

IN THE COURT OF APPEALS OF IOWA

No. 9-569 / 09-0780

Filed July 22, 2009

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

**S.M., Father,
Appellant.**

Appeal from the Iowa District Court for Scott County, Christine Dalton Ploof, District Associate Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Joel Walker, Davenport, for appellant father.

Lucy Valainis, Davenport, for mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Michael J. Walton, County Attorney, and Gerda Lane, Assistant County Attorney, for appellee State.

Stephen Newport of Newport & Newport, P.L.C., Davenport, for minor children.

Considered by Vogel, P.J., and Mahan and Potterfield, JJ.

MAHAN, J.

Shawn appeals from the district court's order terminating his parental rights to his three-year-old daughter J.M. (J.M. I) and two-year-old daughter J.M. (J.M. II). We affirm.

I. Background Facts and Proceedings.

J.M. I and J.M. II are the children of Shawn and Shamicka.¹ The children resided with Shamicka until February 2007, when she was incarcerated for drug dealing and forgery.² At that time, Shawn took over the parenting duties. The instant case came to the attention of the Iowa Department of Human Services (DHS) in December 2007, when a neighbor took J.M. II to the hospital with a high fever. At the time, the children were living with Shawn in a dirty, roach-infested home, furnished with one bed and very little food.

The neighbor and medical professionals were unable to locate Shawn upon J.M. II's arrival at the hospital. Tests revealed that J.M. II had heroin in her system, was very dehydrated, and would have died within a few days due to extreme malnourishment. She remained hospitalized for nearly a month. J.M. I tested positive for cocaine at that time. On December 20, 2007, the court ordered removal from Shawn's home. J.M. I was placed in family foster care. J.M. II joined her sister in the same family foster home upon her release from the hospital. The children were diagnosed as failure to thrive while in Shawn's care, but have since grown significantly in height and weight, are current on their immunizations, and are reported as healthy and developmentally normal.

¹ Shamicka's parental rights were also terminated, but she does not appeal.

² Shamicka has remained incarcerated since that time.

On February 13, 2008, J.M. I and J.M. II were adjudicated children in need of assistance (CINA) and placement was continued in family foster care. A case permanency plan was adopted that called for Shawn to find a suitable home for himself and the children, obtain full-time employment, obtain a substance abuse evaluation and cooperate with any recommended treatment, and attend all of the scheduled supervised visitations with his children.

At the time of termination, Shawn remained unemployed and was in and out of jail. Although Shawn completed a substance abuse evaluation, he did not follow through with aftercare recommendations. Shawn found an apartment to live in for a period of several months that he shared with four other people; however, he did not allow visits at the apartment because too many people were coming in and out. Furthermore, although Shawn attended most of the visits with the girls, in April 2009 he began missing or showing up late to more visits, and did not appear to be himself.

Shawn has admitted to having a strong history of violence. During the pendency of these proceedings, Shawn violated a no-contact order issued by the district court and failed to attend batterers' education program classes or any other anger management classes. Shawn also failed to comply with a recommendation for individual therapy. In December 2008, Shawn was incarcerated for about seventeen days for domestic assault and failure to pay a fine. He was incarcerated again in January 2009, and had informed a DHS caseworker prior to termination that he was going to have to go back to jail.

Shawn has had thirteen children with five women. Most recently, he fathered a baby boy in July 2008 with his current girlfriend. DHS has an open

case on that child because it was born drug exposed. Shawn does not financially support any of his children, nor does he appear to have relationships with the children. With regard to J.M. I and J.M. II, DHS reported that it seemed Shawn just “wanted to keep this case open and have Shamicka get out of prison and then he would give custody back.”

On October 15, 2008, the State filed a termination petition. After a contested hearing, the court terminated Shawn’s parental rights on May 11, 2009, pursuant to Iowa Code sections 232.116(1)(e) and (h) (2007). Shawn now appeals.

II. Scope and Standard of Review.

We review termination of parental rights de novo. *In re Z.H.*, 740 N.W.2d 648, 650-51 (Iowa Ct. App. 2007). Grounds for termination must be proved by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Our primary concern is the best interests of the children. *Id.*

III. Issues on Appeal.

A. Clear and Convincing Evidence.

Shawn argues the court erred in terminating his parental rights because he substantially complied with the case plan. He contends he attended almost all of the supervised visitations. He further alleges that if the children were returned to his care he would move to Illinois and live with his parents in a house, and that he would easily find employment there.

Upon our review of the record, we find Shawn did little to comply with the case plan. Shawn has failed to maintain employment, complete substance abuse treatment, attend therapy, or find suitable housing for himself and the

children. Although he generally complied with visitation, he never progressed to unsupervised visitation, and there have been incidents during supervised visitation causing concern. During the four-to-five-month period Shawn did obtain housing, he shared an apartment with four other people and would not allow DHS to see the apartment because there were too many people going in and out. As the juvenile court stated, "The bottom line for [the] father is that he simply has not progressed or shown an ability to progress in the near future. The children need a home now; not when Shawn gets around to it."

We agree. Shawn received numerous services to reduce and eliminate the adjudicatory harms present in his home; however, he failed to comply with the case plan or make any progress toward unsupervised visitation. He has been in and out of jail and has a number of legal problems. He has struggled to find basic housing and employment. Shawn has many issues to address and improve on before he could safely and effectively parent the children. The children have been removed from his care since December 2007, yet Shawn has not demonstrated significant improvement over many months of services.

The record clearly supports Shawn's inability to provide a safe environment for the children, and returning J.M. I and J.M. II to his home is not an option. There is no reason to further delay the children the permanency they need and deserve. We find clear and convincing evidence supports termination of Shawn's parental rights under sections 232.116(1)(e) and (h), and we affirm on this issue.

B. Best Interests.

Shawn also argues termination of his parental rights is not in the best interests of J.M. I and J.M. II. We disagree. The children were removed from Shawn's care in December 2007 because Shawn's residence was filthy and unfit, and because the children both tested positive for drugs. At that time, J.M. II was so extremely sick, dehydrated, and malnourished nearly to the point of death and had to remain hospitalized for close to a month. The children were both diagnosed as failure to thrive and their immunizations and physicals were not current.

We are convinced the children's interests are best served by terminating Shawn's parental rights and making J.M. I and J.M. II eligible for continued placement in a safe and stable home. Since the children were removed from Shawn's care, he has done little to nothing to improve the situation and resume care of the children. The children deserve the opportunity to establish permanency in a healthy and safe environment. We find termination of Shawn's parental rights is in J.M. I's and J.M. II's best interests.

AFFIRMED.