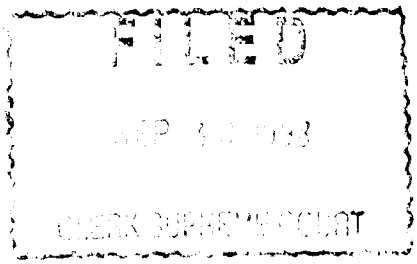
IN THE COURT OF APPEALS OF IOWA

No. 8-389 / 97-2193
Filed September 30, 1998



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

J.L.E., Father,
Appellant.

Appeal from the Iowa District Court for Johnson County, Stephen C. Gerard, II, Judge.

The father appeals from the termination of his parental rights. **AFFIRMED.**

Bruce D. Nestor of Tindal, Erdahl, Goddard,& Nestor, P.L.C., Iowa City, for appellant.

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

Amy L. Evenson of Larson & Evenson, Iowa City, guardian ad litem for minor child.

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

PER CURIAM

John, the father of Jonathon, appeals from the termination of his parental rights. He claims the district court erred in: (1) failing to consider a less restrictive placement of custody with a relative; and (2) finding there was clear and convincing evidence to support the termination.

Jonathon was born in September 1994. At the time of Jonathon's birth, John was incarcerated for operating while intoxicated (third) and being an habitual offender. John remained incarcerated through the termination proceedings. Jonathon was one of five children — all subject to petitions to terminate parental rights. The decree terminating parental rights combined the five children into one decree. John stipulated Jonathon was a child in need of assistance (CINA) and the juvenile court filed an order adjudicating Jonathon to be CINA on May 2, 1996. On April 14, 1997, the State filed a termination petition.

Just prior to the termination hearing, the father filed a motion requesting the court to order a home study of his cousin's home, to modify dispositional placement, and continue the termination hearing to accommodate the study and investigation of relative placement. The juvenile court denied this motion, but ruled the father could present evidence at the termination trial in support of placement with his cousin in Oklahoma.

Following the hearing, the juvenile court terminated the mother's and father's rights to Jonathon. The court acknowledged John loved Jonathon, had exhibited a

desire to support him, and had "done everything possible under the case plan that's been asked of him." However, the court stated John had spent the majority of his adult life incarcerated for various convictions[1] and the prognosis for him establishing a home, getting a job, and overcoming his alcoholism was poor. John appeals.

We review proceedings to terminate parental rights de novo—reviewing the facts as well as the law and adjudicating the parents' rights anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). Weight is accorded the findings of the juvenile court, particularly with respect to the credibility of witnesses, but they are not binding. *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 at 275.

John argues the court erred in denying his motion to continue the termination hearing and to carry out a home study for relative placement. We review a motion for continuance for abuse of discretion and will reverse only if injustice will result to the party desiring the continuance. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa App. 1996); *In re Estate of Lovell*, 344 N.W.2d 576, 578 (Iowa App. 1983). The denial of a

---

[1] John's juvenile record included robbery-1st, burglary-1st, theft-2nd and -3rd, intoxication, and resisting arrest. At age seventeen, he was serving a five-year sentence for theft-2nd, his first adult offense. "John continued having numerous involvements with law enforcement since attaining age of majority, for various charges he served time at a number of facilities. Having broken his probation, John returned to Oakdale on January 14, 1994, where he has remained on charges of Habitual Offender. John has had arrests for Disorderly Conduct, Public Intoxication and Theft-5th among others." "John . . . has a long history of involvement with law enforcement and multiple OMVWI's."

motion to continue must be unreasonable under the circumstances before we will reverse. *Michael v. Harrison County Rural Elec. Coop.*, 292 N.W.2d 417, 419 (Iowa 1980) (citing *State v. Cott*, 283 N.W.2d 324, 329 (Iowa 1979)). Given the timing of the motion, we conclude the juvenile court did not abuse its discretion in denying John's motion to continue the termination hearing. Jonathon had waited long enough for permanency. 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).

Although John asserts the court denied him a meaningful opportunity to present evidence in support of a less restrictive placement, the court specifically allowed John to present evidence concerning his cousin. Alternatively, John argues the court erred in failing to place Jonathon with John's cousin. The evidence demonstrates the cousin lives in Oklahoma and had never seen Jonathon. Placement with this relative, even if suitable, would differ little from foster placement with any stranger, except John would have the ability to maintain contact with Jonathon and delay permanency for him. We find this claim without merit.

Finally, John argues there was a lack of clear and convincing evidence he abandoned his son, services were offered to correct the circumstances leading to the CINA adjudication, Jonathon could not be placed with a relative, and John's prognosis for overcoming alcoholism was poor. The juvenile court terminated John's parental rights under Iowa Code sections 232.116(1)(b), (c), (e), and (k). If the

juvenile court terminated the parental 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 juvenile court to affirm the 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 at 276.

John has been incarcerated since before Jonathon's birth. He has demonstrated a serious alcohol abuse problem (OWI third plus habitual offender). His earliest release would have been February 1998. He has been incarcerated most of his adult life and has only held a job for four months. It is clear Jonathon cannot be returned to John's care now or for the foreseeable future. The State alleged various provisions of 232.116(1) in its petition to terminate parental rights, including 232.116(1)(g) (child under 4 years old). The court grouped all five children together in its conclusions of law under 232.116(1)(e) (child 4 years or older). Jonathon was under three years of age at the time. In our de novo review of the record, we find clear and convincing evidence supporting termination under Iowa Code sections 232.116(1)(g) and (k). The clerical error in citing 232.116(1)(e) (child 4 years or older) instead of (g) (child under 4 years old) for Jonathon was harmless. It would have had the effect of increasing the time John had to become a responsible parent. His past inability to overcome his problems with alcohol belies his assertion he could be a proper parent for Jonathon after his release from prison. Jonathon should not be forced to endlessly suffer the parentless limbo of foster care. *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 need not endlessly

await the maturity of his father. *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). We affirm the decision of the juvenile court.

AFFIRMED.