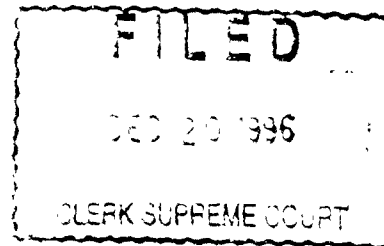


IN THE COURT OF APPEALS OF IOWA

No. 6-753 / 96-1285

IN THE INTEREST OF
C.H., Minor Child,

D.H., Father,
Appellant.



Appeal from the Iowa District Court for Allamakee County, Alan D. Allbee,
Associate Juvenile Judge.

Father appeals the juvenile court's order terminating his parental rights over
his minor child. **AFFIRMED.**

John W. Hofmeyer, III, Oelwein, for appellant.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney
General, Maureen McGuire, Assistant Attorney General, and William Shafer,
Assistant County Attorney, for appellee-State.

Sherry J. Nichols of the Larson Law Office, Decorah, guardian ad litem for
minor child.

Considered by Habhab, P.J., and Streit and Vogel, JJ.

HABHAB, P.J.

Dwight is the father of Chad, born May 9, 1994. The parental rights of Rhonda, Chad's mother, were terminated by the district court and are not at issue in this appeal.

It is unclear where Rhonda and Dwight were living at the time of Chad's birth. However, the record reveals that from October 1993 until December 1994, they resided in four different residences. They were evicted from each residence due to non-payment of rent. Between each residence it appears Rhonda and Dwight stayed with various friends and relatives.

When Chad was approximately six weeks old, Rhonda left Dwight and Chad to work for a carnival. Dwight, unable to care for Chad, left him with his parents in Union Grove, Wisconsin. When Dwight left, Chad had only one bottle, which contained spoiled formula, one change of clothing, and only a few diapers.

Two weeks later, Dwight and Rhonda visited the home of the paternal grandparents to pick up an automobile which they gifted to them. They arrived at 11:00 p.m. and left the following day at approximately 2:00 p.m. They did not take Chad with them.

After they picked up the automobile, Dwight and Rhonda did not contact Chad or Dwight's parents until October 1994, when they arrived unexpectedly at the paternal grandparents' home. At that time, Dwight's parents were visiting relatives in Des Moines. They were contacted at 4:00 a.m. by the sheriff from Union Grove,

Wisconsin, who informed them that Dwight and Rhonda had arrived to pick up Chad. Dwight and Rhonda returned to Iowa without Chad.

As a result of the unexpected visit, the paternal grandparents contacted the Department of Human Services (the Department) expressing concern about the child's well-being if he were returned to his parents. In October 1994, the Department sought and received a temporary order removing Chad from his parents' custody and placing him with his paternal grandparents. The court ordered continued family-centered services, including parent skill development and supervised visits.¹

In November 1994, the court adjudicated Chad to be a child in need of assistance pursuant to Iowa Code sections 232.2(6)(c)(2) and 232.2(6)(g) (1993), following a finding of lack of appropriate supervision and failure to provide adequate food, clothing, and shelter for Chad, while refusing means made available to provide the same. Chad was placed in the custody of the Department with relative placement with the paternal grandparents pursuant to Iowa Code section 232.102. Family-centered services, including parent skill development, were again ordered.

In December 1994, a dispositional order transferred custody of Chad to the Department for relative placement with the grandparents. The court noted that family

¹ Rhonda's parental rights to her daughter from a prior relationship have also been terminated. That child was a member of the same family as the child in interest here. Dwight and Rhonda were offered reunification services in that matter, including parent skill development, family therapy, couples counseling, supervised visitation, and referral to the public health nurse and WIC program. They did not successfully participate in these services

therapy and parent skill development services had been provided to Dwight and Rhonda for approximately one year at that time. Reunification services were ordered to continue including family therapy, parent skill development, and supervised visitation.

Dwight and Rhonda had made some progress by the time of the three-month review hearing held in March 1995 and visitation was expanded. The August 1995 review hearings resulted in orders continuing Chad's placement with his paternal grandparents as Dwight had been incarcerated and Rhonda had been evicted, had nowhere to live, and had no income. Services were continued to the parents consisting of family counseling, therapy, parent skill development, and supervised visits.

Weekly visitation was provided in the dispositional order. The paternal grandparents brought Chad to Iowa every other weekend. Dwight and Rhonda were to visit in Wisconsin on the alternating weekends. The paternal grandparents had furnished them with a reliable vehicle. The Department also offered to pay for a driver of their choice to transport them for visitation. However, Dwight and Rhonda made no further attempt to visit Chad in Wisconsin. They did visit Chad when he was brought to Iowa by the paternal grandparents. Visits usually lasted from two to six hours. On one occasion, Dwight and Rhonda visited for only fifteen minutes and on another weekend they did not show up at all. The paternal grandparents continued

to bring Chad for visits until September 1995, at which time Rhonda's whereabouts were unknown and Dwight was incarcerated.

In April 1995, Dwight pled guilty to three counts of forgery. His sentence was suspended and he was placed on probation. After Dwight's incarceration, the Department continued to provide him with counseling. Dwight was sent to Mount Pleasant for drug and alcohol treatment and then was sent back to the West Union facility for follow-up care and residential treatment.

On August 23, 1995, after only two days in placement at West Union, Dwight fled to Cresco to be with Rhonda. He was subsequently apprehended and placed in the county jail. On September 30, 1995, he was given permission to leave the jail to attend a funeral. While he was out for the funeral, he stole a car and was subsequently placed at the Mount Pleasant Facility, where he has remained. As a result, Dwight pled guilty to second-degree theft. His probation was revoked and he was sentenced to serve a term of imprisonment not to exceed five years. Dwight was eligible for parole in August 1996.

