

IN THE COURT OF APPEALS OF IOWA

No. 8-003 / 07-2041
Filed January 30, 2008

**IN THE INTEREST OF N.B.G. and C.M.G.,
Minor Children,**

**C.D.S., Father,
Appellant.**

Appeal from the Iowa District Court for Linn County, Susan Flaherty,
Associate Juvenile Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Robert Kimm, Cedar Rapids, for appellant father.

Annette Martin, Cedar Rapids, for mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Harold Denton, County Attorney, and Robert Hruska, Assistant
County Attorney, for appellee State.

Anna Wirt O'Flaherty, North Liberty, for minor children.

Considered by Huitink, P.J., and Zimmer and Miller, JJ.

ZIMMER, J.

A father appeals from a juvenile court order that terminated his parental rights. We affirm the decision of the juvenile court.

I. Background Facts and Proceedings.

Chris is the father and Dawn is the mother of Nathaniel, born in January 2004, and Cody, born in August 2005.

The Iowa Department of Human Services (Department) became involved in this case when Cody tested positive for the presence of marijuana at the time of his birth. Dawn admitted to ongoing use of marijuana. Chris admitted to a history of marijuana use, but denied any recent use.¹ The parents agreed that Nathaniel and Cody would live with Chris and that Dawn would not reside with Chris or the children until the Department agreed that she could safely return to the household.

On October 17, 2005, the Department received a report that Chris and Dawn were living together with the children. The Department also learned that Chris was using illegal substances and there was significant traffic in and out of the family's apartment. Neighbors reported that Chris was "hollering" a lot and that the sound of someone being "smacked" could be heard coming from the apartment. A Department social worker reported that Chris's apartment was a health and safety hazard for young children. When law enforcement officers went to the apartment, they found two bags of marijuana and other drug

¹ Chris also had a significant history of criminal activity, including multiple possession of controlled substance charges, multiple operating while intoxicated charges, and multiple driving while barred charges.

paraphernalia in the household. Chris and Dawn both tested positive for marijuana. The parents allowed the children to be placed with Chris's mother.

Nathaniel and Cody were adjudicated children in need of assistance (CINA) on October 27, 2005. Following adjudication, the parents received a variety of services designed to transition the children safely back to their care. However, these services proved to be unsuccessful, and the children remained in their paternal grandmother's care.

On July 17, 2006, the State filed an amended and substituted petition to terminate the parental rights of Chris and Dawn. In October 2006, at the time originally set for hearing on this petition, the parties requested that the termination hearing be reset until January 2007 to allow Chris additional time to comply with the case plan. The court granted that request.

The juvenile court held a contested termination hearing on January 18, 2007. In an order filed October 19, 2007, the court found that the parental rights of Dawn should be terminated pursuant to Iowa Code sections 232.116(1)(h) (2005) and 232.116(1)(l).² The court also found that the State had established by clear and convincing evidence legal grounds to terminate Chris's parental rights pursuant to section 232.116(1)(h); however, based upon the progress Chris had made prior to the termination hearing, the court determined that it was in the children's best interest to allow Chris additional time to resume care of Nathaniel and Cody.

On November 16, 2007, the court held a further evidentiary hearing to review Chris's progress since the termination hearing in January 2007. Chris

² Dawn has not appealed from the termination of her parental rights.

was incarcerated at the time of the November hearing. Chris's counsel made a motion to continue the hearing to allow Chris additional time to be released from prison and appear personally, but the court overruled his motion.

In an order filed November 19, 2007, the juvenile court terminated Chris's parental rights to Nathaniel and Cody pursuant to section 232.116(1)(h) (children are three or younger, children CINA, removed from home for six of last twelve months, and children cannot be returned home). Chris now appeals.

II. Scope and Standards of Review.

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). A denial of a motion to continue is reviewed for an abuse of discretion and we will only reverse "if injustice will result to the party desiring the continuance" and the denial was unreasonable under the circumstances. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996). The ground for termination must be supported by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). We are primarily concerned with the children's best interests in termination proceedings. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). Even when the statutory grounds for termination are met, the decision to terminate parental rights must reflect the children's best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). When we consider the children's best interests, we look to their long-range as well as immediate best interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997).

III. Discussion.

In this appeal, Chris does not contend the statutory ground for termination has not been met; rather, he contends the court abused its discretion in denying

him additional time to work toward reunification with his children. He also contends termination is not in the best interests of the children. Upon our review of the record, we find no merit in either of the father's arguments.

Chris contends the court should have granted him a three or four month extension to allow him additional time to resume care of his children. We disagree. In October 2006 Chris was granted additional time until January 2007. In October 2007 Chris was once again granted additional time until November 2007. While the record reveals Chris made some progress between October 2006 and January 2007, the record shows Chris was unable to sustain that progress. Evidence presented at the November hearing reveals Chris reduced his contact with his children and service providers following the January termination hearing. After April 2007 Chris did not contact service providers for parenting sessions or visitation. Additionally, the record reveals Chris continued to engage in criminal activity that resulted in his incarceration. The juvenile court found Chris's behavior and decisions after January 2007 did not provide justification for granting him additional time. We conclude the court's denial of Chris's motion for continuance was reasonable under the circumstances. Accordingly, we conclude the court did not abuse its discretion in denying his motion.

Chris further contends that termination of his parental rights is not in the best interests of his children. We conclude otherwise. The children have been in out-of-home placement, living with Chris's mother, since October 2005. Shortly after the January termination hearing, Chris stopped attending supervised visitation with his children. Although he maintained some contact by visiting the

children in his mother's home, he stopped participating in parenting instruction in April 2007. In the spring of 2007, Chris was incarcerated, during which time he "let his apartment go." After being released from jail, he did not obtain his own housing. In June 2007 Chris was sentenced to prison for two years for driving while barred. We agree with the juvenile court that "even though his parole appears imminent, he does not have a place to live, a job, nor has he demonstrated the stability and basic decision making necessary to parent these children on a day to day basis."

These children should not have to wait any longer for their father to learn how to become a responsible parent. *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). When a parent is incapable of changing to allow the children to return home, termination is necessary. *In re T.T.*, 541 N.W.2d 552, 557 (Iowa Ct. App. 1995). These children deserve stability and permanency, which their father cannot provide. *In re C.D.*, 509 N.W.2d 509, 513 (Iowa Ct. App. 1993). We agree with the juvenile court's finding that termination of Chris's parental rights is in the children's best interests.

IV. Conclusion.

We affirm the juvenile court's decision to terminate Chris's parental rights.

AFFIRMED.