

**IN THE COURT OF APPEALS OF IOWA**

No. 7-045 / 07-0035  
Filed February 14, 2007

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

**D.E.K., Father,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Karla Fultz, Associate Juvenile Judge.

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

Edward Bull of Bull Law Office, P.C., Des Moines, for appellant father.

Cathleen Siebrecht of Siebrecht & Siebrecht Law Firm, Des Moines, for mother.

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

Christine Bisignano, West Des Moines, for minor child.

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

**MAHAN, J.**

Dennis appeals the termination of his parental rights. He claims the district court erred in (1) determining termination was in the child's best interests and (2) basing its opinion on speculation that the child's aunt will adopt him. We affirm.

**I. Background Facts and Proceedings**

Dennis is the father of J.K., born in December 1990. In December 1993, when J.K. was three years old, Dennis was incarcerated for possession of a controlled substance. In February 1994 Dennis was found guilty of assault with intent to commit sexual abuse and second-degree kidnapping. While in prison, Dennis had monthly visits with J.K. between 1994 and 1998. Between 1998 and 2002, however, the visits were every other month.

In March 2002 J.K., along with other brothers and sisters, were removed from their mother's care due to domestic violence. J.K. was initially placed in foster care, but moved to Bremwood Luthern Services in June 2002. There, he was diagnosed with major depressive disorder and oppositional defiant disorder. In January 2004 he was placed at Annie Wittenmyer to better meet his educational needs. Dennis was released from prison in December 2005 and had one supervised visit with J.K. On February 8, 2006, however, Dennis was charged with conspiracy to commit a forcible felony and transferred to the federal system on charges of bank robbery and conspiracy to commit bank robbery. J.K. was successfully discharged from Annie Wittenmyer in March 2006. He was then placed with his aunt.

The State filed a petition for termination of parental rights on July 25, 2006. The hearing was held November 2, 2006. At the time, both parents were incarcerated. J.K. requested parental rights be terminated. The juvenile court determined the parents had been offered services at the facilities where J.K. had been placed, but either did not cooperate or did not utilize the services they were offered. It also found neither parent had been in contact with service providers at either Bremwood or Annie Wittenmyer. It further determined Dennis has failed to provide emotional or financial support for J.K. His only contact with J.K. between J.K.'s removal in 2002 and the visit in December 2005 were letters. The district court terminated Dennis's parental rights pursuant to Iowa Code sections 232.116(1)(b), 232.116(1)(d), 232.116(1)(e), 232.116(1)(f), and 232.116(1)(g) (2005).

## **II. Standard of Review**

We review the termination of parental rights *de novo*. *In re D.G.*, 704 N.W.2d 454, 456 (Iowa Ct. App. 2005). The State must prove the circumstances for termination by clear and convincing evidence. *In re L.E.H.*, 696 N.W.2d 617, 618 (Iowa Ct. App. 2005). Our primary concern is the best interests of the child. *Id.* In determining the child's best interests, we look to both long-term and immediate needs. *Id.*; see also *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

## **III. Merits**

Dennis argues only that termination is not in J.K.'s best interests and that the juvenile court erroneously relied on the presumption that J.K.'s aunt is willing to adopt him. We find his arguments without merit. In J.K.'s sixteen years, Dennis has been incarcerated all but three years and two months. He had the

opportunity to be released and begin the process of parenting, but instead chose to engage in alleged criminal acts. *In re J.L.W.*, 523 N.W.2d 622, 624 (Iowa Ct. App. 1994) (noting that an incarcerated parent must take responsibility for the action that caused the incarceration). At the present time, he cannot provide J.K. with a home or emotional or financial support. Given his current charges, there is some indication he will never be able to provide such basic needs. See *In re J.E.*, 723 N.W.2d at 798 (noting a parent's past performance is indicative of the quality of care the parent will provide in the future); *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000) ("The future can be gleaned from evidence of the parents' past performance and motivations."). We therefore conclude termination of Dennis's parental rights is in J.K.'s best interests. 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.").

We also conclude the juvenile court did not rely on the assumption J.K.'s aunt will adopt him. The court acknowledged that the aunt's home is pre-adoptive. It simply recognized the benefit J.K. has experienced in his aunt's care and J.K.'s own desire to stay with her.

The juvenile court's ruling terminating Dennis's parental rights is affirmed.

**AFFIRMED.**