

**IN THE COURT OF APPEALS OF IOWA**

No. 8-346 / 08-0137  
Filed May 14, 2008

**IN THE INTEREST OF T.E.F.-M.,  
Minor Child,**

**J.M., Father,  
Appellant.**

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Appeal from the Iowa District Court for Clarke County, David L. Christensen, Judge.

A father appeals from the district court order terminating his parental rights. **AFFIRMED.**

David Pargulski, Des Moines, for appellant father.

Dustria Relph of Chamber Law Firm, Corydon, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Ronald L. Wheeler, County Attorney, for appellee State.

Karen Emerson-Peters, Atlantic, for maternal grandmother.

Patrick Greenwood, Lamoni, for minor child.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

**HUITINK, J.**

Jimmy appeals from the trial court's termination of his parental rights in regard to his nine-year-old son, Tyson.<sup>1</sup> We affirm.

**I. Background Facts and Prior Proceedings**

Tyson first came to the attention of the Iowa Department of Human Services (DHS) in February 2005 because of his inappropriate sexual behaviors at school. During the investigation, DHS became concerned that both parents might be abusing drugs. The mother refused to submit to a drug test. Jimmy's drug test came back positive for methamphetamine and amphetamines. DHS also received reports that Tyson may have been sexually abused while under his parents' care.

Tyson and his two younger sisters were removed from the family home on March 31, 2005. Further investigation revealed that Tyson was sexually abused by a family friend while this person lived with Tyson and his parents in the family home. Jimmy did not attend meetings to address Tyson's mental health and safety needs. Tyson was adjudicated a child in need of assistance on April 14, 2005, and kept in family foster care. Tyson's parents separated, but remained married. Because of his extreme behavioral problems related to his previous sexual abuse, Tyson was shuffled between foster care families until he was placed with his current foster family in June 2006.

Jimmy continued to abuse drugs and exercise his visitation privileges sporadically. Eventually, in March 2007, he completed all of his required drug treatment programs. However, he had still not progressed past supervised

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<sup>1</sup> The parental rights of Tyson's mother were also terminated and are not at issue here.

visitations. One reason for this lack of progress was his lack of interaction with Tyson during visitations. Rather than speak or engage with Tyson, Jimmy would often just sit and watch Tyson play. When prompted to interact with his son, Jimmy put forth minimal effort. Tyson even questioned why his father did not talk with him more during visitation. As of October 21, 2007, Jimmy stated he was “not used to being around” Tyson and he did not feel comfortable around him.

On November 14, 2007, the juvenile court ordered the county attorney to file a termination petition. During the next six weeks, Jimmy’s interactions with Tyson began to increase, but he still did not make enough progress so that service providers would recommend unsupervised visitation.

The court held a termination hearing on January 9, 2008. At the hearing, the court learned that in the two and one-half years since he was removed from the family home, Tyson had never had a trial visit in Jimmy’s home. The court also learned Tyson still had emotional issues related to feelings of safety and security. He had made progress with his current foster parents and established an emotional bond with them, but was very anxious about where he would live on a permanent basis. His current foster parents testified they would be willing to adopt Tyson once his parents’ parental rights were terminated.

At the end of the hearing, the court issued an order terminating Jimmy’s parental rights with regards to Tyson pursuant to Iowa Code section 232.116(1)(f) (2007). Jimmy now appeals.

## 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, and our primary concern is the child's best interests. *Id.*

## III. Merits

On appeal, Jimmy contends the evidence does not support termination under section 232.116(1)(f) because the State failed to meet its burden to prove Tyson cannot be returned to his care at this time. He argues that he has cured the circumstances that led to the adjudication and made sufficient progress to have Tyson returned to his care. Alternatively, he claims the State should allow him additional time until it can be recommended that Tyson be returned to his care.

Section 232.116(1)(f) provides parental rights can be terminated if the State proves by clear and convincing evidence that the child: (1) is four years of age or older; (2) has been adjudicated CINA; (3) has been removed from the physical custody of his parents for the last twelve consecutive months with any trial period at home lasting less than thirty days; and (4) cannot be returned to the custody of his parents as provided in section 232.102.

The first three elements of section 232.116(1)(f) are not in dispute. The only question is whether Tyson can be returned to Jimmy's care. Upon our de novo review of the record, we conclude that Tyson cannot be returned to Jimmy's care at this time. Tyson's therapist described Tyson's significant emotional needs related to his previous sexual abuse. Part of his condition is that he does not trust adults. He has generalized fears and anxieties because the adults in his

life have not always been what he thought they were supposed to be. The DHS case manager testified that it would be extremely traumatic for Tyson if he were to be returned to his father's care. While Jimmy has stopped abusing drugs, he has not shown he is capable of caring for his son. Because Jimmy has shown little interest towards his son's mental health or emotional needs, we are firmly convinced that returning Tyson to his custody would have a significant negative impact on Tyson's mental health.

We also find termination would be in Tyson's best interests and reject Jimmy's request for more time to prove he can care for his son. 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 twelve-month statutory scheme set forth in section 232.116(f). See *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). The purpose of this twelve-month limitation "is to prevent children from being perpetually kept in foster care and to see that some type of permanent situation is provided for the children." See *In re J.P.*, 499 N.W.2d 334, 339 (Iowa Ct. App. 1993) (discussing the limitation found in section 232.116(1)(e)). Tyson has spent more than thirty-three months in foster care waiting for his father to prove he is willing and able to provide for his care. He can wait no longer; he deserves 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 specially) ("A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests.").

The State has provided clear and convincing reasons for termination under section 232.116(1)(f) and shown that termination is in Tyson's best interest. Accordingly, we affirm the district court's ruling terminating Jimmy's parental rights with regards to Tyson.

**AFFIRMED.**