

IN THE COURT OF APPEALS OF IOWA

No. 8-599 / 98-0552

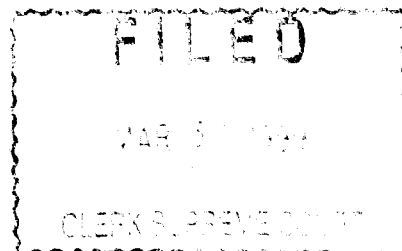
Filed March 31, 1999

IN THE INTEREST OF D.L.L.,

Minor Child,

L.L., Father,

Appellant.



Appeal from the Iowa District Court for Polk County, Karen P. Romano,
District Associate Judge.

The father appeals from the court order terminating his parental rights.

AFFIRMED.

Ta-Yu Yang of Law Offices of Ta-Yu Yang, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Barbara E. B. Galloway, Assistant
Attorney General, and Emily McConkey, Assistant County Attorney, for appellee-
State.

Nicole Garbis Nolan, Youth Law Center, Des Moines, guardian ad litem for
minor child.

Considered en banc.

HUITINK, J.

Louis, the father, appeals the court order terminating his parental rights. He contends there was insufficient evidence to prove: (1) he abandoned his child; (2) he failed to make reasonable efforts to resume care; (3) his child could not be returned to his custody; and (4) that neglect or abuse posed a significant risk to the life of his child. We affirm.

Aimee M. and Louis L. are the parents of Damon L., born January 12, 1996. Two founded reports of denial of critical care were issued against Aimee in November and December 1996. Aimee was born on November 18, 1976, and has been involved in criminal activity, mostly relating to drugs. Louis was born on October 31, 1959, and has a long criminal history. He has been incarcerated or on probation or parole for most of his adult life. Louis has another son, Justin, who also has been adjudicated in need of assistance.

On January 9, 1997, the court ordered Damon removed from Louis' care. The court adjudicated Damon in need of assistance on January 24, 1997, under Iowa Code sections 232.2(6)(c)(2) and (6)(n) (1995). Damon was placed in foster care where he remained throughout the pendency of this case. Louis was arrested on January 31, 1997, and released on February 19, 1997. Louis was incarcerated on March 7, 1997 for auto theft.

In September 1997, Louis filed two pro se pleadings regarding proposals for treatment and visitation. The court informed Louis to contact his court-appointed counsel and no action was taken on the motions.

On October 27, 1997, the State filed a petition for termination of parental rights. At the hearing in January 1998, the State presented evidence of Damon's behavioral problems, including separation anxiety and sleeping disorders. If there were deviations in his daily routine or schedule, Damon would engage in self-biting and head banging, cry, and refuse to eat or nap. These behaviors would also occur after Damon had visits with Aimee. One of the social workers testified the reunification services for Louis were interrupted due to his incarceration, but Louis was able to complete parenting classes and substance abuse treatment while incarcerated. Aimee consented to the termination of her parental rights. She testified Louis would not be an appropriate parent for Damon because he was always in criminal trouble, used drugs, was abusive towards her, never took care of Damon on a full-time basis, and was unsuccessful in parenting Justin.

Louis testified he believed he would be released in December 1998, if not sooner. He stated he would need approximately ninety days following his release to establish a permanent residence and be able to care for Damon. He testified he cared for Damon for three to four months prior to Damon's removal and he was capable of caring for him after his release. He stated he successfully completed New Beginnings Narcotics Anonymous, Active Parenting Today, and Parenting From a Distance while

he was incarcerated. He also testified he sent Damon greeting cards. The court terminated Louis's parental rights under Iowa Code sections 232.116(1)(b), (d), (g), (h). The court found termination was in Damon's best interests.

We review proceedings to terminate parental rights *de novo*—we review the facts as well as the law and adjudicate parents' rights anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We give weight to the findings of the juvenile court, particularly with respect to the credibility of witnesses, but are not bound by them. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995); Iowa R. App. P. 14(f)(7). When the juvenile court terminates a parent's rights on more than one statutory ground, we only need to find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm the district court's ruling. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996); *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa App. 1995).

