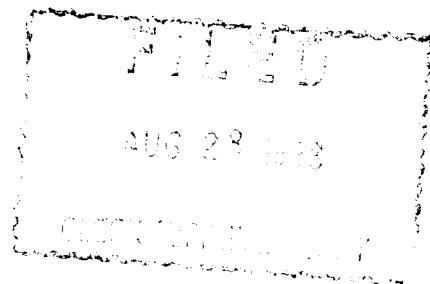


IN THE COURT OF APPEALS OF IOWA

No. 8-441 / 98-459



IN THE INTEREST OF J.F., Minor Child,

D.A., Father,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Jeffrey Harris,
District Associate Judge.

Father appeals the juvenile court's order terminating his parental rights.

AFFIRMED.

John J. Bishop, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General,
and Stephen Halbach, Assistant County Attorney, for appellee-State.

Dennis Guernsey, Waterloo, guardian ad litem for minor child.

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

VOGEL, J.

Dawn is the mother of Jasmine, born in March 1996. Michael is the legal father and Dan is the biological father. Dan appeals the decision of the juvenile court terminating his parental rights.

In March 1997, Dawn's mother, Carol, found Jasmine in the care of Michael, who had passed out. Carol took Jasmine to her home, where she has remained. Both Dawn and Michael had problems with substance abuse. The juvenile court entered a temporary removal order placing Jasmine in the care of Carol. Jasmine was adjudicated to be a child in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(b) and (c)(2).

At a hearing in July 1997, Dawn revealed Michael was not Jasmine's biological father. On July 10, 1997, the State sent notice of the CINA proceedings to Dan, who was then at a work release facility due to his conviction for operating while intoxicated, third offense. Dan called the Department of Human Services and expressed interest in receiving custody of Jasmine.

In September 1997, blood tests showed Dan was Jasmine's biological father. In the meantime, Dan's probation was revoked and he was sent to prison. The earliest date for his release would be August 1998. Dan has had no contact with Jasmine, either in person, or by letter or telephone.

In December 1997, the State filed a petition to terminate the parental rights of Dawn and Dan. Dawn consented to the termination of her parental rights. The

juvenile court terminated Dan's parental rights pursuant to sections 232.116(1)(d) and (g). The court found Dan was presently incarcerated and custody of Jasmine could not be placed with him at the present time. Dan has appealed.

The scope of review in termination cases is *de novo*. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1994). The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa App. 1997). Our primary concern is the best interests of the child. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

Dan contends sections 232.116(1)(d) and (g) cannot be applied as the basis for termination of his parental rights because Jasmine was never "removed" from his care as required by these code sections. Section 232.116(1)(d)(2) provides:

(2) The child has been *removed* from the physical custody of the child's parents for a period of at least six consecutive months.

(Emphasis added).

Section 232.116(1)(g)(3) provides:

(3) The child has been *removed* from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(Emphasis added).

Dan points out Jasmine was never in his physical care, and claims she could not then be "removed." He argues sections 232.116(1)(d) and (g) require removal as a prerequisite for termination of parental rights. Since he believes Jasmine was never

“removed” from his care, he asserts his parental rights were improperly terminated under these code sections.

Although sections 232.116(1)(d) and (g) both require the child to be “removed from the physical custody of the child’s parents,” we believe such a narrow reading of these sections would only serve to frustrate the legislative intent of protecting children from neglective or abusive parents. *See* Iowa Code §232.67. Furthermore, the use of the word “parents” in both code sections also includes the singular use to mean “parent”. *See* Iowa Code §4.1(3) (in statutory interpretation, the singular includes the plural, and the plural includes the singular); *In re C.W.*, 554 N.W.2d 279, 282 (Iowa App. 1996). Thus, we believe sections 232.116(1)(d) and (g) do not require the child to be removed from the physical care of both parents. We determine these code sections require only the removal of the child from one of the parents.

Here, Jasmine was clearly removed from the physical custody of Dawn, one of her parents. We conclude this requirement of sections 232.116(1)(d) and (g) was therefore met, and the parental rights of either of Jasmine’s parents could then be terminated based on her removal.

We note the supreme court has previously held a noncustodial parent’s rights could be terminated under section 232.116(1)(d). *In re N.M.*, 491 N.W.2d 153, 155 (Iowa 1992). The court’s finding was based on a determination chapter 232 should be liberally construed. *Id.*

We determine Dan's parental rights were properly terminated under sections 232.116(1)(d) and (g). There was clear and convincing evidence Jasmine could not be placed in Dan's care at the present time. Dan was in prison, and admitted he could not care for Jasmine at that time. Furthermore, Dan had never actually met Jasmine, and had no contact with her.

We affirm the decision of the juvenile court terminating Dan's parental rights to Jasmine.

AFFIRMED.

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