

IN THE COURT OF APPEALS OF IOWA

No. 3-572 / 93-818

FILED

DEC 29 1993

CLERK SUPREME COURT

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IN THE INTEREST OF A.S.F., A Minor Child,
T.H.S., Father,
Appellant.

Appeal from the Iowa District Court for Decatur County,
William H. Joy, Judge.

Father appeals the termination of his parental rights.

AFFIRMED.

Michael D. Andrew, West Des Moines, and Scot M.
Halverson, Leon, for appellant.

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

George F. Hoffman, III, Leon, for minor child.

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

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HAYDEN, J.

The natural father, Tyrel, appeals the termination of his parental rights to Abigail, born December 31, 1985. The natural mother consented to the termination of her parental rights.

In March 1991 Tyrel was convicted of sexual abuse in the second degree and lascivious acts with a child based on his contact with an eleven-year-old girl. In May 1991 Tyrel was sentenced to consecutive twenty-five-year and five-year prison terms. During an investigation preceding his conviction evidence revealed Tyrel had been sexually involved with Abigail. The mother of the eleven-year-old victim stated Tyrel had also been involved sexually with Abigail. Abigail told the Iowa Department of Human Services (DHS) investigator Tyrel tickled her on her breasts and in the groin area. In December 1990 a founded child sexual abuse report of indecent contact on Abigail was filed against Tyrel.

Abigail was placed in family foster care on January 3, 1991, and remains in foster care. On February 22, 1991, Abigail was adjudicated in need of assistance.

A termination of parental rights petition was filed on February 26, 1993. At the termination hearing Abigail's mother testified Tyrel told her, prior to Abigail's birth, if they "ever had a daughter that he would like to be the first one to break her in." The mother left Tyrel within days of the birth of Abigail. Tyrel had a total of about

five weeks of contact with Abigail during her lifetime. The Iowa Medical and Classification Center had diagnosed Tyrel as a pedophile. In 1992 Tyrel's parental rights to two other children were terminated based on a finding he was not likely to be released from prison for a period of five years or more.

The district court ordered termination of Tyrel's parental rights to Abigail pursuant to Iowa Code section 232.116(e) and (i) (1993). The court found it was unlikely Tyrel would be released from prison for a period of five or more years. Tyrel appeals, contending: (1) the sexual abuse conviction did not involve his daughter, (2) the district court should have ordered long-term foster care for Abigail, and (3) there was no evidence he would not be rehabilitated from his pedophilic tendencies upon release from prison.

Our scope of review in parental termination proceedings is de novo. Iowa R. App. P. 4. Our primary concern is the best interests of the child. In re J.K., 495 N.W.2d 108, 110 (Iowa 1993); Iowa R. App. P. 14(f)(15). Those best interests include the child's long-range as well as immediate interests. Id. The parent's past performance is the best evidence for determining whether a child should be returned to the custody of a parent. Id. Past performance is indicative of the quality of future care the child may receive. Id. (citation omitted).

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Iowa Code section 232.116(1)(i) provides for a termination of parental rights if the court finds both of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has been imprisoned for a crime against a child, the child's sibling, or another child in the household, or the parent has been imprisoned and it is unlikely that the parent will be released from prison for a period of five or more years.

Iowa Code § 232.116(1)(i) states: Both requirements of this section are satisfied by the facts of this case. The juvenile court has adjudicated Abigail to be in need of assistance and ordered custody transferred to DHS. Tyrel is imprisoned for a crime against an eleven-year-old girl and it is unlikely he will be released from prison for a period of five or more years. Tyrel is currently serving consecutive twenty-five-year and five-year prison terms due to his convictions in 1991. His tentative release date is set for September 2005.

The juvenile court also terminated Tyrel's parental rights pursuant to Iowa Code section 232.116(1)(e). Under this section the court may terminate parental rights if the child involved is at least twelve years old, the child has been adjudicated in need of assistance, custody of the child has been transferred from the child's parents for at least twelve of the last fifteen months, and clear and convincing evidence supports a finding the child cannot be returned to the custody of the parent as provided in

section 232.102. Iowa Code § 232.116(1)(e) (1993). At the time of the termination hearing Abigail was seven years old. The juvenile court has adjudicated her in need of assistance. The child had been transferred from the parents' custody for twenty-eight months before the termination hearing. We also determine clear and convincing evidence supports a finding Abigail cannot be returned to Tyrel's custody due to his incarceration and the nature of his crime.

A child must not be made to await her parent's maturity. In re D.W., 385 N.W.2d 570, 578 (Iowa 1986) (citation omitted). Nor should a child be forced to endlessly suffer the parentless limbo of foster care. In re D.J.R., 454 N.W.2d 838, 845 (Iowa 1990); In re L.M.F., 490 N.W.2d 66, 68 (Iowa App. 1992). Tyrel argues the juvenile court erred in ordering termination rather than placing Abigail in long-term foster care. Iowa Code section 232.104(3)(a) provides long-term foster care may only be considered if a termination of parental rights would not be in the child's best interests. Iowa Code § 232.104(3)(a) (1993); see In re L.S., 483 N.W.2d 836, 840 (Iowa 1992). Long-term foster care is not an appropriate solution for this child. The best interests of Abigail warrant the termination of Tyrel's parental rights.

We conclude the requirements of sections 232.116(1)(e) and (i) have been met. We affirm the decision of the juvenile court.

AFFIRMED.