

IN THE COURT OF APPEALS OF IOWA

No. 7-522 / 07-0945
Filed July 25, 2007

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

J.T.F., Father
Appellant.

Appeal from the Iowa District Court for Johnson County, Sylvia A. Lewis,
District Associate Judge.

A father appeals the termination of his parental rights to his daughter.

AFFIRMED.

Ryan P. Tang of Law Office of Ryan P. Tang, P.C., Cedar Rapids, for
appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Janet Lyness, County Attorney, and Kristin Parks, Assistant
County Attorney, for appellee State.

Christine Boyer, Iowa City, for appellee mother.

L. Jay Stein, Iowa City, for minor child.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

VAITHESWARAN, J.

Jerry appeals the termination of his parental rights to J.F., born in 2003. He contends (1) the record lacks clear and convincing evidence to support termination under the grounds cited by the district court, (2) the Department of Human Services did not make reasonable efforts to reunify him with J.F., and (3) termination was not in the child's best interests. On our de novo review, we disagree.

I. Where a court terminates parental rights on multiple grounds, we may affirm if we find clear and convincing evidence to support one of the grounds. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). We find clear and convincing evidence to support termination under Iowa Code section 232.116(1)(h) (2005).¹

J.F. was removed from her parents' care in May 2005 based on allegations that she and her half-siblings were being beaten by Jerry, were exposed to drugs, and were living in an unsafe home. Authorities later learned that Jerry was dealing heroin and cocaine. He was arrested, charged, and convicted for possession of a controlled substance.

The Department placed J.F. with her grandmother but removed her several months later due to domestic violence and drug use in the home.² Meanwhile, Jerry went to prison, where he remained for approximately eighteen

¹ The State pled Iowa Code section 232.116(1)(h), which contains the same substantive requirements as subsection (f), but applies to children "three years of age or younger." J.F. was three years old at the time of the termination hearing but turned four before the district court issued a ruling. The ruling cites section 232.116(1)(f), which applies to children four or older, but finds the State proved "the allegations set forth in the Petition" which, as noted, refers to subsection (h). We believe the appropriate code provision is subsection (h), as J.F. was three years old at the time of the termination hearing. See *In re M.T. & S.T.*, 613 N.W.2d 690, 693 (Iowa Ct. App. 2000).

² J.F. underwent a hair stat test, which was positive for cocaine.

months. On his release in early December 2006, the Department of Corrections placed him at a halfway house. Shortly after his placement, Jerry advised members of the Foster Care Review Board that he would be on probation for one and a half years after his release from the halfway house. He asked that his mother and aunt be considered as placement options. The Board recommended termination of his parental rights.

At the time of the termination hearing in April 2007, Jerry was still at the halfway house. Children were not allowed at the house.

We conclude J.F. could not be returned to Jerry's care at the time of the termination hearing. In reaching this conclusion, we have considered evidence of Jerry's accomplishments following his release from the halfway house. Specifically, he began working toward an Associate degree in sociology, with a minor in child development, tested negative for illegal drugs, secured two jobs, one paying ten dollars per hour, and found a two-bedroom apartment that he intended to move into on his release from the halfway house. These accomplishments are commendable, but came too late to permit reunification. As a Department employee testified, Jerry had yet to prove he could maintain an appropriate lifestyle in the community without supervision.

II. The Department is obligated to make reasonable efforts to reunify parents with their children following an out-of-home placement. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). This obligation is "a part of its ultimate proof the child cannot be safely returned to the care of a parent." *Id.*; see Iowa Code § 232.116(1)(f).

Jerry asserts the Department did not satisfy this obligation. We agree the Department of Human Services did not furnish reunification services while Jerry was imprisoned. The Department of Corrections did provide services to address problems Jerry faced before his imprisonment. The agency offered Jerry a “moderate intensity family violence program” and a “primary chemical dependency” program, both of which Jerry completed.

After Jerry was placed at the halfway house, he requested visitation with J.F. The Department declined the request in light of the child’s permanent foster care placement and the fact that termination proceedings had been initiated. The district court also denied the request. Under the circumstances of this case, these denials do not mandate reversal.

J.F. was twenty-three months old when she was removed from the care of her parents. Jerry did not see her for close to two years. Although he telephoned her every week while she was with her grandmother, that contact stopped in September 2006. Later that year, the district court ordered J.F. placed in a planned permanent living arrangement. Given the limited contact between father and child for almost half the child’s life, we conclude the Department did not violate its mandate.

///. The ultimate consideration in termination of parental rights cases is the best interests of the child. *In re C.B.*, 611 N.W.2d at 492. While there is no question that Jerry maintained a bond with his daughter, we conclude termination was in the child’s best interests, for the reasons stated above.

AFFIRMED.