

IN THE COURT OF APPEALS OF IOWA

No. 7-676 / 07-1357
Filed September 19, 2007

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

**G.D.B., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Joe E. Smith, District Associate Judge.

A father appeals from the juvenile court's order terminating his parental rights to his child. **AFFIRMED.**

Suzan Kelsey Brooks, Des Moines, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Michelle Chenoweth, Assistant County Attorney for appellee State.

Nancy Trotter, Des Moines, for appellee mother.

Charles Fuson of Youth Law Center, Des Moines, for minor child.

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

BAKER, J.

A father appeals from the juvenile court's order terminating his parental rights to his daughter. Upon our de novo review, we affirm.

I. Background and Facts

M.C. is the mother and G.D.B is the father of J.C., who was born in July 2006. J.C. was removed from the mother's custody because she tested positive for cocaine shortly after her birth. J.C. was initially placed with her maternal grandmother for a short while. She was then placed in foster care, then with the mother in a substance abuse treatment facility. In December 2006, she was placed with the father's sister, where she remains.

At the time of J.C.'s birth, the father was living in a homeless shelter. In November 2006, he was arrested for public intoxication, disorderly conduct, and child endangerment when he had J.C. with him at a convenience store. He is currently incarcerated for child endangerment and forgery. His release date, as determined upon entering prison, is May 2010.

J.C. was adjudicated a child in need of assistance (CINA) in September 2006. Following a June 19, 2007 hearing, the juvenile court terminated the father's parental rights pursuant to Iowa Code sections 232.116(1)(d) and (h) (2007).¹ The father appeals.

II. Merits

We review termination orders de novo. *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). While the juvenile court terminated the parental rights on more than

¹ The parental rights of the mother and any unknown putative father were also terminated. No other parent has appealed the termination of their parental rights to J.C.

one statutory ground, we will affirm if at least one ground has been proved by clear and convincing evidence. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Our primary concern is the best interests of the child. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). 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 child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). In considering the child's best interests, we look to both long-range and immediate interests. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997).

The father does not contest the statutory grounds for termination. He contends that the termination of his parental rights is not in J.C.'s best interests because J.C. has been placed with his sister and because of his lack of history for violence. The father asserts that, upon his release from prison, where "terms of parole will require and reinforce his working and remaining sober and law-abiding," he will likely return to the Des Moines area and "know and be known to his daughter," due to her placement with his sister. The father therefore contends that it is in J.C.'s long-term best interests "that the financial, physical, and emotional support of her biological father not be lost forever."

To support his argument, the father relies on Iowa Code section 232.116(3)(a), which states the court need not terminate the parent-child relationship if a relative has legal custody of the child. That section, however, "has been interpreted to be permissive, not mandatory. It is within the sound discretion of the juvenile court, based upon the unique circumstances before it and the best interests of the child, whether to apply this section." *J.L.W.*, 570 N.W.2d at 781 (internal citations omitted).

We agree with the juvenile court's conclusion that the father's imprisonment for criminal conduct was "a consequence of his choice. To allow this case to linger until he is released, offered services and allow time to pass while determining whether or not services would be effective would work a great disservice to [J.C.]" We also agree with the court's conclusion that J.C. is entitled to permanence. The father is not entitled to "an unlimited amount of time in which to correct his . . . deficiencies." *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997). Further, his incarceration does not excuse his unavailability to parent. See *In re J.L.W.*, 523 N.W.2d 622, 624 (Iowa Ct. App. 1994) ("An incarcerated parent must take full responsibility for the conduct which has resulted in his confinement."). It is in J.C.'s best interests to terminate the father's parental rights. We affirm the juvenile court.

AFFIRMED.