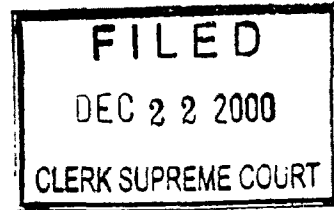


IN THE COURT OF APPEALS OF IOWA

No. 0-684 / 00-1029
Filed December 22, 2000

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

**J.S., Father,
Appellant,**



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

Father appeals from the juvenile court order terminating his parental
rights. **AFFIRMED.**

Michael B. Oliver, and Tiffany Koenig Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Jennifer A. Panko-Rahe, Assistant County Attorney, for
appellee-State.

Marla Suddreth of Borseth, Genest & Suddreth Law Office Altoona, for
minor child.

Heard by Zimmer, P.J., and Hecht and Vaitheswaran, JJ.

ZIMMER, P.J.

A father appeals from the juvenile court order terminating his parental rights. He claims the juvenile court should have refrained from termination because of the strong bond between him and his daughter and because a relative had custody of the child. We affirm.

Jeffrey S. is the father of Amber S., born in May of 1990. Amber's mother, Reba S., is deceased. This family's chronology reveals significant involvement with drugs. The family first came to the attention of the Iowa Department of Human Services in 1993. At that time, a child protective investigation concluded Jeffrey had sexually abused Amber. The family was involved with drugs at that time. Between April of 1994 and September of 1997, six criminal charges were filed against Jeffrey, including possession of a controlled substance and domestic assault. In October of 1997, there was another child abuse investigation involving allegations Reba had exposed Amber to illegal substances.

Reba died in November of 1997 and family preservation services were begun with Jeffrey and Amber the next month. Jeffrey did not attend the recommended parenting classes and failed to follow through with sending Amber to grief therapy. He also missed one-third of the meetings scheduled with an in-home worker. While Amber remained in her father's care, she missed or was very late for school approximately four days a week. He provided Amber little no structure with regard to meal times, bedtimes, bath time and homework. She also had continual head lice problems.

Another drug-related offense precipitated this termination of parent

proceeding. On February 25, 1999, Jeffrey was arrested for selling controlled substances and for child endangerment because Amber was with him when he made the sale. He bonded out of jail the next day and picked Amber up from the home of her maternal grandmother. On March 1, the State applied for temporary removal of Amber. She was again placed in the care of her grandmother. A child-in-need-of-assistance (CINA) petition was filed the next day. At the temporary removal hearing on March 11, 1999, the parties agreed to Amber's continued placement with her maternal grandmother. However, Jeffrey was allowed supervised visitation.

Drugs continued to be a significant problem for Jeffrey. On May 14, 1999, Amber was adjudicated CINA and remained in her grandmother's care. At the CINA hearing, Jeffrey admitted that he continued to abuse drugs and smoked marijuana regularly when Amber had been in the home. Between April 8 and May 13 of 1999, Jeffrey was asked to give urine samples for analysis eleven times, but he only did so twice. Both times the samples tested positive for marijuana. Between May 18 and 28, Jeffrey tested positive for marijuana three more times. On May 27, 1999, he was discharged unsuccessfully from substance abuse treatment.

Jeffrey ultimately pleaded guilty to two of the offenses with which he had been charged in February of 1999. Jeffrey had visits with Amber twice weekly until his incarceration in October of 1999. His earliest parole date is May 9, 2001, and his discharge date is July 12, 2004.

On February 15, 2000, the State filed a petition for the termination of Jeffrey's parental rights to Amber. The termination hearing was held on April 17,

2000. The juvenile court terminated Jeffrey's parental rights pursuant to Iowa Code sections 232.116(1)(c), (e) and (k) (1999). Jeffrey now appeals. He does not contest termination on any of the three statutory grounds. Instead, he asserts the strong bond between him and Amber prevents termination, as does the fact she has been placed with a relative, her maternal grandmother. He maintains the juvenile court should have exercised its discretion under Iowa Code sections 232.116(3)(a) or (c), which permit the juvenile court to avoid termination when either of those two circumstances is present.

I. Scope of Review. We review proceedings to terminate a parent-child relationship de novo. *In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa App. 1998). Our primary concern is the best interests of the child. *Id.* We look at both the child's long-range and immediate interests in making this determination. *Id.* We necessarily consider what the future likely holds for the child if returned to his or her parent. *In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1989) (citation omitted). 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 that parent is capable of providing. *Id.* (citation omitted). The grounds for termination must be shown by clear and convincing evidence. *M.N.W.*, 577 N.W.2d at 875.

II. Parent-Child Bond. Jeffrey asserts the strong bond between himself and Amber should have prevented termination under the statutory exception contained in section 232.116(3)(c). He points to the testimony of several witnesses who acknowledged the strong bond in this case.

Section 232.116(3)(c) provides:

3. The court need not terminate the relationship between the parent and child if the court finds any of the following:

c. There is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.

This statutory exception requires proof by clear and convincing evidence to justify its application. *K.F.*, 437 N.W.2d at 564. Application of the section is not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa App. 1993).

Under this record, the burden of proof cannot be met. The witnesses who recognized the strong bond between Amber and Jeffrey also testified in support of termination. The child's therapist did not believe there would be harm to Amber if she did not have contact with her father until adulthood. Another therapist and a social worker also testified termination was in Amber's best interest. With her maternal grandmother, Amber has an opportunity for a stable, permanent home. She does not need further insecurity after suffering through so much chaos with her father. Although Jeffrey contends he loves Amber a great deal, he has proved incapable of caring for the child, instead using and dealing drugs around her, not providing sufficient food, and even failing to keep her clean. Despite their bond, he has only been a source of angst and instability in the child's life. In view of the paradoxical nature of the relationship, and the strength of the evidence otherwise supporting termination, we find no basis to set aside the termination under section 232.116(3)(c).

III. Placement with Maternal Grandmother. Section 232.116(3)(a) permits termination to be avoided if a relative has legal custody of the child. For reasons similar to those stated above, we also find no basis for avoiding termination on this ground.

It is true that Amber's maternal grandmother has custody. However, despite this fact, the child's best interests dictate termination of Jeffrey's parental rights. He is currently incarcerated. His earliest parole date is May of 2001. There is no indication that he will be ready to care for Amber upon his release. He has a significant and chronic drug abuse problem that he has been unable to deal with for a number of years despite services. He has been arrested numerous times. He has been unable to provide a stable home environment for Amber. When he is released from prison, he could initiate a custody proceeding against the grandmother and further upset Amber's situation. If we terminate his parental rights, then Amber's grandmother has the ability to keep Jeffrey away from Amber if he returns to his former behaviors after his release from prison. We conclude Jeffrey's parental rights should be terminated and we decline to apply the exceptions.

AFFIRMED.