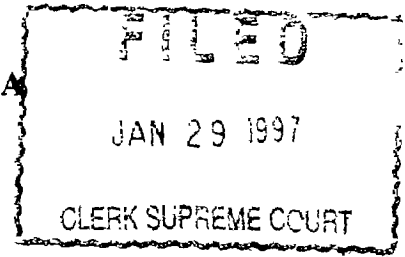


IN THE COURT OF APPEALS OF IOWA

No. 6-746 / 96-1286



IN THE INTEREST OF R.A.C.,
A.D.S. and J.M.S., Minor Children,

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N.J.S., Father of A.D.S. and J.M.S.,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Robert J. Dull,
District Associate Judge.

Father appeals the juvenile court's order terminating his parental rights as to
his minor child. **AFFIRMED.**

Martha M. McMinn, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Dewey P. Sloan, Assistant County Attorney, for appellee State.

Elizabeth A. Rosenbaum, Sioux City, for minor children.

Considered by Habhab, C.J., Cady and Huitink, JJ.

HUITINK, J.

N.S. appeals the termination of his parental rights as to his children J.S. and A.S. pursuant to Iowa Code sections 232.116(1)(c), (d), and (e). We affirm.

N.S., age thirty-one, is the father of J.S., born May 26, 1989, and A.S., born September 3, 1990. N.S. also has a step-son, R.C., born February 21, 1986, who is not the subject of this appeal. The mother C.S., age twenty-seven, has consented to the termination of her parental rights as to all three children. She has not appealed the order of the juvenile court.

N.S. came to the attention of the Department of Human Services (DHS) in November 1993 when his wife's six-year-old niece B.S. alleged N.S. had sexually abused her. A founded child abuse report was completed and N.S. was later arrested and charged in January 1994 with sexual abuse in the second degree.

Another child abuse allegation was made in August 1994 when R.C. informed an examining physician that N.S. had sexually abused him. A founded child abuse report was completed and criminal charges for sexual abuse in the second degree were again filed against N.S.

C.S. reported in September 1994 that N.S. had performed oral sex on their son A.S. The mother left N.S. and a protective order was issued in November 1994 prohibiting contact between N.S. and the family. Later that same month, DHS

learned the mother and the children were once again living with N.S. The children were removed from the home by court order on November 30, 1994.

As part of the temporary removal order issued in December 1994, the parents agreed to undergo psychological, chemical dependency, and parenting skills evaluations. N.S.'s substance abuse evaluation revealed he had received inpatient treatment for drug abuse in 1986 and outpatient treatment in 1991 and 1993. He reported use of crank in July and August of 1994.

DHS reported in December 1994 that N.S. pled guilty to lascivious acts with a child and received a five-year suspended sentence. As part of his probation, he was required to participate in an adult sexual offender's program. He admitted to sexually abusing his niece. In May 1995, the treatment team recommended that the father satisfactorily complete a 16-week program, participate in the group process, and attend Narcotics Anonymous meetings before being allowed visitation with the children.

The children were placed with the maternal grandparents in March 1995. Later that month, the juvenile court adjudicated all three children as Children in Need of Assistance pursuant to Iowa Code sections 232.2(6)(b), (c), and (d) based on the following evidence: the father had pled guilty to lascivious acts with a child, the father was named as the perpetrator of the abuse of R.C., the mother recanted her allegations about the abuse of A.S., and the parents had attempted to elude the police

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while in violation of the no contact order. Placement remained with the grandparents. N.S. appealed the CINA adjudication which was later dismissed at the request of N.S. in September 1995. *In the Interest of R.C.*, Supreme Court No. 95-844.

The case permanency plan adopted in May 1995, as part of the dispositional order, required N.S. to follow the sexual offender program recommendations and to remain sober. The order granted the father supervised visitation at the discretion of DHS. In July 1995, the court ordered that A.S. and J.S. be placed in foster care as their grandparents were no longer able to care for them.

