

**IN THE COURT OF APPEALS OF IOWA**

No. 6-391 / 06-0513  
Filed May 24, 2006

**IN THE INTEREST OF D.V.,  
Minor Child,**

**D.M., Father,**  
Appellant.

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Appeal from the Iowa District Court for Linn County, Susan Flaherty,  
Associate Juvenile Judge.

A father appeals from the juvenile court's termination of his parental rights.

**AFFIRMED.**

Ryan Tang of the Law Offices of Ryan P. Tang, Cedar Rapids, for  
appellant father.

Angela Railsback, Cedar Rapids, for mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant  
Attorney General, Harold Denton, County Attorney, and Kelly Kaufman, Assistant  
County Attorney, for appellee State.

Judith Hoover, Cedar Rapids, for minor child.

Considered by Sackett, C.J., and Huitink and Miller, JJ.

**HUITINK, J.**

***I. Background Facts and Proceedings.***

D.V. was born in March 2001. E.V. is her natural mother. D.M. is her natural father.

D.V. was taken into emergency custody on May 28, 2004, by Cedar Rapids police officers following a domestic disturbance at E.V.'s apartment. A subsequent Iowa Department of Human Services (DHS) investigation disclosed that D.V. tested positive for cocaine, as well as concerns for parental substance abuse and domestic violence. A DHS investigator completed a child abuse assessment and determined D.V. was denied critical care by E.V. On August 26, 2004, D.V. was adjudicated a child in need of assistance pursuant to Iowa Code sections 232.2(6)(b) (parent has physically abused or neglected child (or is imminently likely to do so)), 232.2(6)(c)(1) (child is likely to suffer harm due to mental injury), 232.2(6)(c)(2) (child is likely to suffer harm due to parent's failure to exercise care in supervising child), 232.2(6)(g) (parent fails to provide adequate food, clothing, or shelter), and 232.2(6)(n) (parent's mental capacity (or condition, or drug or alcohol abuse) results in child not receiving adequate care). An October 7, 2004, dispositional order continued D.V.'s placement in family foster care. D.M. was incarcerated at that time and did not personally appear at either the adjudicatory or dispositional hearing. He was, however, represented by counsel at the October 7, 2004, dispositional hearing.

An October 13, 2005, affidavit submitted to the court by DHS includes the following statement:

10. In the Case Permanency Plan dated March 5, 2005, [D.M.] had the following responsibility/expectations:
- A. [D.M.] will attend parenting sessions and visits with [D.V.] through Systems Unlimited. This worker set up parenting skill and supervised visits for [D.M.] through Systems Unlimited starting February of 2005. [D.M.] never attended any of this parenting skill or visit with his daughter.
  - B. [D.M.] will follow all his conditions of his parole. This worker has not had contact with [D.M.].

- . . . .
13. That D.V. is 4 years old . . . and [has] been placed out of the parental home for seventeen months. [D.V.] [is] doing great in [her] current living environment and [D.V.] need[s] to be in a stable, nurturing and safe home environment.

Based upon the above stated information, the Iowa Department of Human Services requests that the County Attorney's Office file a Petition to Terminate Parental Rights on behalf of [D.V.] . . . .

The State's petition for termination of E.V.'s and D.M.'s parental rights was filed on October 22, 2005. After a hearing on the merits, the juvenile court found:

Neither [E.V.] nor [D.M.] has maintained significant or meaningful contact with [D.V.] for more than the last six months. [E.V.] and [D.M.] have abandoned [D.V.] to the child welfare system. They have made no effort to visit [D.V.], emotionally or financially support [D.V.], or investigate the care and welfare of [D.V.] for well over six months. They have not kept in contact with [D.V.'s] caretakers or custodian and have made no real effort to resume care of [D.V.].

The court concluded that the State met its burden of proof and terminated D.M.'s parental rights pursuant to Iowa Code sections 232.116(1)(b) (abandonment), 232.116(1)(e) (child adjudicated CINA, removed for more than six months, and parent has not maintained significant and meaningful contact with child), and 232.116(1)(f) (child age four or older, adjudicated CINA, removed for twelve of last eighteen months and cannot be returned to parental custody). On appeal D.M. argues:

I. THE COURT ERRONEOUSLY TERMINATED THE PARENTAL RIGHTS OF [D.M.] AND THE PARENT-CHILD RELATIONSHIP BETWEEN HIM AND [D.V.].

E.V. does not appeal the termination of her parental rights.

**II. Standard of Review.**

The scope of review in termination cases is de novo. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). The grounds for termination must be proven by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Our primary concern is the best interests of the child. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997).

**III. The Merits.**

As noted earlier, the juvenile court terminated D.M.'s parental rights because he abandoned D.V. Termination of parental rights is justified if the court finds clear and convincing evidence the child has been abandoned. Iowa Code § 232.116(1)(b). Clear and convincing evidence connotes the establishment of facts by more than a preponderance of the evidence, but something less than establishing a factual situation beyond a reasonable doubt. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993) (citing *In re Henderson*, 199 N.W.2d 111, 121 (Iowa 1972)). Abandonment of a child is defined as:

the relinquishment or surrender without reference to any particular person of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.

Iowa Code § 232.2(1). Parental rights, duties, or privileges require more than a subjective interest in the child. *In re D.M.*, 516 N.W.2d 888, 891 (Iowa 1994).

This concept requires affirmative parenting to the extent it is practical and feasible under the circumstances. *Id.*

With the exception of September 2004 through October 2005, D.M. has been incarcerated since D.V. was born. He has only visited her three or four times since her birth and has had no contact with her since 2003. There is also evidence that DHS attempted to arrange services and supervised visitation, but D.M. failed to respond to those efforts. We find that D.M. has demonstrated no more than a subjective interest in D.V. and he has made no attempt at affirmatively parenting her since she was born. Moreover, D.M. cannot use his incarceration as an excuse for his lack of affirmatively parenting D.V. *In re M.M.S.*, 502 N.W.2d 4, 8 (Iowa 1983).

Accordingly, we, like the juvenile court, find D.M. has abandoned D.V., and his parental rights should be terminated. Because we have affirmed on this ground, we need not consider the other grounds cited by the juvenile court in its order terminating D.M.'s parental rights. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

Even if the statutory grounds for termination of parental rights are established, the court need not terminate parental rights if such action is not in the child's best interests. *In re M.M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). "A parent does not have an unlimited amount of time in which to correct his or her deficiencies." *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997). The record shows that D.M. has been given the opportunity to receive family centered services and supervised visitation through DHS. His incarceration prevents him from taking advantage of those services. Even when he was not incarcerated,

he did not follow through with visitation or participate in other parenting services. D.V. is currently in foster care, and testimony indicates that D.V. would be placed with a pre-adoptive family. D.M. does not have any relationship with D.V., and his failure to exercise visitation demonstrates that he is not willing to make D.V. a priority in his life. Accordingly, it is in D.V.'s best interests to terminate D.M.'s parental rights.

D.M. argues that the DHS did not exercise reasonable efforts to reunify the family. "While the State has the obligation to provide reasonable reunification services, the [parent has] the obligation to demand other, different, or additional services prior to the termination hearing." *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999); *In re H.L.B.R.*, 567 N.W.2d at 679; *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994). When the parent alleging inadequate services fails to "demand services other than those provided . . . the issue of whether services were adequate has not been preserved for appellate review." *In re S.R.*, 600 N.W.2d at 65 (citing *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994)). D.M. did not raise the issue of whether DHS made reasonable efforts to reunify D.V. with D.M. at the trial court. We find this issue is not preserved for review.

**AFFIRMED.**