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**IN THE COURT OF APPEALS OF IOWA**

No. 7-440 / 97-0593
Filed 10/29/97

**IN THE INTEREST OF S.K.**, Minor Child,

**L.D.K.**, Father,
Appellant.

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Appeal from the Iowa District Court for Winnebago County, Gerald W. Magee, Associate Juvenile Court Judge.

The father of a minor child appeals a district court order terminating his parental rights. **AFFIRMED.**

F. David Eastman of Eastman Law Office, Clear Lake, for appellant father.

Philip F. Garland, Garner, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Robert R. Cooper, Assistant County Attorney, for appellee State.

Daron F. Fritz of Hanson & Fritz, Lake Mills, guardian ad litem for minor child.

Considered by Cady, C.J., and Huitink and Vogel, JJ.

**HUITINK, J.**

S.K. is the six-year-old daughter of L.K. and D.S. S.K. was adjudicated a child in need of assistance in September 1993 because her parents failed to exercise a reasonable degree of care in her supervision. *See* Iowa Code § 232.2(6)(C)(2). As a result of this adjudication, S.K. was allowed to remain in her parents' custody subject to the protective supervision of the Department of Human Services (DHS). S.K.'s parents were provided in-home therapy and homemaker services. L.K. and D.S. were also ordered to complete substance abuse evaluation. S.K. remained with her parents until December 1994 when she was placed in foster care.

The juvenile court terminated parental rights in March 1997. D.S.'s parental rights were terminated because she failed to respond to the services provided and additional services would not correct the circumstances resulting in S.K.'s adjudication. *See* Iowa Code § 232.116(1)(f). L.K.'s parental rights were terminated because of S.K.'s age, adjudication length of her placement, and the fact she could not be returned home. *See* Iowa Code § 232.116(1)(e).

D.S. does not appeal the juvenile court's order terminating her parental rights. In this appeal, L.K. argues the State has failed to prove he cannot adequately care for S.K. He disputes any allegations that he sexually abused S.K. L.K. also cites acknowledged improvement in his custodial skills and resulting DHS approval of increased and unsupervised visits with S.K.

*II. Scope of Review.*

We review an appeal from termination proceedings de novo. *In re W.G.*, 349 N.W.2d 487, 491 (Iowa 1989), *cert. denied sub nom., J.G. v. Tauke*, 469 U.S. 1222, 105 S.Ct. 1212, 84 L.Ed.2d 353 (1985). We give weight to the findings of fact made by the juvenile court, but we are not bound by them. *Id.* at 491-92. The primary concern in termination proceedings is the best interests of the child. Iowa R. App. P. 14(f)(15); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981):

> We look to the child's long-range, as well as immediate interests. 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 preventive as well as remedial. They are designed to prevent probable harm to a child.

*In re R.M.*, 431 N.W.2d 196, 199 (Iowa App. 1988)(citing *Dameron*, 306 N.W.2d at 745).

*III. The Merits.*

Iowa Code section 232.116(1)(e) authorizes termination of parental rights under the following circumstances:

> (1) The child is four years of age or older;
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> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96;
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> (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;

(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.

The first three elements are not disputed. L.K. however argues the state has not met its burden of proof regarding element (4). We disagree.

The State's burden of proof under this subsection "is met when the child cannot be returned to the parental home because the definitional grounds of a child in need of assistance, Iowa Code section 232.2(6), exist." *In re A.M.S.*, 419 N.W.2d 723, 725 (Iowa 1988). There is sufficient grounds for termination of parental rights where any element of Iowa Code section 232.2(6) is proven by clear and convincing evidence. *In the Interest of R.R.K.*, 544 N.W.2d 274 (Iowa App. 1995).

The record indicates L.K. has a history of sexually abusing children. There is also credible evidence that L.K. sexually abused S.K. during his May and June 1996 visits with her. An evaluation by staff at the University of Iowa Hospitals concluded L.K.'s past sex offender counseling was unavailing and he continues to pose a risk to children. Dr. Randall Alexander, a professor of pediatrics, and Beverly J. Saboe, a registered nurse, testified S.K. is at risk of sexual abuse if returned to L.K.'s custody.

There is evidence of L.K.'s continued alcohol abuse. Nurse Saboe also testified L.K.'s parenting skills were insufficient to meet S.K.'s special needs and the probability of their improvement was remote.

We find clear and convincing evidence indicating S.K. cannot be returned to L.K.'s custody. S.K. is a special needs child. She has been physically abused by her

mother and sexually abused by her father. There is no realistic probability L.K. will resolve the substance abuse and sex abuse issues that have so far prevented S.K.'s return to his custody. We have repeatedly held that children need not endlessly await parental improvement or suffer the "parentless limbo of foster care." *In the Interest of M.R.*, 487 N.W.2d 99, 102 (Iowa App. 1992).

We conclude the State has met its burden. There is clear and convincing evidence supporting the termination of L.K.'s parental rights under Iowa Code section 232.116(1)(e). The juvenile court's termination is affirmed.

**AFFIRMED.**