

IN THE COURT OF APPEALS OF IOWA

No. 1-918 / 11-1650
Filed December 7, 2011

**IN THE INTEREST OF C.G.,
Minor Child,**

**T.M.G., Father,
Appellant.**

Appeal from the Iowa District Court for Black Hawk County, Daniel L. Block, Associate Juvenile Judge.

A father appeals from the termination of his parental rights to his child.

AFFIRMED.

Michael Lanigan of Law Office of Michael Lanigan, Waterloo, for appellant father.

Michael H. Bandy of Bandy Law Office, Waterloo, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Steven J. Halbach, Assistant County Attorney, for appellee State.

Linnea Nicol of Juvenile Public Defender's Office, Waterloo, attorney and guardian ad litem for minor child.

Considered by Sackett, C.J., and Vogel and Eisenhauer, JJ.

EISENHAUER, J.

A father appeals from the termination of his parental rights to his child. He does not dispute the grounds for termination were proved by clear and convincing evidence; rather, he argues he should be granted additional time to reunify with the child. Our review is de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

The child was born in October 2009 and was removed from the mother's care in July 2010. She was adjudicated to be in need of assistance (CINA) in October 2010. Throughout the course of this case, the father has been imprisoned following an incident in May 2010 where he shattered the windshield of the mother's vehicle and tried to assault her while the children were present in the vehicle. He was initially charged with domestic assault (with a serious assault enhancement), disorderly conduct, criminal mischief in the third degree, interference with official acts, assault on a peace officer, and public intoxication in the second degree. In July 2010, he pled guilty to third-degree criminal mischief, third-degree public intoxication, domestic assault (with a serious assault enhancement), and assault on a peace officer. The father was sentenced to two years imprisonment on the first two counts and one year on the last two counts.

Due to his incarceration, the father was not present for any of the hearings in the CINA proceedings but was represented by counsel. At the September 2011 termination hearing, his counsel stated the father had a parole hearing the following month and wanted to be released from prison and participate in services. The father offered no testimony at the hearing. The juvenile court

terminated his parental rights pursuant to Iowa Code sections 232.116(1)(c) and (h) (2011).

The father concedes the existence of clear and convincing evidence to terminate his parental rights pursuant to sections 232.116(1)(c) and (h). He instead argues his parental rights should not have been terminated without the opportunity to be released from prison and participate in services. Because we conclude the child's best interests require termination, we affirm.

In determining best interests, "the court shall give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child." *P.L.*, 778 N.W.2d at 39. The child here has no emotional bond with the father, who has been in prison the majority of her life. The father has a lengthy history of legal trouble, including several domestic abuse charges. His incarceration has prevented him from receiving services to address this issue, and the child cannot be safely placed in his care until it is adequately addressed.

The child should not be forced to endlessly suffer in parentless limbo. See *In re E.K.*, 568 N.W.2d 829, 831 (Iowa Ct. App. 1997). 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 father's history, see *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993) (holding insight for the future is to be gained from evidence of past performance), his lack of progress in addressing the safety concerns with this child, the absence of any bond between father and child, see *In re M.M.S.*, 502 N.W.2d 4, 8 (Iowa 1993) (holding incarceration is not

a justification for lack of relationship with the child), and the child's young age, we find termination to be in the child's best interests. Accordingly, we affirm.

AFFIRMED.