IN THE COURT OF APPEALS OF IOWA

No. 6-557 / 96-0655

IN THE INTEREST OF T.P., E.B., AND M.B.,
Minor Children,

M.B., Father of E.B. and M.B.,
Appellant,

M.P., Mother of T.P., E.B., and M.B.,
Appellee/Cross-Appellant,

T.P., E.B., and M.B.,
Appellees/Cross-Appellants,

State of Iowa,
Appellee/Cross-Appellee.

FILED
SEP 30 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Poweshiek County, Michael R. Stewart, Associate Juvenile Judge.

Father appeals the termination of his parental rights; mother and minor children seek to have decision of juvenile court affirmed unless termination of father's rights is reversed. **AFFIRMED.**

R. Eugene Knopf of Walker, Knopf & Billingsley, Newton, for appellant.

Donald L. Schild, Grinnell, for appellee mother.

C. Jean Pendleton, Grinnell, guardian ad litem for appellees minor children.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney General, Maureen McGuire, Assistant Attorney General, and Rachelle Johnson, Assistant County Attorney, for appellee State.

Decided en banc.

PER CURIAM

Matt and Mindy are the parents of Ember, born in June 1991, and Maurisa, born in August 1992. Mindy is also the mother of Travis, who was born in 1988. This case involves Matt's appeal of the termination of his parental rights to Ember and Maurisa. Mindy and the guardian ad litem for the children have cross-appealed, asking only for a reversal of the termination of Mindy's parental rights if Matt's parental rights are restored.

The Department of Human Services (DHS) became involved with Matt and Mindy in 1990 due to allegations Travis had bruises after he was spanked by Matt. DHS concluded the report was undetermined, but recommended services for the family. In 1991, there was a founded report of physical abuse against Travis because of a bruise on his face. The perpetrator of the abuse was determined unknown. Also, later in 1991, there was a founded report of denial of critical care due to failure to provide proper supervision when Travis was bitten by the family dog.

After Ember was born, Matt broke her leg by accidently sitting on her. In November 1991, DHS issued a founded report of denial of critical care of Ember. Matt and Mindy failed to cooperate with the public health nurse after Ember suffered an infection on her face. They also allowed Ember to sleep on the couch, where she was in danger of falling off.

On June 29, 1992, Ember was adjudicated a child in need of assistance. She was placed in the custody of Mindy, under the protective supervision of DHS. At this

time, Matt was incarcerated while awaiting trial on criminal charges. He was subsequently convicted of second-degree robbery, forgery, and third-degree theft. On August 17, 1992, he was sentenced to a term of imprisonment not to exceed fifteen years. Maurisa was born shortly before Matt was sentenced.

In November 1993, Ember was placed in DHS custody for family foster care. Mindy agreed to the placement on the condition that Maurisa also be placed in family foster care. Maurisa was determined to be a child in need of assistance due to two founded reports of denial of critical care by Mindy. Ember and Maurisa live with a family who would like to adopt them.

Matt had very little contact with the children after his incarceration. Because he was incarcerated at the time of Maurisa's birth, he has never been involved in her care. He stated he was not allowed to make telephone calls while in prison. He felt that since the children were too young to read there was no need to send them cards or letters. Matt did receive pictures of the children from Mindy and he wrote to her periodically.

On July 13, 1995, the State filed a petition to terminate Matt and Mindy's parental rights to Ember and Maurisa under Iowa Code sections 232.116(1)(e) and 232.116(1)(g). While the termination petition was pending, Matt sought visitation with the children. There was no ruling on the visitation issue prior to the termination hearing. The court determined the children had been adjudicated to be children in need of assistance, they had been removed from the physical custody of Matt for the

required statutory time, and the children could not be returned to Matt's custody at present. The court terminated Matt's parental rights to Ember and Maurisa. At the trial, Mindy conceded Ember and Maurisa could not be returned to her care at that time, and her parental rights were also terminated.

Matt has appealed the termination of his parental rights. He claims the State failed to show by clear and convincing evidence that the children could not be returned to his care or that termination was in the best interests of the children. Matt testified he expected to be released soon and states he could then assume custody of the children. He alleges the State failed to show he lacked the parenting skills to care for the children. He claims he never intended to abandon his children.

The scope of review in termination cases is de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). Our primary concern is the best interests of the children. *In re A.Y.H.*, 508 N.W.2d 92, 94 (Iowa App. 1993). Those best interests include the child's long-range as well as immediate interests. *Id.* The grounds for termination must be proven by clear and convincing evidence. *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa App. 1995).

Matt's claims are based on sections 232.116(1)(e)(4) and 232.116(1)(g)(4), which require the State to show by clear and convincing evidence that the children cannot be returned to the custody of the parent, as provided in section 232.102, at the present time. He asserts the children could be returned to him. However, the evidence is clear and convincing that the children cannot be returned to him *at the*

present time. Although Matt testified he expected to be released soon, if he discharges his sentence he would not be released until July 7, 1999. It is strictly up to the Board of Parole whether he might be placed on work release or parole prior to that date.

Under the facts of this case, the children have been in foster care for the required statutory time under sections 232.116(1)(e) and 232. 116(1)(g), the children could still not be returned to Matt's care at the time of the termination hearing, and therefore, Matt's parental rights were properly terminated. We must reasonably limit the time for parents to be in a position to assume care of their children because patience with parents can soon translate into intolerable hardship for the children. *A.Y.H.*, 508 N.W.2d at 96. Children should not be forced to endlessly suffer the parentless limbo of foster care. *In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990). To continue to keep children in temporary foster homes is not in their best interests. *In re J.L.P.*, 449 N.W.2d 349, 353 (Iowa 1989). The amount of time normally for children to be in foster care is prescribed by the termination statute. *S.N.*, 500 N.W.2d at 35. Cases which extend that time are viewed with a sense of urgency. *In re A.C.*, 415 N.W.2d 609, 614 (Iowa 1987).

We also find it is in the best interests of the children to terminate Matt's parental rights. We note there was a founded report of denial of critical care concerning Ember while Matt was still a member of the household. Also, Matt has had virtually no contact with Ember and Maurisa since he has been in prison. Matt

cannot use his incarceration as a justification for his lack of relationship with the children. *See In re M.M.S.*, 502 N.W.2d 4, 8 (Iowa 1993). The children have now bonded with their foster parents and the foster parents are willing to adopt them.

Matt contends the termination of his parental rights was in violation of section 232.116(1)(i)(2), which provides for the termination of parental rights where:

> (2) The parent has been imprisoned for a crime against the child, the child's sibling, or another child in the household, or the parent has been imprisoned and it is unlikely the parent will be released from prison for a period of five or more years.

Matt states he will be released from prison within five years, and therefore, the court should not have terminated his parental rights. This provision does not apply here because Matt's parental rights were not terminated under section 232.116(1)(i); his parental rights were terminated under sections 232.116(1)(e) and 232.116(1)(g).

In the cross-appeal, Mindy and the guardian ad litem ask us to reverse the termination of Mindy's parental rights if Matt's parental rights have been restored. We have determined Matt's parental rights should be terminated. Thus, there is no need to further address the cross-appeal.

We affirm the decision of the district court to terminate the parental rights of Matt and Mindy to Ember and Maurisa. We also deny Matt's application for visitation with the children. Costs of this appeal are assessed to Matt.

AFFIRMED.