

IN THE COURT OF APPEALS OF IOWA

No. 7-003 / 06-1896
Filed January 31, 2007

**IN THE INTEREST OF G.A.,
Minor child,**

**J.J.M., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Louise M. Jacobs,
Associate Juvenile Judge.

The biological father appeals the district court's order terminating his
parental rights. **AFFIRMED.**

Jami J. Hagemeyer of Williams, Blackburn, Hudson & Maharry, P.L.C.,
Des Moines, and Joseph G. Bertogli of the Benhart Law Office, Des Moines, for
appellant.

Michael Bandstra, Des Moines, for appellee intervenor.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Jennifer Galloway,
Assistant County Attorney, for appellee State.

Victoria Mead, West Des Moines, for appellee legal father.

Randall Wilson of Wilson Law Office, Des Moines, guardian ad litem, for
minor child.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

VOGEL, P.J.

Joshua appeals from the district court's order that terminated his parental rights to his twenty-month-old son, Gage. Upon our de novo review, we affirm.

Gage was adjudicated a child in need of assistance (CINA) in August 2005 following removal from his mother and legal father, Ashley and Frank.¹ He was placed in the care of relatives of Frank and has remained there throughout the course of this case. Ashley was a chronic substance abuser of methamphetamine, and Frank was in prison at the time of Gage's removal. Prior to her marriage to Frank, and during the time when Gage was conceived, Ashley lived with Joshua. Although he suspected that he may be Gage's biological father, Joshua failed to confirm his suspicions. In April 2006, paternity testing indicated that Joshua was the likely biological father of Gage, and the district court ordered supervised visitation to begin in late May 2006.

Joshua has a long history of substance abuse and mental health issues. Due to concerns over Gage's well-being and displays of separation anxiety, the service providers and the Iowa Department of Human Services (DHS) decided visitation with Joshua should not begin while Ashley was still exercising visitation prior to the termination of her parental rights. When visitation did begin in late June or early July 2006, the sessions were supervised and limited to two hours per week. Gage continued to experience a high level of anxiety, although Joshua interacted appropriately with him during visitation, and the anxiety seemed to decrease the more familiar Gage became with Joshua.

¹ Termination of Ashley's and Frank's parental rights is not at issue in this appeal.

The case proceeded to termination upon the recommendation of service providers and DHS with trial held in late September and early October 2006. The district court found termination of Joshua's parental rights was in Gage's best interests and that clear and convincing evidence supported termination pursuant to Iowa Code sections 232.116(1)(d) (2005) (child CINA for physical/sexual abuse or neglect, circumstances continue despite receipt of services) and (l) (child CINA, parent has substance abuse problem, child cannot be returned within a reasonable time). Joshua appeals.

We review termination of parental rights de novo. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002). The grounds for termination must be proven by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Our primary concern is the best interests of the child. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001).

Joshua contends that the district court erred by finding clear and convincing evidence supported either ground for termination. In order to affirm a termination of parental rights, we need only find grounds sufficient to terminate under one of the statutory grounds the district court cited. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa 1999). One of the grounds found proven by the district court was section 232.116(1)(l), that the child cannot be returned within a reasonable time to a parent with a substance abuse problem. After reviewing the evidence, the district court determined that Joshua's most recent sobriety was not a true indicator of his long-term ability to maintain sobriety and hence his ability to appropriately care for Gage. Iowa courts have often noted that,

In seeking out those best interests, we look to the child's long-range as well as immediate interests. This requires considering what the future holds for the child if returned to the parents. When making this decision, we look to the parents' past performance because it may indicate the quality of care the parent is capable of providing in the future.

J.E., 723 N.W.2d at 798 (citations omitted).

While he had maintained sobriety in the months leading to termination, Joshua has a long history of substance abuse, most notably methamphetamine use. He has also been incarcerated on drug related charges and struggled with mental health issues. His family has sought to have him involuntarily committed to address those issues no less than four times since 1999. It appears from his past records that Joshua may be sober for a time, only to relapse into using methamphetamine and even selling drugs to relieve his financial difficulties. Joshua's longest period of sobriety has been twelve to thirteen months. When Joshua is using, his substance abuse issues, coupled with his mental health problems have led to threats and violence toward family members and criminal activity. He has lost custody of his older son, with his parents assuming guardianship. Although his parents have stated that Joshua is turning his life around this time, they have witnessed Joshua's cycle of being able to care for his older son only to lose custody following yet another relapse. The evidence also reflects that Joshua has only been able to maintain sobriety when under the supervision of either a treatment program or the Iowa Department of Corrections, and may otherwise be resistant to submit to treatment or even acknowledge that he may have long-term substance abuse and mental health issues. His latest relapse prior to termination of his parental rights in this case occurred in late

January 2006. Joshua indicated to a service provider that he was also selling drugs during this relapse to alleviate his financial woes. These are not positive indicators as to what may lie ahead for Gage, should he be in Joshua's care. See *In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1989).

By all accounts, Gage has thrived in the care of Frank's relatives. The emotional distress he has suffered in his young life is quelled with his current care providers. "At some point, the rights and needs of the child rise above the rights and needs of the parents." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). In making a permanency determination, the child's need for security, stability, and permanence in his young life must come first. *In re C.D.*, 509 N.W.2d 509, 513 (Iowa Ct. App. 1993). We conclude that the district court was correct in finding clear and convincing evidence supported termination under section 232.116(1)(f) and that termination is in Gage's best interests. We affirm.

AFFIRMED.