IN THE COURT OF APPEALS OF IOWA

No. 8-514 / 98-0814

IN THE INTEREST OF A.L.W., Jr., R.F.W., J.A.W. and R.R.W.,
Minor Children,

A.W., Sr., Father,
Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Woodbury County, Patrick H. Tott, District Associate Judge.

Father appeals from juvenile court order terminating his parental rights. **AFFIRMED.**

Randy S. Hisey, South Sioux City, Nebraska, until withdrawal, and then Martha M. McMinn, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Dewey P. Sloan, Assistant County Attorney, for appellee-State.

Joseph W. Kertels, guardian ad litem for minor children.

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

MAHAN, J.

The father, Anthony Sr. (Tony), appeals from the juvenile court order terminating his parental rights to his four children. He contends the court erred in terminating his parental rights pursuant to Iowa Code section 232.116(1)(e), (g), and (h) (1997) because he was denied the services necessary to allow him to correct the circumstances which led to the termination. We affirm.

Tony and Marcia never married, but lived together for approximately eight years. They separated in 1993. During the eight years, Marcia and Tony had four children: Anthony Jr., born in September 1988; Rhylie, born in February 1990; Julie, born in February 1992; and Rayven, born in January 1993. In 1994, Tony lived in California with the children and was awarded custody of them by a California court by default.

Tony returned to Iowa in December 1994 to serve a jail sentence for a probation violation. The children were removed from Tony during his incarceration and returned to him after he had secured a suitable residence for them. In October 1995, however, the children were again removed from Tony's custody due to living conditions which were "filthy and unfit for human habitation." The State filed a child in need of assistance petition. On December 13, 1995, the children were adjudicated to be in need of assistance.

In April 1996, the children were returned to Tony under the supervision of the Department of Human Services. In July 1996, however, Tony again was incarcerated

for probation violations. During this incarceration, the children lived with Marcia in Missouri, but were returned to Iowa and placed in foster care due to Marcia's housing and financial circumstances.

Tony was released from prison in October 1996 and was granted supervised visitation and telephone contacts with the children. His telephone contacts, however, appeared to cause the children to display disruptive behaviors. In June 1997, custody of the children was transferred to Marcia. Tony's supervised visits and telephone contacts were sporadic and disruptive.

The court ordered the Department of Human Services to provide Tony with in-home parenting skills instruction, individual therapy, and nurturing classes. Tony only partially cooperated with a psycho-social evaluation, and he never complied with the parent survival program. Tony requested services in the summer of 1997, but he never followed through with the worker. Three of Tony's attorneys withdrew as his counsel during the proceedings before the district court.

In October 1997, the State filed a petition to terminate Tony's parental rights. His parental rights were terminated on April 27, 1998, pursuant to Iowa Code section 232.116(1)(e).[1] The court determined Tony completely failed to change his lifestyle

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[1] This section requires:

e. The court finds that all of the following have occurred:

(1) The child is four years of age or older.

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

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

or cooperate with services since the CINA proceedings began. The court could not find evidence to suggest Tony's future would be any different than his past and concluded it was in the best interests of the children to terminate their relationship with Tony.

We review terminations of parental rights de novo. Iowa R. App. P. 4; *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998). Our primary interest in termination proceedings is the best interests of the children. Iowa R. App. P. 14(f)(15); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). There exists a parental interest in the integrity of the family unit, but that interest is not absolute and may be forfeited by certain conduct. *Dameron*, 306 N.W.2d at 745. The State has a duty to see 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).

On appeal, Tony argues he has participated in services, has shown progress as a parent, and is willing to continue participation in services. The evidence in the record before us belies his claims. To his credit, Tony has participated in a nurturing program. However, he never complied with the parent survival program in the case

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> (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

Iowa Code § 232.116(1)(e).

permanency plan. Tony also resisted completing a psycho-social evaluation. He blames others for his losing custody of his children. He believes "the system" should return his children to him and leave him alone to raise them as he sees fit. Although he participated in the nurturing program, Tony has not demonstrated progress in becoming a fit parent. An abundance of patience waiting for parents to respond to services can quickly translate into intolerable hardship for the children. *In re R.J.*, 436 N.W.2d 630, 636 (Iowa 1989). Children should not be placed at risk so their parents can experiment with their parenting skills. *In re M.B.*, 553 N.W.2d 343, 346 (Iowa App. 1996); *see In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). The statutory time for patience has passed and we view this case with a sense of urgency. *In re D.A., Jr.*, 506 N.W.2d 478, 479 (Iowa App. 1993).

Tony also contends reasonable efforts have not been made to reunite him with his children. The State argues Tony failed to preserved error on the issue of reasonable efforts by not demanding services prior to the termination hearing or by challenging the case plan when it was entered. Reasonable efforts to reunite parent and child are required prior to the termination of parental rights. *In re T.C.*, 522 N.W.2d 106, 108 (Iowa App. 1994); *see generally* Iowa Code § 232.102. Parents have the obligation to demand services prior to the termination hearing. *In re B.K.K.*, 500 N.W.2d 54, 57 (Iowa 1993); *In re C.D.*, 508 N.W.2d 97, 101 (Iowa App. 1993). In addition, parents should challenge the case permanency plan when it is entered. *In re J.L.W.*, 518 N.W.2d 804, 807 (Iowa App. 1997). We agree with the State that

Tony has failed to preserve error on this issue. Even if Tony had preserved error, we would find the family-centered skill development and individual and group therapy provided by the Department constituted reasonable efforts to reunite Tony with his children.

Normally, the adoptability of the children is a consideration in terminating parental rights. There is a rebuttable presumption the best interests of children are served when custody is with the natural parents. Iowa Code § 232.1; *In re S.J.*, 451 N.W.2d 827, 830 (Iowa 1990); *see also Santosky v. Kramer*, 455 U.S. 745, 769-70, 102 S. Ct. 1388, 1402, 71 L. Ed. 2d 599, 617 (1982). Because the children in this case are in their mother's custody, we need not consider their adoptability in determining whether terminating Tony's parental rights is in their best interest.

For the reasons set forth above, we find termination of Tony's parental rights to Anthony Jr., Rhylie, Julie, and Rayven proper under Iowa Code section 232.116(1)(e) and in the best interest of the children.

AFFIRMED.

Streit, J., concurs; Sackett, C.J., specially concurs without opinion.