

IN THE COURT OF APPEALS OF IOWA

No. 2-586 / 12-0941
Filed July 25, 2012

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

C.J., Father,
Appellant.

Appeal from the Iowa District Court for Plymouth County, Robert J. Dull,
District Associate Judge.

A father appeals the termination of his parental rights. **AFFIRMED.**

Robert B. Brock II of Law Office of Robert B. Brock II, P.C., Le Mars, for
appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Darin J. Raymond, County Attorney, and Amy K. Oetken,
Assistant County Attorney, for appellee State.

Scott L. Bixenman of Murphy, Collins & Bixenman, P.L.C., Le Mars, for
appellee mother.

John C. Polifka of Juvenile Law Center, Sioux City, attorney and guardian
ad litem for minor child.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

POTTERFIELD, J.

A father appeals the termination of his parental rights to his daughter. He contends the court erred in finding his efforts at parental reunification to be lacking. He asserts he has made efforts to spend time with the child, but these efforts have been undermined by the child's biological mother and administrative difficulties. We affirm.

I. Facts and Procedural History

S.J. was born in October of 2005. Her father, C.J., was imprisoned from January 28, 2007, through September 6, 2011. At the time of his release, S.J. had been adjudicated a child in need of assistance (CINA) for almost two years. C.J. was given an opportunity to cooperate with the Iowa Department of Human Services (DHS) in reunification efforts. As part of these efforts, C.J. was scheduled for treatment to address his history of physical abuse, substance abuse, and aggression but failed to complete the assigned programs. He saw S.J. "about four or five times" in the months following his release from prison.

C.J. was re-arrested and re-incarcerated on January 13, 2012. He remains incarcerated after a conviction of serious assault, going armed with intent, and second-degree burglary as an habitual offender. He will be sentenced to a term between fifteen and thirty-one years in prison.¹ His parental rights to S.J. were terminated on May 9, 2012, pursuant to Iowa Code sections 232.116(1)(e) and 232.116(1)(f) (2011).

¹ C.J. has filed an appeal in the criminal matter.

II. Analysis

We review termination orders de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We give weight to the juvenile court's factual findings, but are not bound by them. *Id.* The juvenile court found clear and convincing evidence for termination under sections 232.116(1)(e) and 232.116(1)(f) of the Iowa Code. Subsection (e) provides for termination where a child has been adjudicated CINA, has been removed from the custody of the parent for at least six months, and "the parent has not maintained significant and meaningful contact with the child" and made "no reasonable efforts to resume care of the child despite being given the opportunity to do so." Iowa Code § 232.116(1)(e) (2012). Subsection (f) requires removal from custody for at least twelve of the last eighteen months and "clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parent." Iowa Code § 232.116(1)(f). We agree with the juvenile court that S.J. cannot be returned to her father's custody at the present time.

On appeal, C.J. offers as excuses for his minimal contact with S.J. and failure to follow through with required treatment that S.J.'s mother was reluctant to have contact with him after he was released from prison, and that he had difficulties communicating with DHS after he moved to another county. The district court found these arguments unpersuasive, noting: "He has never discharged any of the duties of a parent and probably never will."

Any relationship S.J. had with her father has been diminished by the time and distance of his incarceration, and weighs against deferral of permanency.

We do not hold or suggest that termination is a necessary result of conviction of a crime and resulting imprisonment. On the other hand [a parent] cannot use his incarceration as a justification for his lack of relationship with the child. This is especially true when the incarceration results from a lifestyle that is chosen in preference to, and at the expense of, a relationship with a child.

In re M.M.S., 502 N.W.2d 4, 8 (Iowa 1993) (citations omitted). S.J. has had minimal contact with her father and does not recognize he is her father. The father has made little effort to change this situation.

There is clear and convincing evidence establishing that grounds for termination of the father's parental rights exist, termination is in the child's best interests, and no pertinent factor weighs against termination. We therefore affirm. See *D.W.*, 791 N.W.2d at 707 (stating we do not gamble with children's futures by asking them to continuously wait for a stable biological parent); *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990) ("Children simply cannot wait for responsible parenting. Parenting . . . must be constant, responsible, and reliable.").

AFFIRMED.