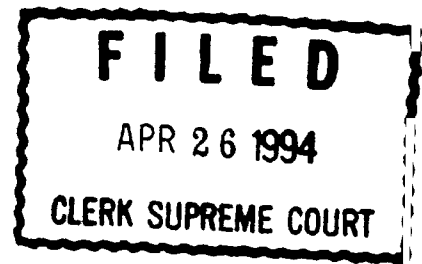


IN THE COURT OF APPEALS OF IOWA
No. 4-088 / 93-1406



IN THE INTEREST OF J.R., A Minor Child,
C.R., Father,
Appellant.

APR 26 1994

Appeal from the Iowa District Court for Black Hawk
County, Alan D. Allbee, Associate Juvenile Judge.

Father appeals an order terminating his parental
rights. **AFFIRMED.**

Mark D. Reed of Bertroche Law Offices, Des Moines, for
appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter,
Special Assistant Attorney General, Judy Sheirbon,
Assistant Attorney General, and Dan Block, Assistant County
Attorney, for appellee State.

Sharon Briner of the Public Defender's Office,
Waterloo, for minor child.

Heard by Hayden, P.J., and Cady and Huitink, JJ.

HUITINK, J.

Curtis appeals from an order terminating his parental rights to J.R., born in May 1990. He lived with J.R.'s mother, Shirley, from June 1989 until his incarceration in September 1991. His last personal contact with J.R. was in October 1991.

Curtis and Shirley began receiving services from the department of human services (DHS) in early 1991 following two founded reports of denial of critical care of Shirley's two sons. J.R. was adjudicated a child in need of assistance in June 1991. In June 1992 J.R. was removed from Shirley's custody and placed in foster care. Shirley consented to the termination of her parental rights in December 1992.

During the placement investigation for J.R., a social worker contacted Curtis in prison. In January 1993 Curtis mentioned he believed his natural mother was a Native American, possibly of the Winnebago tribe. He provided no further information.

A petition to terminate the parental rights of Curtis and Shirley was filed in February 1993. Curtis objected to Shirley's consent to termination, alleging she was incapable of voluntary consent.

At the June 1993 hearing on the petition Shirley testified she was unable to parent her children and voluntarily consented to the termination. Two social workers also testified of their attempts to gain

information concerning Curtis's claimed Native American heritage. They were told by the Winnebago tribes of Minnesota, Wisconsin, and South Dakota that they could not be of assistance without more information about Curtis's birth mother.

Curtis testified he had just completed a parole hearing and was waiting to hear if he received the necessary fourth vote for his release. He believed he would be able to care for J.R. within thirty days of obtaining a job. Curtis also testified his adoptive parents were unwilling to give him further information about his biological parents. Curtis's counsel informed the court he would contact the adoptive parents in an attempt to gain the appropriate information. Curtis refused to allow his attorney to contact his parents.

The juvenile court held the record open and ordered DHS to notify the Secretary of the Interior that a termination was pending which might affect an Indian child and afford the Secretary an opportunity to intervene in the proceedings. Notice was received by certified mail on July 9, 1993. No request to intervene or for extension of time was received within the time specified in the notice.

On August 31, 1993, the juvenile court concluded the Indian Child Welfare Act would not be applied in light of Curtis's "bare claim" of Native American heritage and the Secretary's decision not to intervene. The court found Shirley had knowingly and voluntarily requested that her

parental rights be terminated. The court terminated her rights pursuant to Iowa Code section 232.116(1)(a) (1993). It terminated Curtis's parental rights pursuant to section 232.116(1)(g) (child three years of age, previously adjudicated in need of assistance, removed from parent's custody for at least six months and cannot be returned to parent's custody at present time).

Curtis appeals contending: (1) the juvenile court failed to follow the mandates of the Indian Child Welfare Act; (2) there was insufficient evidence to support the termination; and (3) trial counsel was ineffective in failing to present available evidence refuting mother's alleged voluntary consent to termination.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984), cert. denied sub nom. J.G. v. Tauke, 469 U.S. 1222 (1985). 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 primary concern in termination proceedings is the best interest of the child. Iowa R. App. P. 14(f)(15); In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

We look to the child's long-range, as well as immediate, interests. We consider what the future holds for the child if returned to his or her parents. Insight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care the parent is capable of providing. Our statutory

termination provisions are preventative as well as remedial. They are designed to prevent probable harm to a child.

In re R.M., 431 N.W.2d 196, 199 (Iowa App. 1988) (citing Dameron, 306 N.W.2d at 745).

Our review of the record convinces us that the juvenile court properly concluded the Indian Child Welfare Act does not apply to this termination case. Curtis's bald assertion that he is of Native American ancestry will not suffice to propel this case under the umbrella of the Indian Child Welfare Act.

This assertion was not made in good faith nor a timely manner. Rather, it was an effort to delay the termination proceedings and place an undue burden on the juvenile court to investigate, without any help from Curtis, the validity of his claim. In this case, neither DHS nor the court had a duty to investigate Curtis's bare claim of Native American ancestry based upon the sparse information Curtis provided. See In re Adoption of Crews, 825 P.2d 305, 312 (Wash. 1992).

Even so, the record indicates the court complied fully with the notice requirements of the Indian Child Welfare Act. The court held the record open, and proper notice was provided by certified mail to the appropriate parties.

In addition, social workers testified concerning their attempts to gain information about Curtis's claimed Native American ancestry. None of the tribes contacted by these social workers chose to intervene due to the minimal

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information provided by Curtis. The juvenile court complied with the notice requirements of the ICWA in the interest of comity. To require it to do more, thereby delaying the termination, is not in the best interests of the child. We agree with the juvenile court in that the Indian Child Welfare Act did not apply to this termination proceeding.

Curtis also contends there was insufficient evidence to support the termination. We disagree. The record reveals Curtis has been incarcerated for much of his adult life. He is unable to provide a stable home for the child. J.R. should not be forced to endlessly suffer the parentless limbo of foster care. In re A.C., 415 N.W.2d 609, 613 (Iowa 1987). J.R. has been in foster care for close to two years. It is in the child's best interests to terminate Curtis's parental rights so adoption may proceed.

There is clear and convincing evidence to support the termination. The statutory requirements for termination under Iowa Code section 232.116(g) have been satisfied. Our de novo review of the record convinces us the juvenile court correctly terminated Curtis's parental rights.

Finally, Curtis contends his trial counsel was ineffective for failing to present evidence to refute the mother's voluntary consent to termination. In order to prevail on his claim of ineffectiveness Curtis must show (1) his counsel's performance was deficient and (2) actual prejudice resulted. In re A.R.S., 480 N.W.2d 888, 891 (Iowa 1992)(citations omitted).

In this case Curtis fails to show either deficient performance or prejudice. The record is replete with instances where the mother expressed her willingness to consent to the termination of her rights to J.R. Intervention of the various services has been unsuccessful. The mother also testified as to her wish to terminate her rights at the termination hearing. There is substantial evidence indicating the mother's consent was voluntary. Therefore no prejudice resulted from a failure on the part of Curtis's counsel to refute the voluntariness.

For the reasons stated above, we affirm the judgment of the juvenile court.

AFFIRMED.