

IN THE COURT OF APPEALS OF IOWA

No. 0-004 / 09-1681
Filed February 10, 2010

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

B.D., Mother,
Appellant,

M.A., Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Joe E. Smith, District Associate Judge.

A mother and father appeal the termination of their parental rights to their child. **AFFIRMED.**

Christopher Kragnes, Sr., of Kragnes & Associates, P.C., Des Moines, for appellant-mother.

Jessica A. Miskimins of Sporer & Flanagan, P.C., Des Moines, for appellant-father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John Sarcone, County Attorney, and Jennifer Galloway, Assistant County Attorney, for appellee.

Paul White, Des Moines, attorney and guardian ad litem for minor child.

Considered by Vogel, P.J., and Eisenhauer, J., and Zimmer, P.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

EISENHAUER, J.

A mother and father appeal the termination of their parental rights to their child. The father contends the State failed to prove the grounds for termination by clear and convincing evidence. Both parents contend the State failed to prove termination is in the child's best interest.¹ We review their claims de novo. See *In re N.E.*, 752 N.W.2d 1, 6 (Iowa 2008).

The child was removed at birth in March 2009 because both parents were incarcerated. He has been in the same foster home placement since. On April 14, 2009, the child was adjudicated in need of assistance. He had his first contact with the father on June 15, 2009, after the father was placed at the Fort Des Moines Correctional Facility. At the time of the termination hearing, the father had visited with his son fifteen times in a supervised setting. The father was released on parole the day before the termination hearing. The child has had no contact with the mother, who is serving a twenty-five year prison sentence for possession of a controlled substance with intent to deliver.

The father's parental rights were terminated pursuant to Iowa Code sections 232.116(1)(d) and (l) (2009). We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). In order to terminate under section 232.116(1)(l), the State must prove by clear and convincing evidence:

¹ The mother also contends the father's parental rights should not have been terminated. Because she does not have standing to so argue, we will not address her claim. See *In re D.G.*, 704 N.W.2d 454, 459-60 (Iowa Ct. App. 2005).

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

The father does not dispute the first element was proved. Instead, he argues there is not clear and convincing evidence for elements two and three

We conclude the grounds for termination have been proved. The father has a lengthy history of substance abuse with convictions for public intoxication, operating while intoxicated, and possession of a controlled substance with intent to deliver. In 2005, his probation was revoked because of an OWI conviction and in 2008 he was paroled, but his parole was revoked a short time later after he drove drunk with the mother and her older child in the car. He has been in substance abuse treatment in 2004 and 2008. He admits using marijuana most recently in April 2008 and alcohol in November 2008. He is an admitted alcoholic.

At the time of the child's birth, the father was incarcerated. He was only released from prison again the day before the termination hearing, and has been unable to demonstrate a significant period of sobriety. His alcohol use has threatened the life of another child. As found by the trial court "without treatment or aftercare and with the denial that is present it would take months if not years for [the father] to convince the court that he could safely parent." The future can

be gleaned by the father's past performance. See *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

We likewise conclude termination is in the child's best interest. The mother has not established any relationship with the child and is currently serving a prison sentence. The father has had minimal contact with the child given his ongoing legal troubles. In contrast, the child is bonded with his foster family, who wish to be a long-term placement for the child. Evidence indicates to remove the child from his current placement would have serious consequences for the child. Children should not be forced to endlessly await the maturity of a natural parent. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). At some point, the rights and needs of the child rise above the rights and needs of the parent. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). Given the child's young age and need for a permanent home, see *In re J.E.*, 723 N.W.2d 793, 802 (Iowa 2006) (Cady, J. concurring specially) (holding the need for a permanent home is a defining element in a child's best interest), we find termination is appropriate.

AFFIRMED.