

**IN THE COURT OF APPEALS OF IOWA**

No. 7-517 / 07-0946  
Filed July 25, 2007

**IN THE INTEREST OF H.J. and K.J.,  
Minor Children,**

**R.L.J., Father,  
Appellant.**

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Appeal from the Iowa District Court for Poweshiek County, Michael R. Stewart, District Associate Judge.

Father appeals from the order terminating his parental rights. **AFFIRMED.**

Dennis E. McKelvie of McKelvie Law Office, Grinnell, for appellant father.

Jeffrey Garland, Grinnell, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Michael W. Mahaffey, County Attorney, and Rebecca L. Petig, Assistant County Attorney, for appellee State.

Terri Beukelman, Pella, guardian ad litem for minor children.

Considered by Huitink, P.J., and Vogel and Baker, JJ.

**HUITINK, P.J.**

Ricky appeals from the trial court's termination of his parental rights concerning his two children, H.J. and K.J. Ricky claims that termination is not in the children's best interests. We review his claims de novo. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

**I. Background Facts and Prior Proceedings**

H.J. was born in July 2001, and K.J. was born in June 2002. They were removed from their mother's care in December 2005 amidst allegations of child abuse and substance abuse. The children were placed with Ricky's mother. The children were removed from her care on May 10, 2006, because of concerns about her paramour and his abuse of controlled substances. The children were placed in foster care and have remained there since.

At the time of removal, Ricky was serving a prison sentence for an unrelated sexual offense with a minor. He has remained incarcerated and is expected to be released in March 2009. Ricky has a long history of substance abuse and has been disciplined several times while in prison.

Ricky did not send letters, cards, or gifts to his children during the pendency of these proceedings. He also did not respond to communications from an Iowa Department of Human Services caseworker until he was informed she was recommending termination of his parental rights.

On March 3, 2007, the State filed a petition to terminate both parents' parental rights. The mother voluntarily agreed to terminate her parental rights. Ricky did not appear at the hearing, but his counsel argued that Ricky loved his children, opposed the termination, and wanted the children placed with his

mother. The district court entered an order on May 18, 2007, terminating Ricky's parental rights pursuant to Iowa Code section 232.116(f) (2007) (child four or older, child CINA, removed from home for twelve of last eighteen months, and child cannot be returned home) (2007).

## **II. Merits**

On appeal, Ricky claims termination is not in the children's best interests. He requests that the children be placed with his mother until he is released from prison. Ricky does not contend the State failed to prove by clear and convincing evidence any of the statutory grounds upon which termination was based. Therefore, he waives any claims of error concerning the statutory grounds for termination by failing to raise them on appeal. See Iowa R. App. P. 6.14(1)(c). Consequently, we affirm the termination of his parental rights on statutory grounds.

Even where there is a statutory basis to terminate parental rights, the termination must still be in the best interests of the children. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). That determination considers both the children's long-range and immediate interests. *In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa Ct. App. 1998).

Beyond his request on appeal, Ricky made no attempt to establish why his children should be placed with his mother. Similarly, due to Ricky's limited cooperation with the Iowa Department of Human Services, there is no evidence Ricky would be capable of caring for his children once he is released from prison. This, when considered with his past criminal behavior and unwillingness to participate in services to facilitate reunification, leads this court to believe Ricky

will not be able to effectively care for the children in the foreseeable future. See *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006) (noting a parent's past performance is indicative of the quality of care the parent will provide in the future).

As has been stated many times, "patience with parents can soon translate into intolerable hardship for their children." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). These children have been removed from their parents for more than sixteen months. There is no reason to deny them permanency while they wait for Ricky to show signs of maturity. See *id.* ("The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems."); see also *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."). H.J. and K.J. are healthy and adoptable. They need permanency now. Therefore, we conclude termination of Ricky's parental rights is in the children's best interests and affirm the juvenile court's order terminating his parental rights.

**AFFIRMED.**