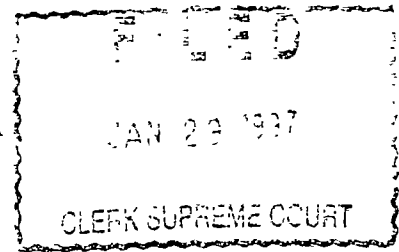


IN THE COURT OF APPEALS OF IOWA

No. 6-808 / 96-1586



IN THE INTEREST OF K.S., Minor Child,

000271

R.S., Father,

Appellant.

Appeal from the Iowa District Court for Dubuque County, Jane Mylrea,
Associate Juvenile Judge.

Father appeals the order of the juvenile court terminating his parental rights as
to his minor child. **AFFIRMED.**

Monica Ackley, Dubuque, for appellant.

Thomas J. Miller, Attorney General, Debora L. Hewitt, Assistant Attorney
General, and Jean Becker, Assistant County Attorney, for appellee State.

Ann McDonough, Dubuque, for minor children.

Considered by Sackett, P.J., and Cady and Huitink, JJ.

HUITINK, J.

R.S. appeals the order of the district court terminating his parental rights as to his child, K.S. We affirm.

R.S. and K.K. have one son together, K.S., born on March 13, 1994. At the time of his birth, the mother was sixteen years old and the father was nineteen. The couple never married. Initially, the child lived with his mother at Dana Place where she was developing independent living skills.

K.S. was placed in foster care in April 1994 due to allegations that the mother had overdosed on narcotics supplied to her by the father. Eight days later, the child was returned to K.K. and services were provided. Shortly thereafter, the child was once again removed from the mother's custody after she expressed the desire to place the child for adoption. At a hearing later that month, R.S. was denied custody pending further investigation and confirmation of paternity. Both parents were granted supervised visitation with the child.

In April 1994, R.S. was arrested for criminal mischief in the second degree and later for burglary in the third degree. In May, he was arrested again for criminal mischief in the second degree, and following that arrest he was charged with operating while intoxicated and public intoxication. R.S. was incarcerated at the Dubuque Law Enforcement Center (DLEC) and later at the Elm Street Correctional Facility.

In May 1994, K.S. was adjudicated a Child in Need of Assistance pursuant to Iowa Code sections 232.2(6)(c)(2)(j)-(n) and 232.96. A June 1994 dispositional review order determined that K.S. and his mother should be placed in a foster home together. R.S. was transferred to the Elm Street Facility to serve the remainder of his sentence. Prior to the next hearing date, the mother ran away and the father escaped from the Elm Street Facility. After both were later found, the mother was placed at the juvenile home in Toledo and the father was returned to DLEC. Before R.S. was re-incarcerated, he incurred additional criminal charges.

At a November 1994 review hearing, the father requested placement be considered with his grandmother and a home study was ordered. The mother continued placement at Toledo. The father was scheduled to be transferred to the West Union Correctional Facility where he was to receive services through DHS. The father was authorized to have visitation with K.S. in December 1994 at DLEC. The home study of R.S.'s grandmother was favorable and she was recommended as a placement option in the event the mother needed assistance or failed to make progress towards reunification.

In March 1995, the child was returned to the care of K.K. following a dispositional review hearing. Respite care with R.S.'s grandmother was authorized and R.S. was permitted to have supervised visitation. He was also ordered to complete a parenting class while incarcerated.

Following his discharge from the West Union Correctional Facility, R.S. was charged with additional crimes in May and June 1995. He was later convicted of first-degree criminal mischief and operating a motor vehicle without the owner's consent. He was sentenced to a ten-year prison term at the Iowa Men's Reformatory in Anamosa. R.S. is scheduled to complete his sentence in the year 2001.

In June 1995, DHS received reports that K.K. was having parties while her child was present. She was also becoming combative and uncooperative with her service providers. As a result, K.S. was removed from her care and visitation with both parents ceased. During the period between the removal and the next hearing held in October 1995, DHS had little contact with both the mother, who had disappeared, and the father, who was incarcerated at Oakdale Correctional Center. At the October 1995 review hearing, the father was denied further visitation due to the child's age, apparent attachment disorder, and the potentially harmful impact the visits may have on the child. The mother had since been located in LaMotte, Iowa, and services were reinstated.

In January 1996, the court restricted K.K.'s visitation to no more than once a month. The court also indicated termination would be considered if the child could not be returned to K.K.'s care by the end of 1996.

A petition for termination of the parental rights of both parents was filed in July 1996 and a hearing was held in August 1996. The father was transported from

the Iowa Men's Reformatory at Anamosa to attend the hearing. K.K. did not attend and her whereabouts at that time were unknown.

