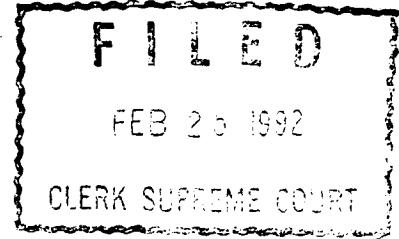


IN THE COURT OF APPEALS OF IOWA

No. 1-588 / 91-1256



IN THE INTEREST OF C.E.W., A Child,
C.W.W., Natural Father,
Appellant.

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Appeal from the Iowa District Court for Johnson County,
Sylvia A. Lewis, District Associate Judge.

Father appeals the termination of his parental rights.
AFFIRMED.

Mary K. Hoefer of the Mears Law Office, Iowa City, for
appellant father.

Bonnie J. Campbell, Attorney General, John M. Parmeter,
Special Assistant Attorney General, and Judy Sheirbon,
Assistant Attorney General, for appellee State.

Stephen N. Greenleaf of Lynch, Greenleaf & Michael,
Iowa City, guardian ad litem for child (appellee).

Heard by Donielson, P.J., and Schlegel and Sackett, JJ.

SCHLEGEL, J.

The father, C.W.W., appeals the termination of his parental rights to his son. He challenges the sufficiency of the evidence to support termination and contends the juvenile court erred by failing to explore a less restrictive alternative. He asserts his older sister and her husband are prepared to make a home for himself and the child, that the sister and her husband are experienced parents who can provide a good home, and that such an arrangement would be in the child's best interests. Finally, the father argues that even if termination is otherwise warranted, it should be avoided under Iowa Code section 232.116(3)(c) due to the closeness of the parent-child relationship. We affirm the termination.

C.E.W. is a boy born in November 1989. His parents were married to each other then, but the marriage has since been dissolved. The child was hospitalized by his mother at the age of two months for failure to thrive; his father was incarcerated at that time. Upon C.E.W.'s release from the hospital he was placed in foster care, where he has since remained. He has been adjudicated a child in need of assistance.

His mother has moved away from the area where the child resides and has had no contact with him for some time. C.E.W.'s father continues to reside in the same geographical area as the child. He has exercised supervised visitation fairly frequently, although somewhat

sporadically. He demonstrates love and affection for the child but has failed to stabilize his life in several important respects and has failed to improve his parenting skills. He has an extensive history of convictions and incarceration for minor crimes. During his marriage to the mother, several of these convictions were for domestic assault; recently most of his convictions have been for driving without a valid license. The father has a serious problem controlling his temper. He has sometimes neglected his own medical needs. In the past he has experienced difficulty in maintaining a job or a stable residence, although on these two subjects he appears to have improved in the last year.

The parents' rights have previously been terminated with respect to two older siblings of C.E.W. Concerns at that time included both parents' extreme neglect of the children's medical and nutritional needs, their pronounced disregard for the children's safety, and the extreme filth of their residences. We affirmed that termination. In Interest of J.V., 464 N.W.2d 887 (Iowa App. 1990). In the present case, social workers expressed the opinion that the father has learned little about parenting skills since the prior termination proceedings.

C.E.W. has special medical needs due to a serious digestive problem. He also needs special supervision due to developmental delays and an extremely high activity level. Social workers expressed the view that the father,

in spite of his affection for the child, is wholly lacking in the judgment, skills, and maturity necessary to meet the child's special needs.

In 1991 the State filed a petition to terminate the parental rights of both parents with respect to this child. After a hearing, the juvenile court did terminate their parental rights under Iowa Code sections 232.116(1)(f) and (1)(g). The mother has not appealed.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984), cert. denied, 469 U.S. 1222, 105 S. Ct. 1212, 84 L. Ed. 2d 353 (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); see In re A.C., 415 N.W.2d 609, 613 (Iowa 1987).

The juvenile court granted termination of C.W.W.'s parental rights pursuant to Iowa Code sections 232.116(1)(f) and (g). The first section states termination should be granted if:

- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (2) The court has determined parental rights pursuant to section 232.117 with respect to another child who is a member of the same family.
- (3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.
- (4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

Iowa Code § 232.116(1)(f) (1991). The latter section provides for termination if:

(g) The court finds that all of the following have occurred:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

Iowa Code § 232. 116(1)(g) (1991).

