

IN THE COURT OF APPEALS OF IOWA

No. 9-224 / 98-0761

FILED

IN THE INTEREST OF
J.M.L., Minor Child,

M.L., Father,
Appellant.

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

A father appeals the termination of his parental rights with respect to his
youngest son. **AFFIRMED.**

Martha L. Johnson, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General,
and Jaki Livingston, Assistant County Attorney, for appellee.

Christine Bisignano, Des Moines, guardian ad litem for minor child.

Considered by Huitink, P.J., and Vogel and Mahan, JJ.

HUITINK, P.J.

The father, Michael, appeals the termination of his parental rights to his youngest son, Jonathan. He claims the court erred in determining the child could not be returned to his custody. Michael does not appeal the other terminations. The mother's parental rights also were terminated, but are not part of this appeal. We affirm.

Jonathan, born in February 1994, is the youngest of five children of Michael and Shelly. (Jeffrey, Michael, Jacob, Jessica, and Jonathan). The children came to the attention of the Department of Human Services (DHS) in 1996 when they were found living in a tent at the Iowa State fairgrounds. In September 1996, Jonathan and his siblings were removed from their parents' custody and the State filed children in need of assistance (CINA) petitions on all five children. Following a hearing, the children were adjudicated CINA under Iowa Code sections 232.2(6)(a), (c)(2), and (n) (1995). The children were placed in foster care where they remained during the pendency of the CINA cases. Jeffrey, the eldest, was placed with his maternal grandmother. Jacob and Jessica were placed with their maternal aunt.

The parents did not attend the adjudicatory hearing. Neither parent appeared at the dispositional hearing in January 1997 or at the review hearing in June 1997.

On November 24, 1997, the State filed a petition to terminate Michael's parental rights to Jonathan and the other children. Michael consented to the termination of his parental rights to Jacob and Jessica. The paternal aunt and uncle

moved to intervene with respect to the child, Michael. The State withdrew its petition as to that child and the court entered a permanency order directing DHS to investigate placement of him with his aunt and uncle.

The court found the father had a history of incarceration, including recent incarceration for domestic assault and assault on the maternal grandmother. Michael also had a long history of substance abuse and homelessness. He was thirty-one years old at the time of the termination hearing and had been abusing drugs since age fifteen, never going longer than four months without using drugs, except in prison. Michael was living in a halfway house at the time of the hearing.

The court determined there was clear and convincing evidence Jonathan had been removed from his parents' custody for at least six months and that he could not be returned to Michael's custody. Based on these findings, the court terminated Michael's parental rights with respect to Jonathan pursuant to section 232.116(1)(g). The court also noted Jonathan had turned four during the CINA proceedings and had been out of his parents' custody for more than twelve months, satisfying the time requirement of section 232.116(1)(e).

On appeal, Michael contends the court erred in determining there was clear and convincing evidence Jonathan could not be returned to his custody within a short time after his release from the halfway house. In particular, he asserts he has been improving his life and, although unable to resume parenting of Jonathan at the time of the hearing, he would soon be in a position to be a successful parent. He asks for

an extension for a reasonable period of time during which he could demonstrate his ability to resume custody of Jonathan.

Jonathan had been in foster care for eighteen months at the time of the termination hearing. Michael had not seen him during that time, primarily because of his incarceration. 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 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). At some point, the rights and needs of the child rise above the rights and needs of the parents. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997). The legislature, in section 232.116(1)(g)(3), established a six-month standard. *See In re A.C.*, 415 N.W.2d at 614 (“It is unnecessary to take from the children’s future any more than is demanded by statute.”). The legislature adopted the standard in the belief that this period must be reasonably limited because, “beyond the parameters of chapter 232, patience with parents can soon translate into intolerable hardship for their children.” *Id.* at 613. The legislature has categorically determined “the needs of a child are promoted by termination of parental rights” if the grounds for termination of parental rights exist. *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990). Jonathan has been in limbo for three times the statutory period. Now his father asks for the period to be

extended without any proof he ever will be able to resume Jonathan's care and custody. We find termination appropriate and in Jonathan's best interests.

AFFIRMED.

No. 98-0761. [9-224] IN RE J.M.L.

Appeal from the Iowa District Court for Polk County, Karen A. Romano, Associate Juvenile Judge. **AFFIRMED.** Considered by Huitink, P.J., and Vogel and Mahan, JJ. Opinion by Huitink, P.J. (5 pages \$2.00)

The father, Michael, appeals the termination of his parental rights to his youngest son, Jonathan. He claims the court erred in determining the child could not be returned to his custody. Michael does not appeal the termination of his parental rights to his other children. Jonathan, born in February 1994, is the youngest of five children of Michael and Shelly. In September 1996, Jonathan and his siblings were removed from their parents' custody and the State filed children in need of assistance (CINA) petitions on all five children. The parents did not attend the adjudicatory hearing. Neither parent appeared at the dispositional hearing in January 1997 or at the review

hearing in June 1997. In November 1997, the State filed a petition to terminate Michael's parental rights to Jonathan and the other children. Michael was thirty-one years old at the time of the termination hearing and had been abusing drugs since age fifteen, never going longer than four months without using drugs, except in prison. Michael was living in a halfway house at the time of the hearing. **OPINION HOLDS:** Jonathan has been in limbo for three times the statutory period. Now his father asks for the period to be extended without any proof he ever will be able to resume Jonathan's care and custody. We find termination appropriate and in Jonathan's best interests.