After his arrest, Dwight has had very limited contact with Chad. The record reveals he attempted to call only seven times, and on three of those attempts he spoke with someone at his parent's residence for a total of twenty minutes.

In October 1995, the State filed a petition for termination of both parents' parental rights. Following a June 1996 hearing, the court found grounds existed for termination of Dwight's parental rights pursuant to Iowa Code sections 232.116(1)(d)

and 232.116(1)(g). The court also terminated Rhonda's parental rights. It noted the child's paternal grandparents "are dedicated to him and to his well being, further they are willing and capable to serve as the child's long-term caretakers" and that they "would seek to adopt the child in the event termination of the parents' rights is ordered."

Dwight appeals. He contends the State did not make reasonable efforts to reunite him with Chad. Specifically, he asserts the State failed to take reasonable steps to identify his needs, failed to provide him with services designed to meet his needs, and allowed a continued placement of Chad outside of Iowa. Dwight further argues termination is not in Chad's best interests. He maintains the court should have entered a permanency order placing Chad in the long-term care of his parents.

Our review of termination proceedings is *de novo*. *In re T.M.P.*, 528 N.W.2d 671, 673 (Iowa App. 1995). We give weight to the findings of fact made by the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. *Id.* The grounds for termination must be proven by clear and convincing evidence. *In re R.K.K.*, 544 N.W.2d 274, 277 (Iowa App. 1995). Our primary concern is the best interests of the children, which include both their long-range and immediate interests. *In re A.Y.H.*, 508 N.W.2d 92, 94 (Iowa App. 1994). In making this determination:

We consider what the future 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 quality of the future care the parent is capable of providing. Our statutory termination provisions are preventative as well as remedial. They are designed to prevent probable harm to a child.

In re L.J.O., 527 N.W.2d 417, 420 (Iowa App. 1994) (citing *In re R.M.*, 431 N.W.2d 196, 199 (Iowa App. 1988); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981)).

I. Services Provided by the Department. Dwight contends the Department failed to identify and provide him with appropriate services to reunite him with Chad. His argument is without merit.

Reasonable services must be provided in an attempt to preserve the family unit before the State terminates parental rights. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). However, a parent must raise this issue when the services are offered prior to the termination hearing. *Id.*; *In re C.D.*, 508 N.W.2d 97, 101 (Iowa App. 1993) (emphasis added). The parent has the responsibility to demand services prior to the termination hearing. *Id.* A case plan for each child is an integral element of the Department's implementation of reasonable efforts to reunify the family. *Id.* at n.4. Challenges to the plan for reunification should come when the plan is entered. *Id.* at 807.

In December 1994, the first case permanency plan was developed for Chad. A detailed list of responsibilities was provided to return Chad to Dwight and Rhonda. Services provided to Dwight included parent skill development, family-centered services and family therapy. These services were discontinued as Dwight was

uncooperative. He failed to resolve any of the problems identified within the plan and never requested additional or alternative services.

Dwight did not successfully participate in the services provided by the Department and nowhere does the record indicate that Dwight requested additional services before the termination hearing. It was too late to challenge the service plan at the termination hearing. As such, his argument that additional or further services were unprovided is without merit and we need not further address this issue.

II. Best Interests of the Child. Termination of Dwight's parental rights was in Chad's best interests. Dwight has been sentenced to serve a term of imprisonment not to exceed five years. He has no relationship with Chad as he has had little contact with him since leaving him with his parents. Chad is doing well in his placement with his grandparents. He refers to his grandparents as "mom" and "dad" and they are willing to adopt him.

When Chad was in Dwight's custody, Dwight was unable to care for him. Before his incarceration, Dwight was regularly without a home. Dwight absented himself from Chad for extended periods of time. Although he had every opportunity to be with his son and to provide for him, he declined to do so. Past behavior of a parent is an important factor to consider when determining whether or not termination of parental rights is warranted. *In Interest of M.H.*, 367 N.W.2d 275, 278 (Iowa App. 1985). Insight into what the future holds for a child if the child is returned home is

gained from a parent's past performance. *In Interest of S.N.*, 500 N.W.2d 32, 34 (Iowa 1993).

Dwight asserts it is in the best interests of Chad that a permanency order placing him in the long-term care of his paternal grandparents be put in place until Dwight is released from prison and has received services enabling him to parent his son. We disagree. We must reasonably limit the time for parents to be in a position to assume care for their children because patience with parents can soon translate into intolerable hardship for children. *A.Y.H.*, 508 N.W.2d at 96. Chad has been in the paternal grandparents' care for over two years and Dwight may be incarcerated for several more years. "Iowa case law clearly holds we do not allow children to 'suffer indefinitely in parentless limbo.'" *In re R.C.* 523 N.W.2d 757, 760 (Iowa App. 1994) (citing *In re T.A.L.*, 505 N.W.2d 480, 485 (Iowa 1993); *Long v. Long*, 255 N.W.2d 149, 146 (Iowa 1977)). Chad needs a safe, stable home and a nurturing environment which Dwight has been unwilling and unable to provide at any time in the past and shows no ability to provide in the future.

We find the juvenile court properly terminated Dwight's parental rights pursuant to Iowa Code sections 232.116(1)(d) and 232.116(1)(g). We conclude there is clear and convincing evidence it is in Chad's best interest to terminate Dwight's parental rights.

AFFIRMED.