

**IN THE COURT OF APPEALS OF IOWA**

No. 7-529 / 07-1043  
Filed September 6, 2007

**IN THE INTEREST OF E.V.,  
Minor Child,**

**R.M.M., Father,  
Appellant,**

**E.V., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Webster County, James A. McGlynn, Associate Juvenile Judge.

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

Marcy Lundberg of Blake Parker Law Office, Fort Dodge, for appellant father.

Brigette Plowman Cromwell of Kersten, Brownlee, Hendrick L.L.P., Fort Dodge, and Darren D. Driscoll of Johnson, Erb, Bice, Kramer, Good, Mulholland & Cochrane, P.L.C., Fort Dodge, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Timothy Schott, County Attorney, and Sarah L. Smith, Assistant County Attorney, for appellee State.

Derek Johnson, Fort Dodge, guardian ad litem for minor child.

Considered by Sackett, C.J., and Zimmer, J., and Schechtman, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

**SCHECHTMAN, S.J.****I. Background Facts & Proceedings**

Ryan and Etya are the biological parents of Ezekeil, born in December 2003. At his birth, Etya was a minor and had been adjudicated a child in need of assistance (CINA). Etya and Ezekeil were placed in family foster care. Ryan, an adult, is in prison on sexual abuse charges arising from his contact with Etya while she was a minor.

While on a home visit in July 2005, Etya married David in South Dakota.<sup>1</sup> The couple were not prepared to care for Ezekeil and did not have a permanent residence. Separate CINA proceedings were initiated for Ezekeil. On August 9, 2005, the juvenile court entered a joint adjudicatory/dispositional order finding Ezekeil was a CINA under Iowa Code sections 232.2(6)(b) and (c)(2) (2005). The court found, "It is clear that Etya will need to establish stability, find employment, and secure appropriate housing for herself and the child." Ezekeil was placed in foster care.

Etya made progress by obtaining an apartment and working toward her GED. Plans were initiated to expand her visits. But in February 2006, Etya began a relationship with Cliff, her husband's cousin. She allowed Cliff to move in with her. Cliff had a history of substance abuse, criminal activity, and a founded child abuse report. Instead of increasing, her visits were decreased. Etya was evicted from her apartment in April 2006 due to criminal charges for aiding and abetting a third-degree burglary. Etya moved in with her mother, but visits were curtailed at her mother's home because of its condition. She quit

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<sup>1</sup> Etya was not yet eighteen years old at the time of the marriage.

attending GED classes. Etya did not obtain employment, and was inconsistent in attending visitation. She shuttled between several intimate relationships.

In August 2006, the State filed a petition seeking termination of the parental rights of Ryan and Etya. In December 2006 Ezekeil was placed with his paternal grandparents. The juvenile court terminated the parents' rights pursuant to sections 232.116(1)(d) (child CINA for neglect, circumstances continue despite the receipt of services) and (h) (child three or younger, CINA, removed for at least six months, and cannot be returned home). The juvenile court commented that over twenty months had passed since Ezekeil's CINA case was initiated, and "the child remains out of the custody of the parents, the father is still in prison and the mother is still unable to resume custody of the child." Ryan and Etya each appeal the termination order of the juvenile court.

## **II. Standard of Review**

The scope of review in termination cases is *de novo*. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). Grounds for termination must be proven by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Our primary concern is the best interests of the child. *In re C.V.*, 611 N.W.2d 489, 492 (Iowa 2000).

## **III. Ryan**

Ryan contends termination of his parental rights is not in Ezekeil's best interests. He points out that Ezekeil is in the care of his relatives. Ryan claims the child could be placed in a guardianship, and he could maintain contact with the child in the future. The juvenile court did not address placing Ezekeil in a

guardianship. This aspect of Ryan's best interests argument was not preserved for review. See *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994) (noting an issue not presented in the juvenile court may not be raised for the first time on appeal).

Notwithstanding, Ryan's imprisonment does not allow him to meet the child's needs. As the juvenile court concluded, "He bears sole responsibility for his inability to provide for his child."

We affirm the juvenile court decision terminating Ryan's parental rights.

#### **IV. Etya**

Etya contends that termination of her parental rights was not in Ezekeil's best interests, immediate or in the long-term. She asserts there was not clear and convincing evidence presented that termination was in his best interests. The attorney and guardian ad litem for Ezekeil agreed. They each maintain that Etya should be granted more time to reunite with her son, that her parental shortcomings are minor, and can be corrected with appropriate services. Etya suggests that the Iowa Department of Human Services has treated her unfairly.<sup>2</sup>

Etya's challenge is obviously stronger than Ryan's. But it is clear that Etya struggles with significant parenting defects. She continues to show little stability in housing and employment. At a time when her visitations were to be increased and home visits were on the foreseeable horizon, she opted to initiate a relationship that potentially could sacrifice the safety of the child. Criminal

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<sup>2</sup> Etya challenges the foster placement with the paternal grandparents as inherently unjust. She agreed to this move in December 2006. Nor was this issue addressed by the trial court and it was not preserved for appeal. See *In re N.W.E.*, 564 N.W.2d 451, 455 (Iowa Ct. App. 1997) (noting we do not address issues raised for the first time on appeal).

charges ensued that exacerbated her instability and led to an eviction, which again left her without quarters. In October 2006, she served a few days in the county jail. She has been inconsistent in all her pursuits and not motivated to correct her parenting shortfalls. Etya has muffed months of chances to show she is capable of responsible parenting.

Etya intimates that her rights were terminated because she did not locate housing until the day of the termination hearing, and had not obtained employment, although she had a job interview scheduled. The juvenile court fully addressed these contentions, which are supported in the record:

The Court acknowledges that the mother presented evidence on the second day of trial that she now has obtained an apartment. However, she has not been able to establish to the Court's satisfaction that she will be able to maintain that apartment or any sort of stability for herself and the child. . . . For the last 20 months, the mother has been essentially homeless, living with relatives, friends or at the YWCA. Her visitations with the child have not been consistent. She has made no meaningful progress towards reunification. The fact that the mother obtained an apartment on the eve of trial does not change the lengthy history of the case. The child deserves permanency, which the mother has clearly demonstrated she is unable to provide.

Under our cases, continued patience with Etya must now yield to the needs of Ezekeil. "Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable." *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *Id.* "It is simply not in the best interests of children to continue to keep them in temporary foster homes while the natural parents get their lives together." *Id.*

We look to a parent's past performance to consider what the future may hold for the child if returned to that parent. *In re L.L.*, 459 N.W.2d 489, 494 (Iowa 1990). Etya was given ample opportunity to demonstrate the consistency and stability needed for parenting. Tragically, she was never willing to place the child's needs above her own.

Termination of Etya's parental rights is affirmed.

**AFFIRMED.**