

IN THE COURT OF APPEALS OF IOWA

No. 7-170 / 07-0177
Filed March 28, 2007

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

**M.L.M., Father,
Appellant.**

Appeal from the Iowa District Court for Story County, Victor G. Lathrop,
District Associate Judge.

A father appeals from the order terminating his parental rights to his
daughter. **AFFIRMED.**

Shannon M. Leighty, Assistant Public Defender, Nevada, for appellant-
father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Stephen Holmes, County Attorney and Cynthia McIntosh,
Assistant County Attorney, for appellee-State.

Carin Forbes, Ames, for appellee mother.

Angelina Thomas, Ames, guardian ad litem for minor child.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

BAKER, J.

Martin is the father of Kaysandra, who was born in May of 2001. Kaysandra's involvement with the Iowa Department of Human Services (DHS) began in late 2002 after DHS received reports of domestic violence between Martin and Kaysandra's mother, Jodi. On December 23, 2003, Kaysandra was adjudicated to be a child in need of assistance (CINA) under Iowa Code sections 232.2(6)(c)(2) and (k) (2003) based on a lack of supervision and Jodi's desire to be relieved of the children's custody. After a dispositional hearing on February 22, 2003, Kaysandra was placed in foster care.

On August 4, 2006, the State filed a petition seeking to terminate of the parental rights of both Martin and Jodi to Kaysandra. Following a hearing on that petition, the court terminated Martin's parental rights to Kaysandra pursuant to section 232.116(1)(f) (2005). Martin has appealed from that ruling.¹

We review termination orders de novo. *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). Our primary concern in termination proceedings is the best interests of the child. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). 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).

We first reject Martin's contention that the State did not make reasonable efforts to reunite him with Kaysandra. In its termination order, the court noted that only at that hearing did Martin first raise the argument that DHS had not

¹ Jodi consented to the termination of her parental rights and her rights are not at issue in this appeal.

made reasonable efforts. In particular, he alleged he was given insufficient visitation. As the court further found, nothing in the CINA files shows that he ever requested additional visitation. Accordingly, we conclude this issue is not preserved for our review. See *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999) (noting that the parent has an obligation to demand other or additional services *prior* to the termination hearing). Regardless, we would conclude DHS made reasonable efforts under the circumstances to reunite Martin with Kaysandra.

Next, upon our careful *de novo* review of the record, we conclude termination of Martin's parental rights under section 232.116(1)(f) (child four or older, removed for twelve months, and cannot be returned to home) is appropriate. First and foremost, at the time of the termination hearing, Kaysandra could not be returned to Martin's care because he was incarcerated. Even under the best case scenario, he only stood to be released toward the end of 2007. Martin has exhibited a pattern of behavior that is simply inconsistent with caring for Kaysandra. For example, less than one month after he was released after six months of incarceration in October of 2005, he tested positive for the use of cocaine.

We additionally conclude termination is in the best interests of Kaysandra. See *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994) (recognizing that even if the statutory requirements for termination of parental rights are met, the decision to terminate must still be in the best interests of the children). Martin has had serial involvement with the criminal justice system. He has admitted to four convictions for operating while intoxicated. He was also incarcerated for large portions of

this CINA case and has been involved in domestic violence incidents. Kaysandra needs and deserves a more responsible and mature parent to provide her care.

We also reject Martin's contention that the court "erred in finding that [Jodi's] consent to termination for lack of being financially stable was good cause for granting termination." Martin does not have standing to raise this issue. See *In re A.B., A.B., & A.A.*, 662 N.W.2d 375 (Iowa Ct. App. 2003).

Finally, we reject Martin's arguments regarding the sweat patches worn by him. These patches are devices by which an individual is tested for the presence of drugs. It is through one of these patches that Martin tested for cocaine. Both Martin and the State presented expert testimony regarding the reliability of the patches and the court found them to be reliable. Regardless of the court's ruling on the reliability of the sweat patches, upon our de novo review of the facts we would still find termination appropriate under the circumstances. We therefore affirm the termination of Martin's parental rights.

AFFIRMED.