The court found the actions of K.K. had evidenced her abandonment of the child. As to the father, the court expressed concern that the father had "never parented this child and that the father admitted he would need assistance in doing so." The court acknowledged the father had been denied visitation following his incarceration at Anamosa due to the age of the child, the limited contact the father had with the child, and also the disruption to the child that would result from visits to the Anamosa facility. The termination order noted the father's lengthy criminal history, probation violations, and substance abuse problems. Finally, the court cited the father's failure to parent the child in the past even when not incarcerated, his "poor choices" resulting in incarceration, and the child's immediate need for a permanent, stable home as reasons supporting the termination of his parental rights. The court terminated the parental rights of both parents pursuant to Iowa Code sections 232.116(1)(g) and 232.102.

R.S. appeals the termination order asserting the State failed to meet its burden to present clear and convincing evidence that K.S. could not be returned to his father's care. He also argues the juvenile court erred in determining the termination was in K.S.'s best interests. K.K. has not appealed the decision of the juvenile court.

Appellate review of termination proceedings is de novo. *In re W.G.*, 349

N.W.2d 487, 491 (Iowa 1989), *cert. denied sub nom., J.G. v. Tauke*, 469 U.S. 1222, 105 S.Ct. 1212, 84 L.Ed.2d 353 (1985). We give weight to the findings of fact made by the juvenile court, but we are not bound by them. *Id.* at 491-92.

The primary concern in termination proceedings is the best interests 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 preventive 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).

The State is required to make reasonable efforts to reunite the parent and child prior to termination. *In re C.L.H.*, 500 N.W.2d 449, 453 (Iowa App. 1993). In proceedings to terminate parental rights, the reasonableness of services the State has offered in an effort to preserve the family should be very carefully scrutinized. *In re C.D.*, 508 N.W.2d 97, 100 (Iowa App. 1993).

R.S.'s first argument on appeal asserts the State failed to prove by clear and convincing evidence that R.S. could not provide for his son's care. He argues that prior to the termination he was denied visitation by the mother, DHS, the correctional facilities, and the court. R.S. also urges the court to consider his numerous requests

to have his grandmother considered as a temporary custodian until R.S. was released from incarceration. R.S. expressed his intentions to find employment and continue substance abuse treatment following his release. He further asserts the record does not indicate the prison system has failed to rehabilitate him. Finally, he contends that during the time K.S. was in foster care, the State neglected to make reasonable efforts to reunite him with K.S., but rather efforts were focused on the mother instead. Overall, R.S. argues his incarceration in and of itself is insufficient to establish he was not able to provide for his child's current and future needs and, furthermore, it is premature to terminate his rights. He advises he is scheduled to be released as early as January 1997 and at that time services through DHS could resume.

Upon de novo review of the record, we find clear and convincing evidence that K.S. could not be returned to the care of his father. The record indicates R.S., by his actions, bears responsibility for the obstacles to reunification with his son. *See In re J.L.W.*, 523 N.W.2d 622, 624 (Iowa App. 1994) (unavailability to parent as a result of being incarcerated is no excuse for parent's conduct for purposes of proceedings to terminate parental rights). He has an extensive criminal history beginning as a juvenile and continuing to the present time. His record includes numerous criminal mischief charges, theft and burglary charges, and drunk driving arrests. His inability to fulfill the responsibilities of parenting K.S. are the direct result of his own conduct. *See In re J.S.*, 470 N.W.2d 48, 51 (Iowa App. 1991) (incarcerated parent must take

responsibility for conduct leading to the confinement). At the point where it became imperative for R.S. to focus his efforts on achieving reunification with K.S., his criminal behavior continued. R.S.'s inability to refrain from illegal activity after his parental rights were in jeopardy demonstrates his lack of commitment to this child. Therefore, we reject his argument placing blame upon the mother, the service providers, the correctional facilities, and the juvenile court for his limited access to his child.

R.S. also argues the juvenile court erred in determining it was in K.S.'s best interests to terminate his father's rights. We reject this argument as well. The record indicates K.S. has been in foster care since June 1995. He cannot be returned to his father's care because R.S. is currently serving a ten-year sentence set to expire in the year 2001. The possibility of R.S. achieving an earlier release is presently unknown. R.S. indicates in his brief that he could be released as early as January 1997. However, he does not identify support in the record for this assertion nor does he explain the conditions of his potential release. To continue placement of his son in long-term foster care awaiting his release is not in the best interests of K.S. *See In re J.L.P.*, 449 N.W.2d 349, 353 (Iowa 1989).

R.S.'s troubled history as a parent demonstrates his inability to successfully parent K.S. upon his release from prison. *See In re R.M.*, 431 N.W.2d at 199 (past performance may be indicative of quality of future care parent is capable of

providing). We will not force K.S. to endlessly await R.S.'s decision to make the necessary commitment essential to reunification. *See In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). The termination of R.S.'s parental rights is in the best interests of K.S.

We affirm the juvenile court's order in its entirety.

AFFIRMED.

Cady, J., concurs; Sackett, P.J., specially concurs without opinion.