

IN THE COURT OF APPEALS OF IOWA

No. 8-100 / 07-2040
Filed February 13, 2008

**IN THE INTEREST OF J.M., Jr. and K.M.,
Minor Children,**

J.J.M., Sr., Father,
Appellant.

Appeal from the Iowa District Court for Clinton County, Arlen J. Van Zee,
District Associate Judge.

A father appeals from the juvenile court order terminating the parental
rights to two of his children. **AFFIRMED.**

Neill A. Kroeger, Davenport, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Mike Wolf, County Attorney, and Ross Barlow, Assistant
County Attorney, for appellee State.

J. David Zimmerman, Clinton, for appellee mother.

Edward Kross, Clinton, for appellee intervenor.

Stephen D. Haufe of Frey Haufe & Current, P.L.C., Clinton, for minor
children.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

BAKER, J.

A father appeals from the juvenile court order terminating the parental rights to his children. Because clear and convincing evidence supports the termination of the father's parental rights, and the termination is in the children's best interests, we affirm.

I. Background and Facts

Jeremy is the father and Renee is the mother of a son born in October 1995 and a daughter born in May 1997.¹ In 1998, Renee consented to placing guardianship of the children with Jeremy's father and stepmother, Mike and Julie. In September 2000, the guardians and Jeremy agreed to a visitation schedule for Jeremy. In May 2006, Mike, passed away. Guardianship with Julie continues.

Jeremy has a history of altercations with women. He has a criminal history of domestic violence, simple assault, false imprisonment, and assault with injury. He has been diagnosed with bi-polar disorder, for which he refuses to take his prescribed medication. Jeremy has problems with anger management.

The Iowa Department of Human Services (DHS) became involved with the family in February 2006 due to allegations of domestic violence between Jeremy and his paramour, Amie. The incident took place in the presence of the children. DHS found a denial of critical care and failure to provide proper supervision and filed a petition alleging a need for assistance. A protective order providing for no contact between Jeremy and the children was issued at that time. When the children were adjudicated in need of assistance on May 18, 2007, the protective order was vacated with the understanding that visitation would be supervised.

¹ Jeremy is the father to four other children who are not the subject of this appeal.

Another domestic violence incident occurred between Jeremy and Amie on June 2, 2006. At a June 7, 2006 family team meeting, Jeremy agreed to cooperate with DHS services, including random drug testing. Throughout the month of June, Jeremy refused to comply with the DHS case plan, including the drug testing. During this time, it was alleged that Jeremy slashed Amie's car tires, broke a no-contact order between him and Amie by leaving her threatening messages, and told his son that Mike had been killed by Julie. Pursuant to a July 28, 2006 court order, all visitation and contact between the children and Jeremy was terminated due to Jeremy's uncooperative behavior.

In approximately July 2006, Jeremy left the state for Fargo, North Dakota. He returned to Iowa in March 2007. On March 19, 2007, he appeared at Julie's home and angrily demanded to see his children. The daughter reported being afraid of Jeremy. The children have not had approved contact with Jeremy, nor has he complied with the DHS case plan, since June 2006.

On November 19, 2007, the juvenile court terminated Jeremy's parental rights pursuant to Iowa Code section 232.116(1)(f) (2007).² The court also ordered that custody and guardianship continue with Julie and that DHS assist her in the permanency and adoption process. Jeremy appeals the termination.

II. Merits

We review termination orders 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.* "Clear and convincing evidence" means there are no

² The juvenile court also terminated Renee's parental rights pursuant to Iowa Code section 232.116(1)(b). Renee is not a party to this appeal.

serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.” *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). Our primary concern is the best interests of the children. *Id.* Even where the statutory requirements are met, the decision to terminate parental rights must still be in the children’s best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994).

Jeremy contends the State failed to prove the grounds for terminating his parental rights by clear and convincing evidence. In order to support termination under section 232.116(1)(f), the State must establish the following:

- (1) The child is four years of age or older.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child’s parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child’s parents as provided in section 232.102.

The first three requirements of section 232.116(1)(f) are clearly met. Regarding the fourth, Jeremy does not contend the children could be returned to his care. Rather, he contends that the guardianship of the children should continue, and that he should be allowed visitation. He argues that (1) because he is not seeking custody of the children, termination is not necessary unless the relationship between him and his children is proven to be harmful to the children, and (2) because he has not recently contested the guardianship, the court erred in reasoning that simply continuing the guardianship would not provide permanency. Notwithstanding Jeremy’s failure to cite any authority to support his

arguments, we find clear and convincing evidence supports the termination. See Iowa R. App. P. 6.14(1)(c) (“Failure in the brief to state, to argue, or to cite authority in support of an issue may be deemed waiver of that issue.”).

The children have lived with Julie for nearly all of their lives, and they view her as their parent. Jeremy has added nothing of value to the children’s lives. Rather, he has scared them by subjecting them to violence. When given the opportunity to participate in DHS services, he was uncooperative. Jeremy has not functioned as a parent in the past, and we doubt he would do so in the future. 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.”). These children should not have to wait for Jeremy to demonstrate an ability to parent. See *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997) (“A parent does not have an unlimited amount of time in which to correct his or her deficiencies.”).

We agree with the juvenile court that “[t]o continue the guardianship is to continue with a lack of permanency and stability in the life of these children.” The children need permanency. Julie has provided a stable home. The continued legal relationship of Jeremy with the children threatens that stability. At this point, the rights and needs of the children surpass Jeremy’s rights and needs. See *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997) (“At some point, the rights and needs of the child rise above the rights and needs of the parents.”).

We find the clear and convincing evidence supports the termination of Jeremy’s parental rights. The termination is also in the children’s best interests. Accordingly, we affirm the termination of Jeremy’s parental rights.

AFFIRMED.