

IN THE COURT OF APPEALS OF IOWA

No. 6-289 / 06-0378

Filed April 26, 2006

**IN THE INTEREST OF R.L., JR.,
Minor Child,**

**D.H., Mother,
Appellant,**

**R.L., SR., Father,
Appellant.**

Appeal from the Iowa District Court for Scott County, Nancy S. Tabor,
Judge.

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

Patrick J. Kelly, Bettendorf, for appellant-father.

Cynthia Z. Taylor of Zamora, Taylor, Alexander, Woods & Frederick,
Davenport, for appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, William E. Davis, County Attorney, and Gerda Lane, Assistant
County Attorney, for appellee.

Cheryl J. Newport of Newport & Newport, P.L.C., Davenport, guardian ad
litem for minor child.

Considered by Mahan, P.J., and Hecht and Eisenhauer, JJ.

EISENHAUER, J.

A mother and father appeal from the termination of their parental rights to their child. They each contend the State failed to prove the grounds for termination by clear and convincing evidence. The father also contends the State failed to make reasonable efforts to reunite him with his child. Finally, the mother contends termination is not in the child's best interest. We review these claims de novo. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002).

The mother and father's parental rights were terminated pursuant to Iowa Code sections 232.116(1)(b), (e), (f), and (j) (2005). 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). Termination is appropriate under section 232.116(1)(b) "[t]he court finds that there is clear and convincing evidence that the child has been abandoned or deserted." Abandonment is characterized as a giving up of parental rights and responsibilities accompanied by an intent to forego them. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa Ct. App. 1996). Parental responsibilities include more than subjectively maintaining an interest in a child. *Id.* The concept requires affirmative parenting to the extent it is practical and feasible in the circumstances. *Id.*

R.L. was born in 1990 and has been out of his parents care since 1998. He has been in the care of Ms. J. since 2000. As found by the trial court:

[R.] is a child with special needs. He is hearing and sight impaired. Ms. [J.] is also hearing impaired. At the time of the initial placement of [R.] in 1998 he was found to be behind developmentally by 4 years. Since his placement with Ms. [J.] he has excelled in school, participated in Special Olympics and has had his medical needs met on a regular and consistent basis. The guardian reports that the termination petition was filed at the insistence of the child. He views Ms. [J.] as his family and wants that to be permanent.

We adopted these findings as our own.

At the time of termination, the father was incarcerated. With the exception of a few months, he has been incarcerated throughout the nearly eight years this case has been pending. He has not had contact with his child in the last three and one-half years. The last contact the father did have with the child was disruptive and led to the filing of a protective order.

The mother has never actively participated in services and has not been offered any services since 2002. She provides child support to her five children in the aggregate amount of \$110 per month. She has no objections to her child continuing in his current placement and, as the trial court noted, "has made no affirmative efforts to resume parenting of this child."

We conclude clear and convincing evidence shows these parents have abandoned their child. Accordingly, termination is proper under section 232.116(1)(b).

The father contends the State failed to make reasonable efforts to reunite him with his child. The reasonable efforts requirement is not a strict substantive requirement for termination. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). Instead, the scope of the efforts by the DHS to reunify parent and child after removal impacts the burden of proving those elements of termination which require reunification efforts. *Id.* The State must show reasonable efforts as a part of its ultimate proof the child cannot be safely returned to the care of a parent. *Id.* Having found the father abandoned his child, we reject his claim.

Finally, the mother contends termination is not in the child's best interest. We disagree. The child has been in a permanent placement for over six years.

He is bonded with his custodian, views her as a mother, and desires to be adopted by her. The custodian, like the child, is hearing impaired and understands his needs. The mother, however, wishes to remain the child's mother in name only. 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). That time is now. Termination is in the child's best interest and we affirm.

AFFIRMED.