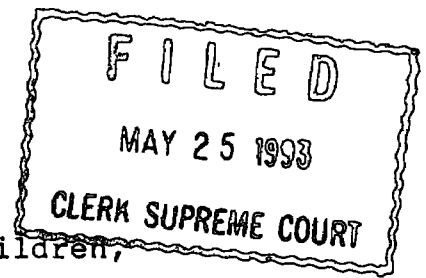


IN THE COURT OF APPEALS OF IOWA

No. 3-101 / 92-1811



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

L.J.M., Father,

000385

Appellant.

Appeal from the Iowa District Court for Woodbury
County, Mary L. McCollum Timko, Juvenile Referee.

The natural father appeals a juvenile court order
terminating his parental rights to his two children.

AFFIRMED.

Jack A. Faith, Sioux City, for appellant.

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

Francis Lee Goodwin of Baron, Sar, Goodwin, Gill &
Lohr, Sioux City, guardian ad litem, for the children.

Heard by Hayden, P.J., and Habhab, J., and Keefe, S.J.*

*Senior judge from the 1st Judicial District serving
on this court by order of the Iowa Supreme Court.

HABEAS, J. 000386

L.J.McN. (hereinafter referred to as "father") appeals the termination of his parental rights to his two children, L.J.M., born October 5, 1987, and J.L.M., born September 7, 1988. The father left Iowa before the birth of his second child and moved to North Carolina, where he and the mother, K.M., had married in 1984. The mother and children remained in Iowa.

In August 1988, the father was imprisoned for breaking and entering. The mother brought both children to visit when the youngest was about one or two months old. This is the only time the father saw the children while he was in prison.

In September 1989, the children were found locked in a bedroom while the mother was away at a party. The children were adjudicated CINA in November 1989. The dispositional order found the father was imprisoned in North Carolina and directed temporary custody be placed with the father's brother and his wife. A copy of the order was sent to the father in prison. The district court found no evidence the father tried to contact his children or his brother during the time period the children were with the brother.

While the father remained in prison, the juvenile court adopted a case plan to reunify the children with the mother. In August 1990, temporary care was returned to the mother, but in November 1990, the children were placed in

emergency foster care after the mother admitted to using drugs in violation of her agreement.

The father was released from prison on December 26, 1990. His parole agreement prevented him from leaving North Carolina. The mother moved to North Carolina to be with her husband. The mother and the father requested a home study in North Carolina. The home study was never completed. The mother has had no contact with the father or the children since April 1991. A warrant is pending against her for violation of her probation which resulted from a conviction of child endangerment.

The father moved to Iowa in May 1991 and stayed with his brother and sister-in-law. Although he contacted DHS once, he did not request visitation. His brother and sister-in-law attempted to regain custody of the children after the mother's whereabouts became unknown. They were given visitation. The father claims he was present during six or seven visits his brother and sister-in-law had with his children between May and December 1991.

A review hearing was held on January 28, 1992. Neither parent was personally present. The boys were continued in foster care. The court ordered the State to initiate proceedings to terminate parental rights. The petition to terminate parental rights stated that the whereabouts of the father were unknown.

The case permanency plan for April 22, 1992, revealed that the father had been incarcerated in Woodbury County

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since January of 1992 for sexual abuse. He was sentenced to twelve years: ten years for sexual abuse third degree, five years concurrent, for assault with intent to commit sexual abuse, and two years, consecutive, for aggravated assault. He is also currently under indictment in federal court for a conspiracy to deliver controlled substances.

After a hearing, the father's parental rights were terminated pursuant to Iowa Code sections 232.116.1(b) (abandonment) and 232.116.1(i) (1991) (parent of child adjudicated CINA and whose custody has been transferred is in prison and unlikely to be released within five years). He appeals. We affirm.

Our review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984) cert. denied sub nom. J.G. v. Tauke, 469 U.S. 1222 (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).

We need not decide whether termination rests on section 232.116.1(i) (1991) (parent of a child adjudicated CINA and whose custody has been transferred is in prison and unlikely to be released within five years) for we affirm the termination on the ground the father abandoned his children. Clear and convincing evidence is required to establish abandonment. Iowa Code § 232.116(1)(b) (1991). Abandonment is defined as:

"Abandonment of a child" means the relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.

Iowa Code § 232.2(1) (1991).

There are two elements necessary to establish abandonment: 1) the giving up of parental rights and responsibilities as exhibited by the party's conduct; and 2) an accompanying state of mind which shows an intent to forego these rights and responsibilities. In re Goettsche, 311 N.W.2d 104, 106 (Iowa 1981). Affirmative parenting to the extent practical and feasible in the circumstances is required. Id. It is not enough to subjectively maintain an interest in the child. Id.

We find the father could have taken numerous affirmative actions to indicate a true interest in his

children, despite his period in jail, but he has failed to do so. The father left Iowa shortly after the first child was born. While in North Carolina he only saw his children once. He sent no cards or correspondence. He claims he did not know where his children were even though he received documents of the Department of Human Services ongoing involvement and a portion of the time his children were placed in temporary custody with his brother.

Upon returning to Iowa the father could have contacted DHS to discuss the steps required to return custody to him. Instead, he made one call to DHS. DHS was unable to return this call because the father's phone number had been disconnected. The father claims he visited the children six or seven times when his brother and his brother's wife had visitation. In January 1992, the father was imprisoned again. He made no effort to contact the children between January 1992 and the termination hearing, in September of 1992.

We find abandonment was established by clear and convincing evidence in the present case. We find the father failed to maintain meaningful communication and associations with his sons to the extent practical. We further find it is in the children's best interest to terminate the natural father's parental rights. We therefore affirm the juvenile court's termination of L.J.McN's parental rights.

Cost of this appeal are taxed to the appellant.

AFFIRMED.

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