IN THE COURT OF APPEALS OF IOWA

No. 7-051 / 96-1676

IN THE INTEREST OF L.G. and M.G., Minor Children,

K.G., Father of **L.G.**,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Associate Juvenile Judge.

A father appeals from the termination of his parental rights. **AFFIRMED.**

Kellyann M. Lekar of Randall, Nelson & Hawbaker, P.L.C., Waterloo, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Steven Halbach, Assistant County Attorney, for appellee State.

Theodre R. Stone, Cedar Falls, for minor children.

Heard by Habhab, C.J., and Huitink and Streit, JJ.

STREIT, J.

A father appeals from the termination of his parental rights. He claims the best interests of the child require the continuation of the parent-child relationship and the entering of a permanency order placing the child with his cousin until he gets out of prison.

April is the mother of LaCrisha, born October 15, 1993, and Marlesha, born July 25, 1995. Appellant, Kinsey, is the father of LaCrisha, and Gordon is the father of Marlesha. April and Kinsey were married on September 27, 1993, and were divorced in approximately June 1996. Kinsey has been incarcerated all of LaCrisha's life, and his contact with her has been limited to a few jail and prison visits, cards, letters, and gifts he has sent to her. He is presently serving a thirty-five year sentence for first-degree robbery, second-degree burglary, and assault while participating in a felony. He will not be eligible for parole until 1998.

Due to April's use of cocaine, a removal order was filed on August 7, 1995. The parties stipulated in an order filed August 30, 1995, the children were children in need of assistance ("CINA"). The children were initially placed with their mother while she attempted substance abuse treatment. April was unsuccessful in completing treatment and the children have been placed in a foster care home since November 1995. The foster parents have expressed an interest in adopting them.

A petition to terminate parental rights was filed June 7, 1996. April stipulated to the termination of her parental rights, and Gordon did not appear for the termination hearing. Only Kinsey challenged the termination. On September 4, 1996, the court terminated Kinsey's rights pursuant to Iowa Code section 232.116(1)(g) (1995).[1] The termination order cited Kinsey's substance abuse, abusive behavior toward his wife, his temper, his long history of criminal behavior, and his present incarceration.

On appeal, Kinsey does not dispute the State proved the grounds for termination. Instead, he argues it was not in LaCrisha's best interests to terminate his parental rights. He argues he has taken every opportunity to visit her during his incarceration and continued to keep in contact with her. He claims he sought frequent updates about her from the Iowa Department of Human Services. Kinsey contends a permanency order should have been entered placing LaCrisha in the care of his cousin so he could continue to have contact with her.

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. Tauke,* 469 U.S. 1222

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[1] The child was three years of age or younger, adjudicated CINA, removed from physical custody of parents for at least six of last twelve months or for last six consecutive months, and there was clear and convincing evidence the child could not be returned to custody of parents without risk of adjudicatory harm.

(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 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).

Insight for the determination of whether a child can be returned to the parent is to be gained from evidence of the parent's past performance, for it is that performance which may be indicative of the quality of future care that parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493-94 (Iowa 1990); *In re C.C.*, 538 N.W.2d 664, 666 (Iowa App. 1995). A child should not be forced to endlessly suffer the parentless limbo of foster care. *In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990). Long-term foster care is not preferred to termination of parental rights. *In re R.L.*, 541 N.W.2d 900, 903 (Iowa App. 1995). We must not gamble on the child's future by awaiting the parent's maturity. *Id.*

Kinsey has seen LaCrisha only a few times during her lifetime and all of those visits were while he was incarcerated. It has been over two years since Kinsey's last visit with LaCrisha. Kinsey remains incarcerated at the Department of Correction facilities at Anamosa. Although he is eligible for parole in 1998, we find LaCrisha should not have to wait another year to see if Kinsey's parole will be granted. By his own admission, Kinsey stated at the termination hearing it was not fair to LaCrisha to make her wait for him to get out of prison before the court made a determination of whether or not he could parent LaCrisha.

LaCrisha is integrated into a foster family with her stepsister. The family has indicated it wishes to adopt both girls. There is no evidence Kinsey is capable of providing the care and needs of LaCrisha should he be paroled next year. Although it is not our place to pass moral judgment, it is the function of this court to intervene when a parent's overall lifestyle is harmful to a child's best interests. *See In re Rice*, 236 N.W.2d 40, 43-44 (Iowa 1975); *In re O'Neal*, 303 N.W.2d 414, 422 (Iowa 1981). Kinsey has a history of violent temper evidenced by his disciplinary problems in prison and has shown violence toward April and LaCrisha.[2] In the best interests of LaCrisha, we affirm the Juvenile Court in terminating the rights of her father, Kinsey.

AFFIRMED.

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[2] In a seemingly insignificant but revealing incident, Kinsey became angry during one of April and LaCrisha's visits at Anamosa and threw soda pop on both of them.