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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-235 / 93-1790

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

B.M., Father,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clark, Judge.

Father appeals from an order terminating his parental rights pursuant to Iowa Code section 232.116(1)(c), (d), (g) and (k) (1993). **AFFIRMED.**

Mark D. Reed of Bertroche Law Offices, Des Moines, for appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Steven J. Halbach, Assistant County Attorney, for appellee.

Donna Lesyshen of Tyler & Lesyshen, Waterloo, for minor child.

Considered by Hayden, P.J., and Habhab and Cady, JJ.

CADY, J.

Byron appeals from the juvenile court order terminating his parental rights to his daughter, Faith. On appeal, he challenges the sufficiency of the evidence supporting the termination and claims termination is not in Faith's best interest.

I. Background Facts and Proceedings

Faith was born on August 20, 1991. Byron's paternity was not established until February 1993. However, in March 1992, Byron was notified of a pending petition to adjudicate Faith a child in need of assistance (CINA). On April 27, 1992, all parties stipulated Faith was a CINA pursuant to Iowa Code section 232.2(6)(b). Faith was removed from her mother's care following the April hearing. (Faith's three siblings, C.G., J.G. and M.M., Jr. are the subjects of another appeal. In re C.G., No. 93-984.)

Byron and his present spouse, Joyce, met with a Department of Human Services (DHS) social worker after learning the results of the paternity test. The social worker recommended Byron attend parenting classes. Byron was on parole for going armed with intent. He attended GED classes during the day and worked in the evenings. The social worker arranged with Byron's parole officer for Byron to miss one day of classes each week to attend parenting classes.

Faith's mother's parental rights were terminated May 24, 1993. The juvenile court refused, however, to terminate Byron's parental rights. The court entered a dispositional order noting Byron was incarcerated at the time Faith was adjudicated a CINA and was not released until after the filing of the petition to terminate his parental rights. Although expressing concerns about Byron's history of assaultive behavior, substance abuse, and lack of parenting responsibility, the juvenile court concluded DHS should provide family-centered services to Byron and Joyce and obtain a parenting evaluation of Byron's family. DHS was to submit a report to the court within thirty days, which was to include the initial evaluation of Byron's amenability to services and a proposed time line for completion of the initial family therapy assessment. Byron was also ordered to participate in random urinalysis monitoring.

On May 25, 1993, a social worker wrote Byron and Joyce and asked them to schedule an appointment to initiate services. On May 27, Joyce called and asked about visitation with Faith. A meeting of Byron, Joyce and the social worker was arranged for May 28. On May 28, Joyce called twice: in the first call she stated she and Byron would be late for the meeting as they would be walking and in the second she stated they were not coming because they did not want to walk in the rain. Another appointment was scheduled for June 2, 1993. Neither Byron nor Joyce attended the June 2 appointment.

On June 8 Byron called and left a message with the social worker indicating he would call again. That same day the social worker wrote Byron a letter outlining what she had learned from Byron's parole officer about Byron's parole violations, the impossibility of meeting the court's guideline for implementing services because of Byron's admission to a sixty day parole offenders program, and DHS's intent to ask the court "to consider terminating [Byron's] parental rights due to his lack of availability for services and his inability to comply with the terms of his parole."

On July 19, 1993, the juvenile court ordered a hearing on termination. On July 25, 1993, Byron was arrested for assaulting Joyce. On September 8, 1993, Byron was arrested for first-degree burglary and assault while committing a felony.

The hearing to terminate parental rights was held September 30 and October 15, 1993. Byron's parole officer testified Byron had not attended the parole offenders program because he had injured his knee and was to undergo surgery in June. Byron's surgery was rescheduled for August. The parole officer was now recommending Byron be returned to prison for his various parole violations (i.e., failure to report, driving without permission, intoxication, violation of curfew, domestic assault, and pending criminal charges). Other testimony established Byron had yet to meet his daughter, though he had attended

several parenting classes. He had not met with the social worker since May 24, though he had stopped by DHS without an appointment three times. Byron testified he could not get to DHS because of his injured leg and because he had no transportation.

The juvenile court found Byron "blames others for his problems, is manipulative and controlling, and is simply not believable. The child Faith would definitely be neglected or abused in an environment controlled by Byron." The court terminated Byron's parental rights pursuant to Iowa Code section 232.116(1)(c), (d), (g) and (k) (1993).

