

IN THE COURT OF APPEALS OF IOWA

No. 9-305 / 89-389

FILED

AUG 23 1989

CLERK SUPREME COURT

In the Interest of C.B., C.B.,
H.B., C.B., and C.B.,
Minor Children.

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C.B., Child,
Appellant,
C.B., Father,
Appellant.

Appeal from the Iowa District (Juvenile) Court for
Dubuque County, Charles H. Jacobs, Juvenile Referee.

The father and oldest child appeal the juvenile court
decision terminating the parental rights of both parents
with respect to five children. **AFFIRMED.**

Chadwyn D. Cox of Reynolds & Kenline, Dubuque, for
appellant father.

Karen Kienast, Dubuque, for appellant child.

Thomas J. Miller, Attorney General of Iowa, and Charles
K. Phillips, Assistant Attorney General, for State of Iowa.

Mary Browne McCuskey of Clemens, King & McCuskey,
Dubuque, guardian ad litem for the children.

Considered by Danielson, P.J., and Schlegel and
Sackett, JJ.

SCHLEGEL, J.

Appellant-father and appellant-daughter separately appeal the termination of parental rights with respect to five children. The father contends the juvenile court should have avoided termination under Iowa Code section 232.116(3)(e) because his absence from the children's lives was due to his incarceration. The oldest child, a fifteen-year-old runaway who objected to termination, contends the juvenile court erred by failing to grant a continuance until she could be found and brought into court to voice her objections. She also contends Iowa Code section 232.116(3)(b) requires that any child over ten years old, and who objects to termination, must be given an opportunity to be heard. We affirm.

This case involves five children, girls born in July 1973, September 1976, April 1981, and November 1986, and a boy born in August 1978. Their parents were married to each other; apparently the marriage has never been dissolved, although the parents have been separated since 1987.

In January 1987 the oldest girl was adjudicated to be a child in need of assistance after reporting sexual abuse by the father over an extended period. She was placed in foster care at that time. The father was convicted of sexually abusing this girl and was sentenced to prison; he remains imprisoned to date.

The other four children lived with their mother until August 1987. At that time all four were adjudicated to be children in need of assistance due to their mother's neglect, substance abuse, and multiple short-term relationships with abusive men. These four children were placed in foster care in September 1987. Three of them have remained in foster care continuously since that time; the youngest child was placed with the mother in February 1988 but was returned to foster care in May 1988 and has since remained there.

The oldest girl was returned to her mother's home in June 1988, subject to a requirement that she undergo a mental health evaluation to determine the most appropriate residential placement. She was scheduled to be transported to a facility for a mental evaluation December 7, 1988. However, in the early morning hours of that day she ran away from home, allegedly in the hope of preventing a permanent removal from her mother's home. Her whereabouts remain officially unknown, although she has had telephone contact with her mother and has apparently had certain informal contacts with juvenile court authorities. Her mother is suspected of helping or encouraging her to run away in order to avoid foster care placement. The daughter is reported to be strongly opposed to termination of the mother's parental rights.

Appellate review of termination proceedings is de novo. In re D.G., 349 N.W.2d 487, 491 (Iowa 1984). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. Id. at 491-92.

The father agrees that grounds existed to support termination under Iowa Code section 232.116(1)(e), but argues the termination should be denied under paragraph three of section 232.116. That paragraph allows the court to deny termination when the absence of a parent is due to the commitment to an institution.

The father was committed to an institution, but his absence was not the only reason for termination. The father abused alcohol and sexually abused the oldest daughter. The father argues, and is supported by several professionals, he has made substantial improvements and is taking responsibility for his past behavior. However, even the professionals who support his contentions testified that he could not be a full-time parent for some time. These children should not be forced to endlessly wait the maturity of their parents. In Interest of T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). The psychologists who treated the children testified that the children need stability in their lives and need it soon. The terminating court may also take into consideration the harm to the children in

waiting for a parent to develop the ability to take care of them. In the Interest of A.C., 415 N.W.2d 609 (Iowa 1987). The children have been in foster care for over a year and the best interests of the children require that they be allowed to get on with their lives. The order terminating the father's parental rights in his children was proper.

The appellant-daughter contends that Iowa Code section 232.116(3)(b) requires that a child over the age of ten be given the opportunity to be heard. We need not address whether this section requires that the child be heard because the daughter clearly was given an opportunity to be heard and was represented by a guardian ad litem and an attorney during the proceeding.

The court had the daughter's objections to the termination before it. Under the Iowa Code the court should consider the wishes of the child merely as a factor. Even if the daughter had appeared personally and expressed her desire to remain with her mother or father, the court did not have to follow it.

The daughter had the opportunity to be heard but chose not to attend the hearing. There was evidence to suggest that she was deliberately avoiding the hearing to prevent termination. A child cannot be allowed to prevent a proceeding which is in her own interest simply by running away. In this case the child's objections were before the

court and she was represented. The juvenile court did not err in failing to grant a continuance until the child could be made to appear.

The daughter also challenges the action of the juvenile court referee. The referee stated that he had seen the daughter himself the day before the hearing. The appellant contends that the referee improperly based his denial of the motion to continue on this personal knowledge. There is substantial evidence apart from the referee's statement to suggest that the daughter was avoiding the hearing. She had talked to her mother on the phone, and had made statements that she wished to avoid the proceedings. The juvenile court was correct in denying the motion to continue.

AFFIRMED.