

IN THE COURT OF APPEALS OF IOWA

No. 7-729 / 07-1433
Filed October 12, 2007

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

**R.N., Father,
Appellant.**

Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Stephen W. Newport of Newport & Newport, P.L.C., Davenport, for appellant father.

Roland Caldwell of Muscatine Legal Services, Muscatine, for mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Gary Allison, County Attorney, and Korie Shippee, Assistant County Attorney, for appellee State.

Mark J. Neary, Muscatine, for minor child.

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

MAHAN, P.J.

Robert appeals from the order terminating his parental rights to his two-year-old son, Dalton. We affirm.

I. Background Facts and Prior Proceedings

Robert has an extensive criminal history. Since June 1996 he has had numerous criminal convictions ranging from domestic abuse to possession of a firearm by a felon. In 2001 his parental rights to two other children were terminated. These children were subsequently adopted by Robert's mother.

In 2005 Robert was sentenced to a twenty-five year prison term for selling methamphetamine. Dalton was born while Robert was incarcerated.

Dalton was removed from his mother's home in August 2006. The issues that led to removal included substance abuse, a lack of appropriate supervision, and an unstable residence. Dalton was placed with Robert's mother on November 29, 2006, and adjudicated a child in need of assistance (CINA) on December 2, 2006. During these proceedings, Dalton has remained with Robert's mother and his two half-siblings. Robert's mother brought Dalton to visit his father in prison approximately twelve times.

The State filed the present petition to terminate both parents' parental rights on June 4, 2007. The termination hearing was held on July 23. Dalton's mother did not appear at the hearing but did consent to the termination.¹ Robert appeared by telephone. Robert testified as to how he had changed his life while in prison. He completed substance abuse treatment, marriage and parenting classes, a criminal thinking class, and also received treatment for anxiety. In

¹ She is not a party to this appeal.

total, he completed all recommended services and received favorable comments from the service providers. Robert was in the process of being paroled, and he anticipated an imminent release. He indicated that he planned to live with his sister once he was released from prison.

The court terminated both parents' parental rights, specifically terminating Robert's parental rights pursuant to Iowa Code sections 232.116(1)(b), (e), (g), (h), (l) and 232.117 (2007).

On appeal, Robert concedes there were statutory grounds for termination under section 232.116(1)(h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home). However, he contends the court should have established his mother as Dalton's guardian so that he could have an opportunity to prove he has changed his life. The guardian ad litem filed an appellate brief contending termination was in Dalton's best interests.

II. Standard of Review

We review termination of parental rights de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Grounds for termination must be proved by clear and convincing evidence. *Id.* Our primary concern is the best interests of the child. *Id.*

III. Merits

Iowa Code section 232.116(3)(a) states that the court need not terminate parental rights if the child is in the legal custody of a relative. This section is permissive and not mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App.

1997). The juvenile court has the discretion to apply this section based on the circumstances before it and the best interests of the child. *Id.*

We look to a parent's past performance to consider what the future may hold for the child if returned to that parent. See *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000) ("The future can be gleaned from evidence of the parents' past performance and motivations.").

The record reveals that Robert has not demonstrated an ability to maintain sobriety outside of a supervised setting or an ability to provide for himself outside of a prison setting. He acknowledges that he cannot provide a home for Dalton at the time of the termination hearing due to his incarceration. He is also unsure whether he would be able to immediately provide a home for Dalton once he was released from incarceration. Robert has not established a significant relationship with Dalton because he has spent less than twenty-four hours with him. His incarceration is not a justification for his lack of relationship with Dalton. *In re M.M.S.*, 502 N.W.2d 4, 8 (Iowa 1993).

Dalton has developmental needs that require special attention. He has delays in speech and in his cognitive abilities. His grandmother, the pre-adoptive parent, performs exercises with him to combat these developmental barriers. Even though Robert has successfully completed all recommended services, his past history does not suggest he will be able to provide a safe and stable environment for a child, let alone a child with Dalton's unique special needs.

A child should not be forced to endlessly suffer in parentless limbo. *J.L.W.*, 570 N.W.2d at 781. While the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," *In re*

A.C., 415 N.W.2d 609, 613 (Iowa 1987), this patience has been built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). A child should not be forced to endlessly await the maturity of a natural parent. *Id.* At some point, the rights and needs of the child rise above the rights and needs of the parent. *J.L.W.*, 570 N.W.2d at 781.

Dalton has been in a stable and loving home with his paternal grandmother since November 2006. A guardianship arrangement would not provide him with a permanent home and would leave his future too uncertain. See Iowa Code § 232.104 (providing the parent may seek to modify a permanency order). Termination and adoption are the preferred solution when a parent is unable to regain custody within the time frames of chapter 232. *In re C.K.*, 558 N.W.2d 170, 174 (Iowa 1997) (“An appropriate determination to terminate a parent-child relationship is not to be countermanded by the ability and willingness of a family relative to take the child.”); *In re L.M.F.*, 490 N.W.2d 66, 68 (Iowa Ct. App. 1992).

Dalton needs permanency now. We conclude termination of parental rights is in his best interests. See *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.”).

AFFIRMED.