

IN THE COURT OF APPEALS OF IOWA

No. 8-390 / 08-0608

Filed June 11, 2008

**IN THE INTEREST OF R.M.,
Minor Child,**

**A.A.M., Father,
Appellant,**

**A.M.L., Mother,
Appellant.**

Appeal from the Iowa District Court for Wapello County, William S. Owens,
Associate Juvenile Judge.

A father and mother appeal separately from the order terminating their
parental rights. **AFFIRMED ON BOTH APPEALS.**

Ryan Mitchell of Orsborn, Milani & Mitchell, L.L.P., Ottumwa, for appellant
father.

Mary Krafka of Krafka Law Office, Ottumwa, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Mark Trammel, County Attorney, and Seth Harrington,
Assistant County Attorney, for appellee State.

Samuel Erhardt, Ottumwa, for minor child.

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

ZIMMER, J.

A father and mother appeal separately from the order terminating their parental rights to their child. We affirm on both appeals.

I. Background Facts and Proceedings.

Angelea is the mother and Aidan is the father of Reyslynn, born in September 2005.

Reyslynn came to the attention of the Iowa Department of Human Services (Department) in January 2006 after a report that the child had been exposed to illegal drugs. Angelea and Aidan both admitted to using methamphetamine. Shortly after Reyslynn tested positive for exposure to methamphetamine and marijuana, she was removed from her parents' care and placed in foster care.

In February 2006 Angelea began to participate in outpatient substance abuse treatment; however, she was subsequently unsuccessfully discharged from her treatment program. On March 9, 2006, Reyslynn was adjudicated a child in need of assistance (CINA) and ordered to remain in foster care.

On March 9, Aidan and Angelea were both charged with arson arising out of allegations that they had participated in burning down an historic church. Angelea, who was then fifteen years old, was placed in detention, and Aidan was placed in jail. Subsequently, Aidan and Angelea pled guilty to arson charges.

Aidan received a suspended ten-year sentence, and he was ordered to reside at the Ottumwa Residential Facility as a condition of his probation. While residing at that facility, Aidan violated the conditions of his probation by using

illegal drugs. Aidan's probation was revoked in January 2007, and he was sent to prison. His earliest possible release date is in June 2009.

As part of Angelea's delinquency case, she was ordered to participate in a group care program at the House of Mercy where she was allowed to have Reyslynn live with her. Unfortunately, Angelea elected to leave that program in October 2006. As a result, she was unsuccessfully discharged from the House of Mercy, and her daughter was returned to foster care. Reyslynn has been out of her mother's care ever since.

Angelea spent a short time in detention after leaving the House of Mercy. She was then placed in another group care program. She was successfully discharged from that program in April 2007. Upon her discharge, Angelea was placed in her mother's custody. Initially, Angelea participated in skill development, substance abuse treatment, and visits with Reyslynn. However, on October 2, 2007, Angelea ran away from her mother's home, which resulted in her being unable to participate in services and visits with her daughter.

On October 25 Angelea was arrested on a warrant and again placed in detention. At the time of her arrest, she tested positive for amphetamine and methamphetamine. In late November 2007, Angelea was placed in a substance abuse treatment program, where she participated in services and resumed visits with Reyslynn.

The State filed a petition to terminate Angelea's and Aidan's parental rights on December 19, 2007. The juvenile court held a contested termination hearing on February 18, 2008. At the hearing, the family's social worker stated there were continuing concerns about Angelea's ability to remain drug-free

outside of a substance abuse program. She testified she did not believe Reyslynn could be returned to either parent's care. The child's guardian ad litem agreed with the social worker's conclusion that it was in Reyslynn's best interests to terminate Angelea's and Aidan's parental rights.

In an order filed April 1, 2008, the juvenile court terminated Angelea's and Aidan's parental rights to Reyslynn pursuant to Iowa Code section 232.116(1)(h) (2007) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home). Angelea and Aidan have appealed separately.

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). The grounds 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 child'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 child's best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). When we consider the child's best interests, we look to her 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, Aidan and Angelea contend the grounds for termination were not supported by clear and convincing evidence. They also maintain termination is not in the best interests of their child. Upon our review of the record, we find no merit in the parents' arguments.

A. Grounds for Termination.

Aidan and Angelea both contend the court erred in terminating their parental rights because they have cooperated with services and should be given additional time to participate in reunification services. Angelea further contends the court erred in terminating her parental rights because the State failed to show that Reyslynn could not be returned to her care. For the reasons that follow, we disagree.

Aidan has been in jail, a halfway house, or prison since Reyslynn's March 2006 CINA adjudication. He was sent to prison after he violated his probation by using drugs. Aidan testified the earliest possible date he could be released from prison would be in June 2009. Although Aidan initially did well while participating in services and visits with Reyslynn, his subsequent actions resulted in his unavailability as a parent. Aidan cannot fault the Department for being unable to provide additional services when his own actions prevented him from taking advantage of services. *In re M.T.*, 613 N.W.2d 690, 692 (Iowa Ct. App. 2000).

Despite receiving extensive services, Angelea has continued to struggle with drug abuse. In October 2007 she ran away from her home and used drugs again. Following her arrest, she tested positive for amphetamine and methamphetamine. Although she was about to graduate from inpatient substance abuse treatment at the time of the termination hearing, serious concerns still remain regarding her ability to remain drug-free outside of treatment.

Simply put, both Angelea and Aidan have continued to make choices that make reunification with their daughter impossible. Neither parent is in a position

to provide a safe and stable home for Reyslynn now or in the near future. We find clear and convincing evidence supports the juvenile court's decision to terminate Aidan's and Angelea's parental rights under section 232.116(1)(h).

B. Best Interests.

At the time of the termination hearing, Reyslynn was two years old and had been out of her parents' care for more than half of her life. Reyslynn has bonded with her foster family and is thriving under their care. Her foster parents have expressed their desire to adopt Reyslynn.

Aidan and Angelea have previously been given two extensions of time to work toward reunification with Reyslynn, one on April 10, 2007, and another on July 13, 2007. The parents have been provided with extensive services since the inception of this case; however, these services have proved unsuccessful. The evidence does not support the conclusion that additional time would allow Reyslynn to be returned to either parent's care.

When parents are incapable of changing to allow a child to return home, termination is necessary. *In re T.T.*, 541 N.W.2d 552, 557 (Iowa Ct. App. 1995). Reyslynn deserves stability and permanency, which her parents 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 Aidan's and Angelea's parental rights is in the child's best interests.

IV. Conclusion.

We affirm the juvenile court's decision to terminate Aidan's and Angelea's parental rights.

AFFIRMED ON BOTH APPEALS.