FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

177

IN THE INTEREST OF	)	
A.M. AND D.M.,	)	
Children,	)	
K.M.,	)	8-327 88-16
Father-Appellant.	)	

Appeal from the Iowa District Court for Warren County, Juvenile Division (Nos. 840 & 841), John P. Crouch, Associate District Judge.

K.M., the natural father of A.M. and D.M., appeals the order of the juvenile court terminating his parental relationship with the two children. **AFFIRMED.**

Robert M. Benton of Schooler, Stuyvesant & Benton, Carlisle, for appellant.

Thomas J. Miller, Attorney General; Charles K. Phillips, Assistant Attorney General; and David Dryer, Assistant Warren County Attorney, for appellee.

Louis M. Fusco of Wilson, Fowler & Fusco, Indianola, guardian ad litem for children.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

SCHLEGEL, J. 178

A.M. and D.M. were adjudged children in need of assistance on June 3, 1986, and were placed in the custody of the Iowa Department of Human Services for placement in a foster home by order entered on June 6, 1986. Petitions for termination of the parental rights of K.M., the natural father, were filed on June 23, 1987, alleging those provisions formerly contained in Iowa Code section 232.116(5) (1987), and now set out in Iowa Code section 232.116(1)(e) (Supp. 1987), as follows:

> 1. Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds:
>
> * * *
>
> e. The court finds that all of the following have occurred:
>
> 1. The child has been adjudicated a child in need of assistance pursuant to section 232.96.
>
> 2. The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least twelve of the last eighteen months.
>
> 3. There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102.

Separate petitions were filed with respect to each of the two children, but trial was held upon both petitions at the same time and the evidence heard was considered as to both petitions. At the conclusion of the trial, the dis-

trict court entered orders terminating the parental relationship between the father, K.M., and both children. The father has appealed those orders. We affirm.

During the trial and at the conclusion of the evidence, the State moved to amend the petitions to conform to the proof by adding the allegation "that the parental-child relationship should be terminated pursuant to House File 568, Section 6 (Iowa Code Supplement section 232.116(1)(f) (1987)). That section provides as follows:

> 1. Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds:
>
> * * *
>
> f. The court finds that all of the following have occurred:
>
> (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
>
> (2) The court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family.
>
> (3) There is clear and convincing evidence that the child cannot be returned or placed in the custody of the child's parents.
>
> (4) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.
>
> (5) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

The court allowed the amendment. The evidence showed that in 1981 the parental relationship between a third child,

C.M., and K.M. was terminated. That termination was upheld on appeal. The parental relationships between the mother, L.M., and all children were terminated pursuant to a hearing in April 1987, and she is not involved in the present appeal.

The sole issue in this case is whether there is clear and convincing evidence that the children, A.M. and D.M., cannot be returned to the custody of K.M., their father, under either Iowa Code section 232.116(5) (1987) or Iowa Code section 232.116(1)(f) (Supp. 1987).

K.M. has a long history of arrests and convictions arising out of criminal conduct on his part. He has been incarcerated in county jails upon several occasions for various crimes, and at the time of the hearing on this matter, was incarcerated in the Medium Security Unit of the Iowa Department of Corrections at Mt. Pleasant, Iowa. He was soon to be transferred to the penitentiary at Fort Madison, Iowa. His earliest probable release date was likely to be in December 1988.

Prior to the most recent incarceration, K.M. had been released on parole. During the few months that he was on parole, a case plan was created to make an effort to rejoin him with his children. Visitations were planned, telephone calls were arranged, counseling session appointments were made for him, and many efforts were expended to give him an opportunity to demonstrate parenting skills to properly

care for and parent these two children. Appointments were missed, visits were not made, and telephone calls were forgotten by K.M. In short, he failed to demonstrate very much in the way of a true regard for the welfare of the children and failed to demonstrate that he is ready to assume the responsibilities of a parent.

By reason of continued drug use and a failure to abide by the rules of his parole, K.M.'s parole was revoked. It is uncertain when he will be free to make an effort to make a proper home for the children.

Appellate review of proceedings to terminate a parent-child relationship is de novo. The reviewing court may review the facts as well as the law and adjudicate the parent's rights anew. In the Interest of Dameron, 306 N.E.2d 743, 745 (Iowa 1981).

> Central to a determination of this nature are the best interests of the child. In this connection, we look to the child's long-range as well as immediate interests. Hence, we necessarily consider what the future likely holds for the child if returned to his or her parents. Insight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the qualify of the future care that parent is capable of providing. (Citations omitted).

Dameron, 306 N.W.2d at 745.

K.M. testified that he believes he is now ready, after an indefinite period of further rehabilitation, to assume his parental responsibilities. These children have been waiting for such a condition for too long. To rule that

they must await the further delay suggested by their father would keep them in limbo to see if additional time would provide them with a caring, providing father. As our supreme court stated in Interest of T.D.C., 336 N.W.2d 738, 744 (Iowa 1983), "Children must not be made to await their [parents'] maturity." Nor should they be required to endlessly suffer the parentless limbo of foster care. Long v Long, 255 N.W.2d 140, 146 (Iowa 1977).

These children should be afforded an opportunity to a life free from the emotional upset that has been caused and certainly will be caused by further association with a father who fails to accept his responsibilities and whose drug abuse, alcohol abuse, and propensity to commit crimes and be absent from his children while an inmate of a correctional facility will be harmful to them. See e.g., In re Interest of Kester, 228 N.W.2d 107, 110 (Iowa 1975); In re Interest of Griffin, 210 N.W.2d 665, 667 (Iowa 1973). The evidence in this record clearly and convincingly shows that the children would suffer harm if they were returned to the custody of K.M. With the lack of care that past experience demonstrates, the likelihood of physical harm is also a probability.

Considering either the grounds set forth in Iowa Code section 232.116(5) (1987), or those set forth in Iowa Code section 232.116(1)(f) (Supp. 1987), it is in the best interests of A.M. and D.M., that the parental relationship of their father to them be terminated.

AFFIRMED.