

IN THE COURT OF APPEALS OF IOWA

No. 2-385 / 12-0531
Filed May 23, 2012

**IN THE INTEREST OF I.T. and A.T.,
Minor Children,**

**S.T., Father,
Appellant.**

Appeal from the Iowa District Court for Marshall County, Victor G. Lathrop,
Associate Juvenile Judge.

A father appeals from the order terminating his parental rights to his
children. **AFFIRMED.**

Mary Cowdrey of Public Defender's Office, Marshalltown, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Jennifer Miller, County Attorney, and Joshua A. Vander Ploeg,
Assistant County Attorney, for appellee.

Jennifer Meyer, Marshalltown, for mother.

Bethany Currie of Johnson, Sudenga, Latham, Peglow & O'Hare, P.L.C.,
Marshalltown, attorney and guardian ad litem for minor child.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

BOWER, J.

A father appeals from the order terminating his parental rights to his children. He contends termination is not in the best interest of the child and asks that this court reverse and remand for entry of a permanency order for guardianship. Because termination of the father's parental rights is in the children's best interests, we affirm.

I. Background Facts and Proceedings.

The Department of Human Services (DHS) first became involved with the children in 2007 due to their parents' drug use. The parents' drug use and lack of an appropriate home resulted in a child-in-need-of-assistance adjudication in September 2010. After living with their grandmother a short time, the children were placed with an aunt.

The parents did not actively participate in the services offered by the DHS to reunite them with the children. They continued abusing marijuana and methamphetamine. A year passed and the parents made no progress. The children were doing well in their aunt's care, and due to their ages—sixteen and eleven at the time of the termination hearing—the DHS case worker recommended guardianship be transferred to the aunt. However, upon speaking with the children, the worker learned the older child wished to have her parents' rights terminated so she could be adopted by her aunt. The juvenile court directed a termination petition be filed.

In November 2011, the father was sent to a residential correctional facility for a probation violation. The father had done nothing to work toward

reunification, but at that time he contacted the DHS worker to request regular visits with the children. He began drug treatment, obtained a job, and started attending church. At the February 2012 termination hearing, the father acknowledged the children could not presently be returned to his care, but believed he could parent the children if given more time.

The juvenile court found the State had proved the grounds for termination by clear and convincing evidence, a finding the father does not contest on appeal. The court then weighed the best interests of the children to determine whether the parents' rights should be terminated to allow the aunt to adopt—as she wished to do—or if the children should be placed in the guardianship of the aunt instead. Given the children's need for permanency and the aunt's willingness to allow the children to continue to have contact with their father, the juvenile court determined termination was in the children's best interests. Both parents' rights were terminated. Only the father appeals.

II. Scope and Standard of Review.

We review proceedings to terminate parental rights de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We give weight to the juvenile court's findings of fact, even though we are not bound by them. *Id.* This is especially true with regard to questions of witness credibility. *Id.*

III. Analysis.

The father's sole contention on appeal is that termination is not in the children's best interests. He asks that his rights as a father be preserved by

entry of a permanency order for guardianship with the aunt. Because we find termination is in the children's best interests, we affirm.

In making the best interest determination, "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." Iowa Code § 232.116(2); *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010). Additionally, Iowa Code section 232.116(3)(a) (2011) states the court "need not terminate the relationship between the parent and child if . . . a relative has legal custody of the child." While the children have been in their aunt's care for almost two-and-one-half years, "[a]n appropriate determination to terminate a parent-child relationship is not to be countermanded by the ability and willingness of a family relative to take the child." *In re C.K.*, 558 N.W.2d 170, 174 (Iowa 1997). The child's best interest always remains the first consideration. *Id.*

Although guardianship in lieu of termination is a viable option in this case, it is not the superior option. It may be a better option for the father, but the children's best interests require termination. The older child wishes parental rights be terminated to allow adoption by the aunt. The aunt wishes to adopt the children. The younger child is too young to understand the difference between guardianship and adoption. Both children wish to continue to see their father and the aunt is willing to allow the children to have future contact with him.

While it is possible the father will finally make the changes in his life necessary to maintain sobriety, a job, a residence, and a life free of criminal

activity allowing the children to eventually be returned to his care, his history shows otherwise. See *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997) (holding that when considering what the future holds if the child is returned to the parent, we must look to the parent's past behavior because it is indicative of the quality of care the parent is capable of providing in the future). The juvenile court noted, and we agree, that the father has a history of doing poorly when not in a structured setting and indicates his participation in services will drop dramatically upon his release from the residential program.

While the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," this patience is built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). This is because patience on behalf of a parent can quickly translate into intolerable hardship for the child. *In re R.J.*, 436 N.W.2d 630, 636 (Iowa 1989). "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987).

Given the importance of establishing child custody quickly so the children are not suffering indefinitely in parentless limbo, *id.*, we find termination is in the children's best interests. The children will still have contact with their father, but they will also have a stable home from which they cannot be removed. Accordingly, we affirm.

AFFIRMED.