, instability in employment, problems with parenting skills, instability in relationships, mental health concerns, and substance abuse problems in support of its determination. On December 3, 1998, Senior filed a rule 179(b) motion to amend, modify, or substitute the juvenile court's previous order. The motion was supported by a doctor's affidavit verifying Senior's present wife was not pregnant, thus alleviating some of the housing and child care concerns cited by the court. The court denied the motion. Senior appeals contending: (1) the court erred in not granting him additional time to demonstrate long-term stability in those problem areas cited by the juvenile court, and (2) termination of his parental rights was not in Junior's best interests.

II. Standard of Review.

Appellate review of proceedings to terminate a parent-child relationship is de novo; thus, "it is our duty to review the facts as well as the law and adjudicate rights anew on those propositions properly preserved and presented to us." *In re O'Neal*, 303 N.W.2d 414, 422 (Iowa 1981). We accord weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses whom the

court heard and observed firsthand, but we are not bound by those findings. *Long v. Long*, 255 N.W.2d 140, 143 (Iowa 1977).

III. Junior Cannot Wait for His Father's Further Attempts at Stability.

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). For "[p]arenting cannot be turned off and on like a spigot; [i]t must be constant, responsible, and reliable." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). While we recognize the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," Iowa has built this patience into the statutory scheme of chapter 232. *In re A.C.*, 415 N.W.2d 609, 613-14 (Iowa 1987). Chapter 232 fosters patience by prescribing certain steps to protect the rights of natural parents in termination proceedings. *In re I.L.G.R.*, 433 N.W.2d 681, 689 (Iowa 1988). However,

[t]here are a number of stern realities faced by a juvenile judge in any case of this kind. Among the most important is the relentless passage of precious time. The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems. Neither will childhood await the wanderings of judicial process.

In re A.C., 415 N.W.2d at 613. To prevent such wasted childhood, juvenile courts must determine the long-term and immediate best interests of the child. *In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1989). Insight for this determination may be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care the parent is capable of providing. *In re L.L.*, 459 N.W.2d at 493; *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981); *In re T.T.*, 541

N.W.2d 552, 555 (Iowa App. 1995). This harsh determination must be made despite a parent's plea for additional time or a parent's recent positive changes. *See In re D.A.W.*, 522 N.W.2d 901, 903-04 (Iowa App. 1996); *In re T.J.O.*, 527 N.W.2d 417, 422 (Iowa App. 1994).

Junior waited three years for a mature natural parent and cannot wait any longer. The department of human services made reasonable efforts to reunite Junior with his father. Efforts included appointment of a home health aid; parent skill development training; supervised visitation; and advice regarding housing, employment, and budgeting. Senior failed to demonstrate he was capable of providing a safe home despite these efforts.

Senior continued to struggle with a number of core responsibilities necessary of any parent. Since January of 1998, Senior moved seven different times including an unspecified time of living in his car. In that same time period, Senior held five different jobs. Coupled with his living and employment instability, Senior had a \$500 monthly child support obligation for an out-of-state child, further crippling his ability to care for Junior. Senior also struggled with instability in relationships. The frequency of his relationships, however, is not nearly as concerning as the abusive way they tended to end. Senior also demonstrated poor parenting skills. Perhaps the most telling example of his inability to parent is his refusal to stop smoking around Junior despite his respiratory ailment. Finally, Senior refused to adequately address his anger management problems and his substance abuse. Although each of these

problem areas may not be worthy of termination in isolation, in the aggregate the problems were overwhelming and endangered Junior's future health and safety. The juvenile court, armed with clear and convincing evidence, responsibly terminated Senior's parental rights.

IV. It Was in Junior's Best Interests to Terminate Senior's Parental Rights.

Even if the statutory requirements for termination are met, the decision to terminate must still be in the best interest of the child. *In re N.H.*, 383 N.W.2d 570, 574 (Iowa 1986); *In re D.W.K.*, 365 N.W.2d 32, 34-35 (Iowa 1985). The best interests of the child are paramount considerations in determining whether to terminate parental rights. *In re L.L.*, 459 N.W.2d at 493; *In re N.H.*, 383 N.W.2d at 574. We give primary consideration to the physical, mental, and emotional condition and needs of the child. *In re J.W.D.*, 456 N.W.2d 214, 217 (Iowa 1990).

Junior's physical, mental, and emotional needs were best met by terminating his father's parental rights. Physically, Junior's respiratory ailments began to subside shortly after his placement in foster care. Since his placement, he has begun to walk and talk and demonstrates no learning or developmental delays. Additionally, Junior is a prime candidate for adoption. These benefits coupled with his natural father's aforementioned inability to provide suitable custody demonstrates the termination was in Junior's immediate and long-term best interests. The juvenile court is affirmed.

AFFIRMED.