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CLERK SUPREME COURT

**IN THE COURT OF APPEALS OF IOWA**

No. 1-603 / 01-754
Filed November 16, 2001

**IN RE N.M., D.M.F., E.A.F., and R.A.F.,
Minor Children,**

**J.A.F., Father of D.M.F., E.A.F., and R.A.F.,
Appellant.**

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Appeal from the Iowa District Court for Woodbury County, Brian Michaelson, Associate Juvenile Judge.

Father appeals the juvenile court's order terminating his parental rights to this three children. **AFFIRMED.**

Douglas Roehrich, Sioux City, for appellant.

Thomas J. Miller, Attorney General, M. Elise Pippin, Assistant Attorney General, and Marlene Loftus, Assistant County Attorney, for appellee-State.

Michelle Dreibelbis of the Juvenile Law Center, Sioux City, guardian ad litem for minor children.

Dewey Sloan, Jr., Sioux City, for mother.

Considered by Hayden, P.J., Habhab, and C. Peterson, S.J.*
*Senior judges assigned by order pursuant to Iowa Code section 602.9206 (2001).

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**HAYDEN, S.J.**

R.A.F. was born August 20, 1988, E.A.F. was born November 15, 1991, and D.M.F was born April 21, 1995. At the time of trial on April 5, 2001 they were twelve, nine, and six years of age respectively.

Susan is the biological mother of the three children. Her appeal was dismissed as untimely by supreme court order, filed June 22, 2001. Her parental rights are not at issue before us. Juan appeals the termination of his parental rights. We affirm.

Susan and Juan were married in 1987, separated in 1993 and divorced sometime after that. Susan was hospitalized on several occasions during these proceedings, before trial. She was diagnosed with bi-polar mood disorder, PTSD and poly-substance abuse. She was belligerent during visits with the children and made threatening remarks to the visiting supervisor. She also threatened the life of a department of human services (DHS) worker during a counseling session. She associated and lived with many men of unsavory character. These men were alcoholics and substance abusers. She had threatened to commit suicide if her parental rights were terminated.

Juan's parental rights to the children were terminated pursuant to Iowa Code sections 232.116(1)(b), (c), (d), (h) and (k) (1999), in an amended order filed on April 11, 2001, by the associate juvenile judge.

Juan has a long criminal history. He has been convicted for deviant sexual assault, armed robbery and unlawful use of a weapon. He has been incarcerated twelve times in Illinois since 1975. Susan reported many domestic abuses by him. In one of his attacks he beat her repeatedly in the head and face

which required reconstructive surgery. In 1993 it was alleged Juan kidnapped Susan, raped and beat her during a seven day period. On July 12, 1993, he was sentenced on charges of possession of a firearm as a felon and as an habitual offender, aggravated domestic abuse, assault and false imprisonment. He was sentenced to seventeen years in the Iowa penitentiary. In September 1999 he pled guilty to a charge of voluntary absence (escape) and was sentenced to another 365 days to be served consecutive to the other sentences.

While incarcerated Juan has been disciplined for attempted escape, assault, possession of drugs, use of gang signs, and sexual misconduct. He has spent a great deal of time in disciplinary lock-up. His earliest release date would be April 2002. He has been turned down for parole on three previous occasions.

The children were removed from Susan's residence at 2:00 a.m. on January 27, 2000. These children were adjudicated to be children in need of assistance (CINA) on March 14, 2000.

R.F. is a special needs child. He is diagnosed with fetal alcohol syndrome and attention deficit-hyper activity disorder. R.F. has been placed in a residential treatment program. He is on a number of medications due to his physical and mental disorders and his behavior has improved since this placement. R.F. does very well and enjoys spending time one-on-one with the staff. He is friendly, polite and affectionate. He is considered an adoptable child.

D.F. had a difficult beginning in foster care where his behavior was sporadic and he was hard to manage. His behavior has improved dramatically since his entry into the foster care and the suspension of visits with Susan. He is on Ritalin and is doing very well in school. D.F. is considered an adoptable child.

E.F. has been placed with her maternal grandparents, who are also foster parents in Illinois. She is bonded to her maternal grandparents. She had resided from 1992 through 1995 with them when the children had been removed from Susan's care by Illinois authorities. She misses her brothers and the grandparents have helped in visitations with them. E.F. is adoptable.

During March of 1989 while incarcerated in Illinois, Juan had visits with Susan and the children. During a visit Susan performed oral sex on Juan with the children present. After that she was barred from the prison. There were allegations Juan sexually abused Susan's daughter, N.M., and Susan fled the area with the children. N.M. is now an adult and her whereabouts are unknown.

Juan appeals the juvenile court's order terminating his parental rights. We affirm.

***I. Scope of Review***

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 Ct. App. 1997). Our primary concern is the best interests of the children. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa Ct. App. 1996).

***II. Termination of Juan's Parental Rights***

The juvenile court terminated Juan's parental rights pursuant to Iowa Code sections 232.116(1)(b), (c), (d), (h) and (k). When the juvenile court terminates parental rights on more than one statutory ground, the supreme court need only find grounds to terminate parental rights under one of the sections

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cited by the juvenile court to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

We choose to discuss Section 232.116(1)(h). We set it out as follows: the court finds that all of the following have occurred:

> 1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.
> 2) There is clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child.
> 3) There is clear and convincing evidence that the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.

We determine this statutory requirement has been met.

The best interests of the children are paramount considerations in determining whether to terminate parental rights. Primary consideration is given to the physical, mental, and emotional condition and needs of the children. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). The court must evaluate each child's long-range as well as immediate interests. It must consider what the future likely holds for the children if returned to their parents. We gain insight into the child's prospects by reviewing evidence of the parent's past performance. . . for it may be indicative of the parent's future capabilities. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). We hold it is in the children's best interests for Juan's parental rights to be terminated and affirm the juvenile court.

Juan's behavior is harmful and dangerous to the others including his family. The evidence is not only clear and convincing but it is overwhelming in support of termination.

Any other arguments Juan presents are without merit.

The children shall be transferred to the Iowa Department of Human Services for adoptive placement.

**AFFIRMED.**