C.W.W. contends the evidence is insufficient to support termination of his parental rights. He does not appear to argue, however, that these sections were not proven. He

claims instead the court should have ordered the child returned to him because he plans on moving in with his sister and her husband. The thrust of his argument is that the testimony of the health professionals indicated C.E.W.'s needs would be better met in a place like his sister's home than in a foster home.

We determine termination was warranted under both Iowa Code sections 232.116(1)(f) and (g). Since the prior termination hearing C.W.W. has been in jail four or five times and at the time of hearing was facing more counts of driving while his license is suspended. In addition, C.W.W. has failed to attend his court-ordered support group for young fathers. He has made strides in self-management and employment, but he has made no substantial progress in the case permanency plan. C.W.W. testified that he was not yet able to care for C.E.W. either financially or emotionally by himself. C.E.W. has special needs that require exceptional parenting skills; he needs almost constant adult supervision.

Sadly, we find the facts and circumstances which led to termination of C.W.W.'s rights to his two older children have not changed sufficiently enough. C.W.W. continues to lack the ability to properly care for a child and more rehabilitation is not likely to help. C.E.W. cannot now be placed in his father's custody and "a child should not be forced to wait in limbo indefinitely for a parent to mature." In re J.V., 464 N.W.2d at 891 (citing In re

T.D.C., 336 N.W.2d 738, 744 (Iowa 1983)). We determine it is in C.E.W.'s best interest that C.W.W.'s rights to him be terminated.

C.W.W. claims the trial court erred in failing to explore less restrictive alternatives to termination. He believes the court should have placed C.E.W. with his sister and her husband. We find the court did not err in placing custody and guardianship with the department of human services. See Iowa Code § 232.117(3)(a) (1991). After this termination the sister and brother-in-law can be considered as a possible adoptive placement.

In addition, C.W.W. argues the trial court erred in failing to acknowledge the closeness of the relationship between him and C.E.W. He cites Iowa Code section 232.116(3)(c) which provides a court need not terminate parental rights if there is "clear and convincing evidence the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." We find this argument is not supported by the facts. C.E.W. is described to be a very outgoing, social child who enjoys playing with anyone and being around people of all ages. C.E.W. does recognize his father from visitations, but testimony suggests C.E.W. would not suffer any long-term trauma from adoptive placement. We note that C.E.W. does have the same type of positive response to other people such as his foster mother and certain nurses as he has to his father.

excellent solution to the problems here, affording the child the stability and love of a mature couple who have the ability to minister to the child's needs while allowing him to maintain his biological ties and his relationship with a father that he knows and loves.

I would remand to the trial court and direct that evidence be taken to establish whether this is a satisfactory placement and what orders need to be made to assure the stability of the placement.

SACKETT, J. (dissenting)

I dissent. I would remand to the trial court to assess whether the termination can be avoided because a mature and responsible aunt and uncle are ready to parent this child. This father's extended family has worked with him to provide a very adequate solution to his parenting problems. When families have the ability to solve problems, we should support family solutions and direct our resources to children who do not have families with solutions.

Clearly, this biological father has not been an adequate parent. He was very young when this child was born. He had the responsibilities of being a father when most young men are still growing up. He has not yet gained the maturity and stability to accept all the responsibilities. But he clearly loves his child and has exercised visitation frequently. There is no evidence he has ever harmed the child.

The father recognizes he does not have the stability and maturity to adequately parent the child himself, so proposes he coparent the child with his older sister and her husband. Unfortunately, when this solution was offered neither the State or the guardian ad litem of the child made any effort to analyze the proposed placement. However, the facts that were before us convince me there is a very strong probability that the placement would be an

excellent solution to the problems here, affording the child the stability and love of a mature couple who have the ability to minister to the child's needs while allowing him to maintain his biological ties and his relationship with a father that he knows and loves.

I would remand to the trial court and direct that evidence be taken to establish whether this is a satisfactory placement and what orders need to be made to assure the stability of the placement.