Byron appeals.

The State objects to Byron's inclusion of DHS's October 25, 1993, report to the court in his designation of appendix. See App. at 327-35. It contends the report is not part of the record. Byron responds that the document is a case plan filed prior to the court's decision, which is part of the record though not admitted as an exhibit. By order dated April 15, 1994, the matter has been submitted with the appeal.

II. Termination of Parental Rights

Byron contends the evidence was insufficient to support the termination of his parental rights. He claims the statutory grounds for termination have not been satisfied and it is not in Faith's best interest to terminate his rights.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984) cert. denied sub nom. J.G. v. Tauke, 469 U.S. 1222 (1985). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. Id. at 491-92.

The primary concern in termination proceedings is the best interest of the child. Iowa R. App. P. 14(f)(15); In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

> We look to the child's long-range, as well as immediate, interests. We consider what the future holds for the child if returned to his or her parents. Insight for this determination can 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. Our statutory termination provisions are preventative as well as remedial. They are designed to prevent probable harm to a child.

In re R.M., 431 N.W.2d 196, 199 (Iowa App. 1988) (citing Dameron, 306 N.W.2d at 745).

The State has the duty to see that every child within its borders receives proper care and treatment and must intercede when a parent is unable to provide it. In re I.L.G.R., 433 N.W.2d 681, 689 (Iowa 1988). The State must act to prevent probable harm to the child and need not delay until actual physical harm has occurred. See Dameron, 306 N.W.2d at 745.

Although a parental interest in the integrity of the family unit exists, that interest is not absolute. Id.

Children deserve a safe, healthy, and stimulating environment in which to grow and mature. In re J.W.D., 456 N.W.2d 214, 217 (Iowa 1990). They should not be forced to suffer the parentless limbo of foster care endlessly. In re D.J.R., 454 N.W.2d 838, 845 (Iowa 1990). Once the statutory limit of twelve months of out-of-home placement has been reached, the case must be viewed with a sense of urgency. In re L.L., 459 N.W.2d 489, 495 (Iowa 1990).

Ample evidence supports the termination of Byron's parental rights. Although Byron complains he has been unable to fulfill some of his responsibilities because he has been incarcerated and meeting his parole requirements, we are mindful that it was his own decisions and resulting conduct which gave rise to his incarceration. In addition, it was again his own decisions and conduct which resulted in his parole violations and subsequent need to attend the parole violators program. Finally, although Byron contends he wishes to parent Faith, whom he has yet to meet, he again violated his parole by missing curfew and being intoxicated. He assaulted his wife and was arrested and was also arrested on burglary charges.

Byron failed to attend any meetings with the DHS social worker. He has not made inquiries regarding Faith's well-being and did not acknowledge her birthday. While he made sporadic attempts to contact the social worker, he failed to follow through at the time he indicated he would. In no way can those few phone calls be seen as

meaningful contact or a reasonable effort to gain Faith's custody.

Finally, Byron admitted having a cocaine problem. Additional testimony indicated Byron consumed alcohol to the extent that he would become aggressive. He engaged in fights and arguments when he was intoxicated. His parole officer testified he confronted Byron when he was intoxicated and Byron's response made him concerned for his own safety. In fact, he found it necessary to call the police.

The record supports the juvenile court's decision to terminate Byron's parental rights under the grounds enumerated. We now turn to Byron's final argument on appeal.

Byron contends his parental rights should not be terminated even if the statutory grounds for termination are satisfied. He claims it is not in Faith's best interest to terminate his rights.

Our legislature, in cases meeting the conditions of Iowa code section 232.116(1)(e)(1), (2), and (3), 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). We extend that premise to terminations pursuant to Iowa Code section 232.116(1)(g)(1), (2), and (3) (1993). The only differences in the provisions is the age of the child and the length of time out of the home. The first section

applies to those children who are four years of age or older and have been out of the home twelve of the last eighteen months. The second provision, which was one of those invoked to terminate Byron's rights, applies to those children age three and under who have been out of the home six of the last twelve months.

We conclude it is within Faith's best interest that Byron's parental rights be terminated. We affirm the juvenile court.

AFFIRMED.