Our primary concern in a termination proceeding is the best interests of the child. *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995). Those best interests are determined by looking at the child's long-range as well as immediate interests. We consider what the future likely holds for the child if that child is returned to his or her parents. Insight for that determination may be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d at 493; *Dameron*, 306 N.W.2d at 745; *In re T.T.*, 541 N.W.2d 552, 555 (Iowa App. 1995).

On appeal, Louis argues: (1) he did not abandon Damon; (2) he made reasonable efforts to care for Damon in light of his incarceration; (3) he demonstrated his ability and qualifications to resume custody after his release from prison; and (4) there is absolutely no evidence that Damon's life was at risk or Damon was ever in imminent danger. Regarding the last argument, Louis contends the court failed to apply the correct standard because the court stated the neglect posed a significant risk to Damon rather than a significant risk *to the life* of Damon.

Abandonment - Iowa Code section 232.116(1)(b). Louis asserts the State did not prove he intended to abandon Damon. *In re D.M.*, 516 N.W.2d 888, 891 (Iowa 1994). At times, intent must be inferred from actions. Louis did not inquire about Damon until eight months after his removal from the home. He has not provided financially for Damon. Louis argues he has done what he can to remain in contact with Damon by sending greeting cards. At Damon's age, cards and letters are meaningless as a means of maintaining meaningful contact. *See In re E.K.*, 568 N.W.2d 829, 831 (Iowa App. 1997). His own actions have caused his incarceration and his absence from Damon's life. Clear and convincing evidence supports termination for abandonment.

Reasonable Efforts to Parent - Iowa Code section 232.116(1)(d). Louis bases his argument on the phrase "despite being given the opportunity to do so" in Iowa Code section 232.116(1)(d)(3). He asserts he could not perform the requirements of the case permanency plan nor make reasonable efforts to parent Damon because of

his incarceration. In a similar situation in *In re E.K.*, this court stated the “incarceration was due to his own actions and he cannot fault DHS for being unable to provide services while he is in prison.” *In re E.K.* 568 N.W.2d at 831. Louis has created his inability by his own actions resulting in his incarceration. He had the opportunity to live within the law and be a parent to Damon. Nothing the juvenile court or DHS did denied Louis the opportunity to parent Damon. Clear and convincing evidence supports termination under Iowa Code section 232.116(1)(d).

Return to Custody - Iowa Code section 232.116(1)(g). Louis argues the phrase “cannot be returned to the custody of the child’s parents” in section 232.116(1)(g)(4) does not necessarily entail physical custody, citing section 232.2(11).¹ There is no merit in this argument. Although a parent and a custodian of a child share some legal responsibilities and powers, the clear intent of the language in 232.116(1)(g)(4) is a return to physical custody, not merely a change in legal status. Clear and convincing evidence supports a finding Damon cannot be returned to Louis’s care and custody so long as Louis remains incarcerated. Louis has been incarcerated for most of his adult life. We find it likely, if Damon were to be returned to Louis’s care and custody once Louis is released, Damon would be removed again because Louis appears unable or unwilling to live within the law, even knowing he had responsibilities as a parent.

¹ This section defines “custodian.” Louis argues that if a custodian can transfer physical possession of a child to another, “custody” need not entail physical custody.

Because we affirm the termination under the sections discussed above, we need not address the claim Louis makes under section 232.116(1)(h). *In re A.J.*, 553 N.W.2d at 911; *In re R.R.K.*, 544 N.W.2d at 276.

The district court placed Damon with the Department of Human Services for adoption, but made no findings on Damon's adoptability. To keep children in temporary or even long-term foster homes is not in their best interests, especially when the children are adoptable. *In re J.L.P.*, 449 N.W.2d 349, 353 (Iowa 1989); *In re T.T.*, 541 N.W.2d 552, 557-58 (Iowa App. 1995). Iowa Code section 232.116 contains no requirement the court must find a child adoptable before terminating parental rights. *In re T.C.*, 522 N.W.2d 106, 109 (Iowa App. 1994).

AFFIRMED.