FILED
OCT 22 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF K.E.B., M.K.B., AND C.E.B., Children,

R.B., Natural Father,

Appellant.

Filed October 22, 1986

6-348
86-381

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Appeal from the Iowa District Court for Mills County (Juvenile #J-668) - James S. Heckerman, District Associate Judge.

The natural father of three children appeals from the juvenile court order terminating his parental rights pursuant to Iowa Code sections 232.116(3) and 232.116(5). **AFFIRMED.**

Gary K. Anderson of Anderson & Wheeler, Council Bluffs, Iowa, for appellant.

Thomas J. Miller, Attorney General of Iowa; Gordon E. Allen, Special Assistant Attorney General; and Valencia Voyd McCown, Assistant Attorney General, for appellee State.

E. Daniel O'Brien of Porter & Tauke, Council Bluffs, Iowa, for appellee B.B., the natural mother.

Heard by Snell, P.J., Schlegel, and Hayden, JJ.

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HAYDEN, J.

R.B. and B.B. are the natural parents of three children: M.K.B., born in 1978; C.E.B., born in 1980; and K.E.B., born in 1982. The children were taken from the home of their parents on October 18, 1982, due to allegations they had been physically abused by their parents. On October 20, 1982, a shelter care hearing was held and, by agreement of the parties, the children remained in foster care. On November 23, 1982, a CHINA adjudication was held and the children were determined to be in need of assistance based on the findings that R.B. had physically abused them. The children were placed in foster care through the department of human services.

On April 2, 1985, the State of Iowa filed a petition seeking to terminate the parental rights of R.B. and B.B., pursuant to Iowa Code sections 232.116(3) and 232.116(5) (1985). The matter came before the court for hearing on June 14, 1985. On February 10, 1986, the juvenile court judge filed an order terminating the parental rights of R.B. and B.B.

Our review of parent-child terminations is de novo. In re Interest of K.L.G., 372 N.W.2d 223, 227 (Iowa 1985). It is our duty to review the facts as well as the law and adjudicate rights anew on those propositions properly preserved and presented to us. In re Interest of W.G., 349 N.W.2d 487, 491 (Iowa 1984), cert. denied, 470 U.S. ___, 105 S. Ct. 1212, 84 L. Ed. 2d 353 (1985).

After a careful review of the record we find the following pertinent facts: Both R.B. and B.B. possess borderline ranges of intelligence. Prior to the involvement of the juvenile court, the Department of Human Services had consulted with the family as a result of five reports of physical abuse from 1980 through 1982. The record contains numerous incidents of physical abuse by R.B. These incidents involve blows with open and closed fists, kickings with cowboy boots, and picking up a child by the neck and throwing him. R.B. admits that these

happenings occurred. He contends that the physical abuse was the result of a substance abuse problem and the stress caused by his marriage. The parties were divorced in 1984.

Iowa Code sections 232.116(3) and (5) permit termination if the court finds:

> a. One or both parents has physically or sexually abused the child; and
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> b. The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused as the result of the acts or omissions of the parent or parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding; and
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> c. There is clear and convincing evidence that the parents had received or were offered services to correct the situation which led to the abuse.
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> * * *
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> a. The child has been adjudicated a child in need of assistance pursuant to section 232.96; and
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> b. The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least twelve of the last eighteen months; and
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> c. There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102.

In considering termination proceedings our decision is controlled by the best interests of the children. In re Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). There is a presumption that the best interests of the children will be served by continued parental supervision, but this presumption is not conclusive and may be rebutted by parental conduct. In re Interest of T.D.C., 360 N.W.2d 738, 740 (Iowa 1983). When evaluating the child's best interests, we consider the long-range as well as immediate interests. Dameron, 306 N.W.2d at 745. We also recognize that in considering the future prospects for the children, if returned to the parents, we may consider evidence of the parents' past perform-

ance, for that performance may be indicative of the quality of future care. In re Interest of M.A., 367 N.W.2d 275, 278 (Iowa Ct. App. 1985).

On appeal, R.B. asserts (1) that there was not sufficient evidence that services were offered or received to correct the situation which led to the physical abuse; and (2) the State failed to establish by clear and convincing evidence that the children could not be returned to the custody of their father.

Initially, we find no merit in any assertion that the State has failed to offer services to correct the situation that led to the occurrences of physical abuse. The court ordered R.B. to attend AA meetings, comply with visitation, go to family therapy, and participate in family evaluation. Along the same lines we find that R.B. participated in a group chemical dependency program; all relating to R.B.'s physical abuse problem. Regarding section 232.116(3) we find that (a) both parents had physically abused the children, (b) the children had been adjudicated in need of assistance, and (c) the parents had received and offered services in an effort to correct said physical abuse. Any question regarding section 232.116(3) is affirmed.

R.B. further contends that he has made changes in his life sufficient to warrant the return of his children. These changes relate directly to his substance abuse treatment and his divorce from B.B. Specifically, R.B. asserts that the State failed to show that custody can't be returned to R.B. as provided in 232.102. Section 232.102(c)(6), Iowa Code (1985), refers to section 232.2(6) (1985), which provides in pertinent part: " 'Child in need of assistance' means an unmarried child . . . (b) Whose parent, guardian or other custodian physically abused or neglected the child, or is imminently likely to abuse or neglect the child." Further, R.B. asserts that no showing of imminent likelihood of physical abuse was made by the State.

It was clearly shown at trial that R.B. did not comply with the department of health case plan. More specifically he did not follow through with psychiatric counselling and has not exercised visitation on a regular basis. Generally he has failed to show a consistency in his effort to comply with the courts and the Department of Human Services suggestions. Although cooperation in the case plan is not mandatory to a return of the children, it is extremely persuasive in the court's decision. Considering R.B.'s inability to function within the parameters of the case plan and his past behavior toward the children, we affirm the finding of the trial court.

AFFIRMED.