

IN THE COURT OF APPEALS OF IOWA

No. 9-633 / 89-1147

FILED

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CLERK SUPREME COURT

IN THE INTEREST OF C.L.,

A Minor Child,

R.L., Father,

Appellant.

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Appeal from the Iowa District Court for Scott County,
John G. Mullen, Judge.

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

Gary D. McKendrick of Gomez, May, McKendrick & Kelly,
Davenport, for appellant.

Thomas J. Miller, Attorney General; Gordon E. Allen,
Special Assistant Attorney General; and Katherine S.
Miller-Todd, Assistant Attorney General, for appellee, the
State of Iowa.

Heard by Oxberger, C.J., and Donielson and Habhab, JJ.

OXBERGER, C.J.

The natural father, R.L., appeals from the¹³⁵ decision of the juvenile court terminating his parental rights to his daughter, C.L. R.L. challenges the sufficiency of the evidence to establish that termination is in C.L.'s best interest. We affirm the decision of the juvenile court.

R.L. and S.K. are the parents of a daughter, C.L., born in March 1985. In November 1986, C.L. was adjudicated a child in need of assistance; she had been severely burned while in the care of her 13-year-old half-sister. In June 1987, C.L. was placed in foster care after social workers on a routine visit found the home unsafe and unsanitary and C.L. dirty and unkempt. C.L. has been in foster care or residential placement ever since. In September 1988, a petition for termination of the parental rights of R.L. and S.K. was filed.

Trial was held in February and June 1989. Following trial, the juvenile court terminated both R.L.'s and S.K.'s parental rights. For most of C.L.'s life, S.K. was incarcerated or in a substance abuse program or her whereabouts were unknown. She has never done any affirmative parenting of C.L. The juvenile court terminated R.L.'s parental rights pursuant to Iowa Code section 232.116(1)(e) (child in need of assistance whose custody has been transferred from parents for at least

twelve months cannot be returned there) and of S.K. pursuant to Iowa Code section 232.116(1)(e) and 232.116(2) (abandonment). Only R.L. has appealed.

Appellate review of termination proceedings is de novo. In Interest of W.G., 349 N.W.2d 487, 491 (Iowa 1984) cert. denied, 469 U.S. 1222, 105 S. Ct. 1212, 84 L. Ed. 2d 353 (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.

In termination proceedings our central concern is the long-term, as well as immediate, best interests of the children. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). We consider what the future holds for C.L. if returned to her father. Id. Essential to the evaluation of a child's best interests is an examination of the parents' past performance, from which valuable insight may be gained as to the future quality of care the parents are able to provide. In Interest of O'Neal, 303 N.W.2d 414, 423 (Iowa 1981). The past behavior of the parent is an important factor to be considered by the court. In Interest of M.H., 367 N.W.2d 275, 278 (Iowa App. 1985). Iowa statutory termination provisions are preventative as well as remedial. Interest of Dameron, 306 N.W.2d at 745. They are designed to prevent probable harm to a child. Id.

The State must prove by clear and convincing evidence the allegations contained in the termination petition. See In Interest of C.M.T., 433 N.W.2d 55, 56 (Iowa App. 1988); Santosky v. Kramer, 455 U.S. 745, 770, 102 S. Ct. 1388, 1402, 71 L. Ed. 599, 617 (1982). Termination may occur under Iowa Code section 232.116(1)(e) if the juvenile court finds: (1) the child has been adjudicated a child in need of assistance pursuant to section 232.96, (2) the custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least twelve of the last eighteen months, and (3) there is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102. In Interest of A.C., 415 N.W.2d 609, 612 (Iowa 1987).

The father agrees that grounds existed to support termination under Iowa Code section 232.116(1)(e), but argues that the State has not shown that termination is in C.L.'s best interests. R.L. maintains it is not in C.L.'s best interest to terminate his parental rights because of the strong bond between them.

Iowa courts have recognized the existence of a "'parental interest in the integrity of the family unit; nonetheless we are also cognizant this interest is not absolute, but rather may be forfeited by certain parental conduct.'" In Interest of R.J., 436 N.W.2d 630, 634 (Iowa

1989) (quoting In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981)). The State has a duty to assure that every child within its borders receives proper care and treatment and must intercede when parents fail to provide it. Dameron, 306 N.W.2d at 745.

Upon our review of the record, we agree with the juvenile court that C.L.'s best interests require termination of R.L.'s parental rights. We make this determination after specifically examining R.L.'s past performance, as it may be indicative of the quality of future care he is capable of providing. See O'Neal, 303 N.W.2d at 423.

R.L. has serious health problems. He is a diabetic and must take insulin shots every day. The records indicate he is very obese and moves with difficulty. R.L. is on dialysis for four hours a day, three times a week. Because of his health problems he relies heavily on other caretakers. While in the hands of these caretakers C.L. has suffered sexual abuse, physical abuse, and neglect. We find this factor important since R.L. does not acknowledge that he is responsible for the abuse and neglect because he chose inappropriate caretakers.

In addition, R.L. has a long history of arrests and convictions arising out of criminal conduct on his part. He has been incarcerated in county jails upon several occasions for various crimes. At the time of the hearing

on this matter, R.L. was incarcerated after being found guilty of possession with intent to deliver a controlled substance. In February 1989, he was sentenced on the conviction to a term of up to ten years in prison with a mandatory one-third of the sentence to be served before he is eligible for parole.

The Iowa Supreme Court has held a child should not be forced to endlessly suffer the parentless limbo of foster care. In Interest of A.C., 415 N.W.2d 609, 613 (Iowa 1987). C.L. has been in foster care for over two years and her best interests require that she be allowed to get on with her life. We believe the order terminating R.L.'s parental rights in C.L. was proper.

R.L. requests as an alternative to termination that C.L. be placed with a member of his family. The Department of Human Services (DHS) completed home studies on two of R.L.'s family members as possible placement homes. After complete home studies DHS found both homes to be inappropriate as placement options for C.L. DHS was rightfully concerned about possible future contact with R.L. if placed in either of these homes. DHS concluded that it would be best for C.L. to not have direct contact with her father.

In rejecting R.L.'s request that C.L. be placed with other family members the juvenile court stated:

On the basis of the home study of the [D.L. and R.W.] . . . home, the Court finds that that would not be an appropriate placement. A closer

issue is whether or not the child should be placed with [G.L.] . . . , the father's sister. Such a placement might be appropriate if it were not for the fact that she has never had any relationship with C.L. and the Court can only speculate whether a satisfactory relationship could be established. In addition, the Court has some concerns about whether or not [G.L.] . . . can successfully protect the child from [R.L.] From statements made at trial, he seems to be quite determined to have access to the child upon his release from prison.

We agree with the findings of the juvenile court.

After reviewing the home studies and the record in this case we agree with the juvenile court's conclusion. C.L. is currently living with a foster family who wants to adopt her. C.L. has a good relationship in this foster family's home. We do not believe C.L. should be forced to suffer indefinitely in parentless limbo. Consequently, we believe it to be in C.L.'s best interests to terminate R.L.'s parental rights and continue her placement in the foster home. We affirm the decision of the juvenile court in all respects.

AFFIRMED.