

IN THE COURT OF APPEALS OF IOWA

No. 7-043 / 06-2101
Filed February 14, 2007

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

J.M., Father,
Appellant,

R.E., Mother,
Appellant.

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

A mother and father appeal from the order terminating their parental
rights. **AFFIRMED.**

Jared C. Harmon, Des Moines, for appellant father.

Samantha J. Kain of Handley, Block, Lamberti, Zinno & Gocke, P.C.,
Ankeny, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Corey McClure,
Assistant County Attorney, for appellee State.

Michael Sorci of the Youth Law Center, Des Moines, for minor child.

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

HUITINK, J.

Mother and father appeal the termination of their parental rights. Both contend termination was not in the child's best interests. We affirm.

I. Background Facts and Proceedings

Rachelle gave birth to D.M. in March 2003. D.M. has been the subject of a Child in Need of Assistance (CINA) proceeding since December 2005 when both parents tested positive for methamphetamine. John, D.M.'s father, blamed the test result on a neighbor who allegedly put the methamphetamine in his food.

D.M. was removed from the home on December 12, 2005, and placed with his maternal aunt and uncle. D.M. has remained with his aunt and uncle since the removal. D.M. was adjudicated a child in need of assistance on February 16, 2006, after both parents stipulated there was a factual basis for adjudication pursuant to Iowa Code sections 232.2(6)(c)(2) (parents' failure to exercise care in supervising child) and (n) (parents' drug abuse results in child not receiving adequate care) (2005).

A dispositional hearing occurred on March 30, 2006. The court ordered services to continue in order to assist the parents in addressing their mental health and substance abuse issues. These services included in-home services, substance abuse evaluations, psychosocial evaluations of the parents, drug screens, visitation, and bus tokens.

After months of little to no efforts by the parents, the State filed a petition for termination of parental rights on October 4, 2006. The court terminated the parental rights of both Rachelle and John on December 11, 2006. The district court terminated John's parental rights pursuant to sections 232.116(1)(d) (child

CINA for neglect, circumstances continue despite receipt of services) and (h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home). The court terminated Rachelle's parental rights pursuant to sections 232.116(1) (d), (h), and (l) (child CINA, parent has substance abuse problem, child cannot be returned home within a reasonable time).

Both parents appeal, claiming the court erred in determining termination of parental rights was in D.M.'s best interests.

II. Standard of Review

We review the termination of parental rights de novo. *In re D.G.*, 704 N.W.2d 454, 457 (Iowa Ct. App. 2005). 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 first and primary concern is the best interests of the child. Iowa R. App. P. 6.14(6)(o); *D.G.*, 704 N.W.2d at 457.

III. Merits

Both Rachelle and John waive any claim of error concerning the statutory grounds for termination by failing to raise such claims on appeal. See Iowa R. App. P. 6.14(1)(c). Therefore, we affirm the termination of D.M.'s parental rights on statutory grounds. However, even if the statutory grounds for terminations are met, the decision to terminate must still be in the child's best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994).

Rachelle has not had a stable residence or stable employment since the beginning of the CINA proceedings. She has a history of substance abuse and has done little to address the problem in the year since D.M. was removed. Her

participation in drug screenings has been wholly inconsistent. At the termination hearing, Rachelle stated that she had made arrangements to begin substance abuse treatment, but she had not yet begun treatment. She also testified that she used methamphetamine one week prior to the termination hearing. Rachelle has a mental health diagnosis of depression, but chooses not to take the prescribed medication to address the issue.

John has not had a stable residence or stable employment since the beginning of the CINA proceedings. He has not been involved in parenting classes. He has not consistently participated in drug screenings. He admits that he was not forthright with substance abuse evaluators and this led to an initial delay in offered services. Once drug treatment services were offered, he did not participate until he was arrested in August 2006 on drug related charges. At the time of the termination hearing, John was incarcerated at the Fort Des Moines Correctional Facility. He has been clean and sober since he was arrested and placed in the custody of the Iowa Department of Corrections. This court is unable to determine whether his substance abuse problem has been resolved because it is unknown whether he will be able to maintain sobriety once he is released from custody. He expected to be discharged on January 4, 2007.

Both parents have been inconsistent in visitation; they often arrived late, left early, or did not show up at all. Neither parent was able to have D.M. placed with them at the time of the termination hearing.

In determining the best interests of the child, we look to the child's long-range and immediate interests. *In re J.J.S., Jr.*, 628 N.W.2d 25, 28 (Iowa Ct. App. 2001). "Insight for the determination of a child's long-range best interests

can be gleaned from ‘evidence of the parent’s past performance for that performance may be indicative of the quality of the future care that parent is capable of providing.’” *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (quoting *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981)). We have long recognized that parents with chronic and unresolved substance abuse problems clearly present a danger to their children. *In re J.K.*, 495 N.W.2d 108, 113 (Iowa 1993). When the issue is parental drug addiction, we consider the treatment history of the parent to determine the likelihood that the parent will be in a position to parent in the foreseeable future. *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). “Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting.” *Id.* The record gives this court no reason to believe either parent will be in a stable, drug-free environment within a reasonable period of time.

D.M. should not be forced to endlessly await the maturity of his parents. See *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) (“The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.”). He is an adoptable child. Pre-adoptive parents have been identified, and they have had a significant relationship with D.M. since February 2006. D.M. deserves a permanent and stable home with loving parents who are able to provide proper care and supervision. See *In re J.E.*, 723 N.W.2d at 801 (Cady, J. concurring) (“A child’s safety and the need for a permanent home are now the primary concerns when determining a child’s best interests.”).

Based on our de novo review of the record, we conclude termination is in D.M.'s best interests. We affirm the trial court's decision terminating John's and Rachelle's parental rights concerning D.M.

AFFIRMED.