

IN THE COURT OF APPEALS OF IOWA

No. 9-246 / 09-0101
Filed April 22, 2009

**IN THE INTEREST OF V.S.,
Minor Child,**

**J.E.S., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Joe E. Smith,
Associate District Judge.

A father appeals the termination of his parental rights to his child.

AFFIRMED.

Francis Hurley of Phil Watson, P.C., Des Moines, for appellant father.

Todd Babich, Des Moines, for appellee mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Jennifer Galloway,
Assistant County Attorney, for appellee State.

Paul White of Des Moines Public Defender's Office, Des Moines, for minor
child.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

VAITHESWARAN, J.

Jesus appeals the termination of his parental rights to his daughter, born in 2007. He contends (1) the State failed to prove the grounds for termination by clear and convincing evidence and (2) termination of parental rights was not in the child's best interests.

I. We may affirm if we find clear and convincing evidence to support any of the grounds cited by the district court. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). On our de novo review, we believe the evidence supports the district court's conclusion that the child could not be returned to the father's custody. See Iowa Code § 232.116(1)(h) (2007) (requiring proof of several elements, including proof that child was removed from parents for at least six of the previous twelve months and could not be returned to parent's custody).

Jesus's child was removed from her parents' care in late May 2008 after the child's mother, Jamie, was found to have abused a half-sibling. Jesus was not present when the abuse occurred. According to Jamie, he happened to come over twenty minutes after it occurred and he agreed to take Jamie and the child to a Des Moines hospital. The child was later transferred to the University of Iowa Hospitals in Iowa City and Jesus agreed to drive Jamie and her father there. Jesus was not administratively cited for abuse or neglect in connection with this incident or criminally charged with or convicted of child endangerment.

Jesus's child and two of her three half-siblings were placed with Jesus's cousin and his wife, a placement that Jesus helped to arrange. Jesus stipulated to the child's removal and took no position with respect to her adjudication as a child in need of assistance. Although he maintained continuous contact with her,

those contacts were uniformly supervised by the foster mother. The foster mother assisted him with basic parenting skills including diaper changes, which Jesus conceded he had never performed while the child was in his custody.

Meanwhile, the six-month window for reunification slipped away with little progress toward reunification. The department noted that Jesus could have but did not ask an “FSRP” worker to provide additional time with his daughter. The department also stated that to reunify with his daughter, Jesus would have to “demonstrate the ability to appropriately care for [the child] and provide her with a safe home environment.” Although Jesus testified that he complied with the specific expectations set forth in an order entered one month before the termination hearing, his failure to insist on unsupervised visits or trial home placements within the six month statutory removal period made immediate reunification untenable.

In Jesus’s case, the effect of time was even more pronounced because he faced deportation and had agreed to leave the country within two months of the termination hearing. Therefore, the district court could not have extended the period for reunification. Meanwhile, his daughter developed a “profound” bond with her foster mother, viewed her foster parents as her mother and father, and showed an attachment to her half-siblings. Because the record does not reveal that Jesus could parent his daughter on his own, we agree with the district court that the child could not be returned to his custody.

The State advances several other reasons to support the termination decision. We will address those reasons.

First, the State asserts that Jesus had a history of domestic violence. On this point, the record reflects that Jamie accused Jesus of abusing her and, in response, the State charged Jesus with domestic abuse assault causing injury. The charge was dismissed in January 2008 at Jamie's behest. The dismissal was entered more than four months before the children were removed from the parents' custody. When the prosecutor asked Jesus why he remained with Jamie after she levied the charge, he testified, "Because I wanted to be with my daughter." While the mother broadly apprised the department of other instances of abuse, she did not testify at the termination hearing and the department did not specify the nature or timing of those other acts. On our de novo review, we reject this rationale for terminating Jesus's parental rights.

Second, the State asserts that Jesus abused alcohol. The record reflects that Jesus pled guilty to public intoxication in 2005. At the termination hearing in late 2008, he testified without contradiction that he drank once a month. As this ground was not developed, we decline to rely on it in affirming the termination decision.

Finally, the State asserts that Jesus did not fully cooperate with reunification services. The record reflects that Jesus regularly visited the child at his cousin's home. A court-appointed special advocate who attended an early visit stated that "he appeared to be very attentive to her." A social worker stated that she saw Jesus during one visit and found him to be "gracious" and "cordial." In July 2008, the foster mother reported that Jesus visited his daughter every night. While the foster mother complained that Jesus sometimes arrived for visits

late in the evening, Jesus explained that he often had out-of-town construction jobs that prevented him from coming earlier.

In addition to engaging in visits, Jesus complied with other recommended services. When ordered to provide urine samples for drug testing, he explained that because he was generally out of town during the day, he desired an alternate method of compliance. In August 2008, the department administered a patch test to screen for drugs. In a subsequent report, the department explained that the lab results from that test were unavailable through no fault of Jesus. A later test was negative for the presence of drugs.

Less than one month before the termination hearing, Jesus was ordered to undergo a substance abuse evaluation. At the termination hearing, he testified that he complied with that order. During the child-in-need-of-assistance proceedings, Jesus was also advised that his housing situation was inappropriate. At the termination hearing, Jesus testified that he had secured his own apartment and a daycare provider. According to a department report, Jesus also met with a department worker on a monthly basis. In addition, he gave his cousin \$100 a week to help support his daughter and helped with obtaining school supplies for his daughter's half-siblings. At the termination hearing, he conceded that he missed one payment because he did not have the money, but it was clear that all the payments were voluntary.

Jesus requested custody of his daughter within two months of the child's removal and did his best to comply with recommended services. Although he did not proactively seek unsupervised visits, trial home placements, or parent-skills training, we decline to affirm the termination decision on the ground that he failed

to cooperate with the department. As stated earlier, however, we agree with the district court that the child could not be returned to her father's custody.

II. The ultimate consideration in this case is the child's best interests. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). There is no question that Jesus shared a bond with his daughter, but there is also no question that she became attached to her foster parents. In particular, a social worker testified that the bond between the child and her foster mother was greater than the bond between the child and her father and the child would suffer harm if she were forced to leave the foster home. For this reason, we agree with the district court that termination was in the child's best interests.

AFFIRMED.