

IN THE COURT OF APPEALS OF IOWA

No. 9-780 / 09-1228
Filed October 21, 2009

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

**E.L.A., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Constance Cohen,
Associate Juvenile Judge.

A father appeals the district court's order terminating his parental rights to
his two children. **AFFIRMED.**

David Pargulski, Des Moines, for appellant father.

Edward Bull and Jared Harmon of Bull Law Office, P.C., Des Moines, for
appellee mother.

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

Karl Wolle, Des Moines, for minor children.

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

VOGEL, P.J.

A father appeals from the district court's order terminating his parental rights to his two children, born in 2003 and 2006, pursuant to Iowa Code sections 232.116(1)(f), (h), and (l) (2009).¹ On appeal, he challenges the sufficiency of the evidence, essentially arguing that the children could be returned to his care, and claims he should have been given more time prior to termination.

We review termination of parental rights de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). In May 2007, the children came to the attention of the Iowa Department of Human Services (DHS) after the younger child burned her hand on an open heater in the family home. Although the father agreed to participate in services, he became hostile with DHS workers and did not follow through with services. The children's health concerns with lice and scabies continued and the younger child burned her hand a second time. Subsequently, the children were adjudicated to be children in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) (2007).

The father was offered services, including mental health and substance abuse treatment, but again did not follow through with services. In January 2008, the father received a substance abuse evaluation that recommended treatment. Subsequent to the evaluation, he failed a drug screen, after which he refused to participate with substance abuse services. Additionally, that same month, the father also received an updated mental health evaluation that noted his diagnosis of explosive disorder and recommended therapy. He attended only two therapy

¹ The child-in-need-of-assistance proceedings are ongoing regarding the mother, who does not appeal.

sessions in March and April 2008, after which he refused to participate in any further mental health services. After abusing the children's mother while the children were present in March 2008, the children were removed from the father's care. He was later arrested for possession of a controlled substance for a September 2008 incident. From June 2008 to December 2008, the father did not exercise visitation with the children.

Since the children's removal, the father has not progressed past supervised visitation. During visitations he generally has positive interactions with the children, but the reports indicate he interacts with the children as a playmate and has not taken on a parental role, including implementing safety boundaries. Additionally, he continued to refuse any mental health or substance abuse services. In March 2009, the children had to be moved to a new foster home because the father had threatened the children's foster parents such that workers were concerned for the children's and foster parents' safety. In April and May 2009, DHS workers reported incidents where the father was hostile and threatening.

A June 2009 report to the court stated,

[The father] has not participated in any services to remedy his unstable mental health or substance abuse issues. He has refused to participate in any substance abuse recommendations and has not followed through [with] recommendations made in regards to his mental health. The situation is no different today than when the children were originally removed from his custody and care in May 2008.

At the July 2009 termination hearing, when the father was asked why he had not provided any drug screens for DHS, he answered: "Because I'm not willing to

work with them.” He was unemployed and admitted that he needed to get a job before the children could be returned to him.

The father asserts the children could be returned to his care and he should have been granted additional time. We find his arguments without merit. We agree with the district court that the father’s “acts and omissions demonstrate no desire to participate in reunification services other than supervised visitation.” There is no indication additional time would remedy the situation, especially due to his refusal to participate with services and his expressed aversion to DHS. See *J.E.*, 723 N.W.2d at 798 (stating that we look to the parent’s past performance because it may indicate the quality of care the parent is capable of providing in the future). “At some point, the rights and needs of the child rise above the rights and needs of the parents.” *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997).

Upon our review, we find the district court had clear and convincing evidence to support termination of the father’s parental rights and termination is clearly in the children’s best interests. See *J.E.*, 723 N.W.2d at 801 (Cady, J., concurring specially) (stating a child’s safety and need for a permanent home are the defining elements in determining a child’s best interests). Accordingly, we affirm.

AFFIRMED.