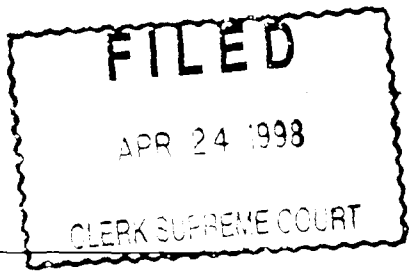
IN THE COURT OF APPEALS OF IOWA

No. 8-182 / 97-1972



IN THE INTEREST OF J.T.S., Minor Child,
R.S., Father,
Appellant.

Appeal from the Iowa District Court for Jasper County, Thomas W. Mott, District Associate Judge.

Father appeals from the associate district court order terminating his parental rights to J.T.S. **AFFIRMED.**

Richard E.H. Phelps II, Mingo, for appellant.

Thomas J. Miller, Attorney General, and Charles K. Phillips, Assistant Attorney General, for appellee-State.

Ryan A. Genest of Borseth & Genest, Des Moines, guardian ad litem for minor child.

Considered by Cady, C.J. and Huitink, and Streit, JJ.

CADY, C.J.

Background. Roger and Julie are the parents of Justin (J.T.S.), born December 27, 1996 and Wendy, born December 12, 1991. Julie has two other children from a previous relationship, Johnna, born December 30, 1983 and Amanda, born September 24, 1985. In August, 1996 the court entered a temporary removal order concerning Johnna, Amanda, and Wendy because Roger had sexually abused Johnna, physically abused Amanda, and all three girls were imminently likely to be molested, bullied, and abused by him. The three girls were adjudicated in need of assistance in October and placed in the care and custody of their maternal aunt in November.

Justin tested positive for amphetamine exposure at birth. The day after Justin's birth, the court ordered him temporarily removed from Roger's and Julie's care and custody pending foster placement. Both Roger and Julie have used illegal drugs in the past. Justin was adjudicated in need of assistance on March 7, 1997 by stipulation of the parties. The April 21, 1997 dispositional order continued Justin's CINA status, ordered visitation be supervised, and found he would "suffer harm in a manner specified in Section 232.2(6), (1995), if returned home at this time." The court ordered Roger to continue with substance abuse counseling, to obtain suitable housing, to obtain employment, and to complete a sexual perpetrator program.

Roger did not continue his substance abuse counseling and was discharged from the program for failure to attend. At the time of the termination hearing, Roger

was living part-time with his retired parents and had not maintained employment. He had not participated in or completed a sexual perpetrator program. Roger had exercised some supervised visitation, but quit seeing Justin in May, 1997 because he felt hurt when he had to leave and he said one hour per week was not enough for him. Roger sought to have the court place Justin with his retired parents to avoid termination of his parental rights.

Scope of Review. Review of terminations of parental rights is *de novo*. Iowa R. App. P. 4; *In re R.L.*, 541 N.W.2d 900, 902 (Iowa App. 1995). Weight is to be accorded the findings of the juvenile court, particularly with respect to the credibility of witnesses. *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).

The 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 to be determined by looking at the child's long-range as well as immediate interests. The court considers 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 489; *Dameron*, 306 N.W.2d at 743; *In re T.T.*, 541 N.W.2d 552, 555 (Iowa App. 1995). Case history records are entitled to much probative force when a parent's record is being examined. *Id.*

The Iowa Supreme Court has often recognized there exists a parental interest in the integrity of the family unit, but that such interest is not absolute but may be forfeited by certain conduct. *Dameron*, 306 N.W.2d at 743. The State has the duty to see that every child within its borders receives proper care and treatment, and must intercede when parents abdicate that responsibility. *In re I.L.G.R.*, 433 N.W.2d 681, 689 (Iowa 1988). At a minimum, this care includes proper food, clothing, discipline, and supervision. "Every child deserves a safe, healthy, and stimulating environment in which to grow and mature." *In re J.W.D.*, 456 N.W.2d 214, 217 (Iowa 1990).

"[T]he general assembly has carefully crafted a legislative framework for State intercession into the parent-child relationship while protecting wherever possible the integrity of the family unit." *I.L.G.R.*, 433 N.W.2d at 681. Under the statutes the State must act to prevent probable harm to a child and need not delay until harm has actually occurred. The termination statutes are preventative as well as remedial. *Dameron*, 306 N.W.2d at 743. "So the statutory presumption that a child's best interest will be served by leaving the child with the child's parent is not conclusive." *L.L.*, 459 N.W.2d at 489. If any one of the grounds listed in section 232.2(6) can be proven by clear and convincing evidence, there is a sufficient basis for termination. *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990); *In re R.R.K.*, 544 N.W.2d at 277.

The legislature has determined the interval for which patience with parents may last. Iowa Code section 232.116(1)(g)(4) sets the period at six months if no trial return period of thirty days or more has occurred. "This period must be reasonably

limited because patience on behalf of the parent can quickly translate into intolerable hardship for the children." *In re R.J.*, 436 N.W.2d 630, 636 (Iowa 1989). A child should not be forced to suffer the parentless limbo of foster care endlessly. *In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990); *Long v. Long*, 255 N.W.2d.2d 140, 146 (Iowa 1977). He or she need not endlessly await the maturity of his or her natural parent. *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). "Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). To continue 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).

Bases for termination. On appeal, Roger argues the court erred in finding Justin could not be returned to his custody at that time (232.102(5)) and in finding services would not correct the conditions which led to Justin's removal within a reasonable period of time (232.116(1)(g)(4)).

In our de novo review of the record, we find Roger has not complied with the requirements of the dispositional order. His past history raise significant concerns about his ability to parent and the safety of any child in his care. He has not availed

himself of the services offered by the State: supervised visitation, substance abuse counseling, and a sexual perpetrator program. He has not sought the opportunity to parent Justin during the period of Justin's removal from his custody. His attempts to throw the responsibility for the CINA adjudication on Julie demonstrate his immaturity and refusal to address his own significant problems. Roger's retired parents likely would not be able to protect Justin from harm from Roger. Because of their age, placement of an infant in their custody long-term is not in the child's best interests. Accordingly, we affirm the termination of Roger's parental rights.

AFFIRMED.