In August 1995, the sexual offender treatment team reported minimal progress and recommended that visitation not commence between N.S. and the children. A January 1996 report indicated that N.S. was temporarily suspended from the program because of reports by the two boys that they had contact with their father during visitation with the paternal grandparents. The team would not recommend visitation due to the father's insufficient therapeutic progress and resistance to the program. A dispositional hearing that same month granted DHS the discretion to arrange visitation provided the guardian ad litem and the therapists concurred.

A May 1996 progress report stated N.S. had missed four of fourteen scheduled appointments and that his attendance at individual appointments became so poor he was placed on probation from January until March. Visitation was not yet recommended because the children's therapist did not believe the boys were ready.

In May 1995, DHS sought a termination of parental rights hearing based on N.S.'s minimal progress in his treatment program. A petition was filed and a hearing was held in June. At the hearing, the boys' therapist opined that the boys could not be returned to their parents because the boys did not trust them. The therapist also believed the boys had been sexually abused by N.S. The father's therapist testified that N.S. had not finished all of his assignments and that he still had problems with "distorted thinking." His therapist described N.S.'s progress as "average" and also indicated that it takes most participants at least two to three years to complete the program. She also did not believe N.S. should have custody of the children. Assuming the children were ready, a minimum of one year of therapy would be required in order for unsupervised visitation to occur. Furthermore, the therapist indicated N.S. denied sexually abusing any child other than his wife's niece. Finally, the caseworker testified N.S. required at least another two years of treatment before the children could be returned to his care. She also stated if N.S. had been more responsive and dedicated to the services provided, he would have moved through the program quicker.

The juvenile court observed that no therapist testifying at trial had reached any conclusions as to when the children would be amenable to unsupervised visitation with their father. The court expressed concern over the anticipated extended delay and noted that it had already been nineteen months since the father had been in

contact with the children. The court also concluded N.S.'s "average" performance in the sexual offender program evidenced insufficient progress to satisfy the best interests of the child standard imposed by the juvenile court. These deficiencies were aggravated by his failure to meet other responsibilities such as restitution and delinquent child support payments. Based on these circumstances, the court terminated his parental rights pursuant to Iowa Code section 232.116(1)(c), 232.116(1)(d), and 232.116(1)(e).

N.S. appeals the termination order by asserting he was denied the services necessary to permit him to address the problems that led to the CINA adjudication. He further argues the record does not establish by clear and convincing evidence that he failed to make reasonable efforts to resume care of the children despite being given the opportunity to do so. Finally, N.S. contends he was not afforded a trial period of home placement with the children as provided by the termination statute.

Appellate review of termination proceedings is de novo. *In re W.G.*, 349 N.W.2d 487, 491 (Iowa 1989), *cert. denied sub nom., J.G. v. Tauke*, 469 U.S. 1222, 105 S.Ct. 1212, 84 L.Ed.2d 353 (1985). We give weight to the findings of fact made by the juvenile court, but we are not bound by them. *Id.* at 491-92.

The primary concern in termination proceedings is the best interests 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 preventive 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 is required to make reasonable efforts to reunite the parent and child prior to termination. *In re C.L.H.*, 500 N.W.2d 449, 453 (Iowa App. 1993). In proceedings to terminate parental rights, the reasonableness of services the State has offered in an effort to preserve the family should be very carefully scrutinized. *In re C.D.*, 508 N.W.2d 97, 100 (Iowa App. 1993).

N.S. alleges the district court did not make an explicit finding prior to termination that he had been offered or received the necessary services. He explains that his progress was impeded by DHS's failure to offer substance abuse services in a timely manner. He accuses the caseworkers of advancing the case to the termination stage by deliberately withholding the necessary services. N.S. also asserts that the State failed to prove by clear and convincing evidence, pursuant to Iowa Code section 232.116(1)(d)(3) (1995), that he did not make reasonable efforts to resume care of the children despite being given the opportunity to do so.

Our review of the termination order indicates the juvenile court implicitly found the state had made reasonable efforts to reunite N.S. with his children by acknowledging the testimony of the therapists actively involved in the rehabilitation of the family. Their testimony described N.S.'s unsatisfactory participation in the sexual offender program and its negative impact upon the prospects of reunification with his children. Moreover, N.S. does not identify in the record evidence of DHS's failure to provide substance abuse treatment nor does he elaborate on how that alleged failure prevented reunification. To the contrary, the record reveals that in August 1995, N.S. reported that he had been clean for six months and was willing to undergo drug testing. He also completed a substance abuse evaluation as part of his probation and was directed by the treatment team in May 1995 to attend mandatory Alcoholics Anonymous or Narcotics Anonymous meetings.

Upon review of the record, we find the State made reasonable efforts to provide N.S. with the services necessary to remedy the behaviors that led to the adjudication. We conclude that N.S. was offered an abundance of services to address his propensity to sexually abuse the children under his care and the resulting damage. These services included individual and group therapy through the adult sex offenders program, substance abuse treatment through Alcoholics Anonymous or Narcotics Anonymous, and therapy for the children to help them in dealing with the prior abuse. Furthermore, N.S. had an obligation to demand additional substance abuse treatment

prior to the termination hearing if he felt such assistance would be beneficial. It is too late to challenge a reunification plan at the termination hearing. See *In the Interest of B.K.K.*, 500 N.W.2d 54, 57 (Iowa 1993); *In the Interest of L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994).

The professionals familiar with the family's case all concurred that the possibility of reunification was uncertain given N.S.'s minimal progress. The record reflects that N.S. had missed appointments, refused to acknowledge the abuse of any children other than his niece, and also continued to exhibit "distorted" thinking. The failure of the parents to comply with DHS's case plan cannot be an independent ground to terminate parental rights. *In re J.L.P.*, 449 N.W.2d 349, 352 (Iowa 1989). However, that failure can be considered as evidence of the parent's attitude toward addressing the problems that resulted in the loss of custody in the first place. *Id.*

N.S.'s failure to satisfactorily participate in the services offered through the adult sex offenders program demonstrates his unwillingness to confront the serious issues affecting the safety and well-being of his children. The evidence demonstrates that after sixteen months of sexual offender treatment, there was still no possibility of visitation between N.S. and the two boys. We will not force the children to endlessly await N.S.'s decision to make the necessary commitment essential to reunification. See *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). Furthermore, we acknowledge the negative impact of extended foster care placement while the father

addresses his problem. To continue placement in long-term foster care awaiting N.S.'s rehabilitation is not in the best interests of the children. *See In the Interest of J.L.P.*, 449 N.W.2d 349, 353 (Iowa 1989).

Finally, N.S. contends the record does not establish that pursuant to section 232.116(1)(e), he was accorded a trial period of thirty days or less of custodial care during the twelve months preceding the termination. This argument is without merit. We do not read the statute to provide such an opportunity to temporarily resume care of the children before termination may be ordered. Section 232.116(1)(e) provides that termination of parental rights may be ordered when the court finds the following have occurred:

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

Iowa Code section 232.116(1)(e) (1995) (emphasis added).

Subsection (3) does not state that a trial period at home is required before termination of parental rights may be ordered; rather, we conclude this subsection

unambiguously declares that if a trial period at home in fact takes place, this trial period must not be for a period exceeding thirty days.

The record establishes that the children had not been in the custody of N.S. since November 30, 1994, nearly seventeen months prior to the termination hearing. Due to the father's lack of progress in therapy, visitation was not possible and, thus, no trial period at home ever took place. Accordingly, we find that the requirements of section 232.116(1)(e) have been met.

We conclude that the State produced clear and convincing evidence supporting the termination of N.S.'s parental rights, and we affirm the juvenile court's order in its entirety.

AFFIRMED.