



IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF J.J.B.,	)	Filed December 23, 1986	
A Minor Child;	)		
	)		
T.B., Natural Mother, and	)	6-403	1
J.B., Natural Father,	)	86-230	
	)		
Appellants.	)		

Appeal from the Iowa District Court for Wapello County (No. T2-25) -
Gene Glenn, Judge.

The natural parents of a two-year-old boy appeal separately from the juvenile court order terminating their parental rights pursuant to Iowa Code section 232.116(5) (1985), asserting that there was insufficient evidence that the boy could not be returned to their custody. The natural mother also asserts that Iowa Code sections 232.116(5) and 232.102(5) (1985) require the State to prove that every effort was made to return the child to the child's home.

AFFIRMED.

Kirk A. Dailey of Webber, Gaumer & Emanuel, Ottumwa, for appellant
T.B.

Thomas F. Kintigh of Griffin, Dew & Emanuel, Ottumwa, for appellant
J.B.

Thomas J. Miller, Attorney General; Valencia Voyd McCown, Assistant
Attorney General; and Timothy Starken and John Knight, Assistant County
Attorneys, for appellee.

Steven W. Gardner of Kiple, Kiple & Deneffe, Ottumwa, guardian ad litem
for the minor child.

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

PER CURIAM**2**

On August 13, 1984, J.J.B. was adjudicated a child in need of assistance by a referee in the juvenile court for Wapello County. As a result of this adjudication, custody of J.J.B. was placed in the Wapello County Department of Human Services. J.J.B. remained in the foster care situation in which he had been placed pursuant to an earlier temporary removal order.

Following a review hearing held on September 10, 1985, the juvenile referee ordered the Wapello County Department of Human Services to prepare and file a Termination of Parental Rights Petition. Following an October 25, 1985, hearing on the petition, the juvenile referee entered findings and an order terminating the parental rights of the appellants J.B. and T.B., father and mother, respectively, of J.J.B. These findings and the order were affirmed by the juvenile court judge on January 8, 1986. This appeal followed.

Subsequent to the termination of their parental rights, the marriage of J.B. and T.B. was dissolved. The parents have separately appealed, each seeking a reversal of the termination order as to them individually. Our review is de novo. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). Central to our determination are the best interests of the child. Id.

The juvenile court terminated the parent-child relationship pursuant to Iowa Code section 232.116(5) (1985). A termination pursuant to this subsection requires that the child has been adjudicated in need of assistance, has been placed out of the parents' custody for at least twelve out of the last eighteen months, and there is clear and convincing evidence that the child cannot be returned to the parental home because definitional grounds of a "child in need of assistance" still exist. In Interest of K.L.C., 372 N.W.2d 223, 227 (Iowa 1985). Neither appellant disputes that the first two of these criteria are established. Both contend, however, that the State has failed to show by clear and convincing

evidence that, if returned to them, J.J.B. will suffer any of the harms specified in Iowa Code section 232.2(6) (1985), which defines a "child in need of assistance."

The juvenile court found that J.J.B. could not be returned to the custody of the parents, either as a couple or individually, because of the presence of the following dangers and harms:

- (a) physical abuse at the hands of [the father];
- (b) possible physical abuse at the hands of [the mother];
- (c) neglect and inattention to his needs by one or both parents;
- (d) [the mother's] apparent incompetence to parent;
- (e) harmful effects as the failure to exercise a reasonable degree of care in supervising the child;
- (f) emotional abuse as a consequence of the father beating upon the mother, and the [parents] fighting as a way of life; and
- (g) emotional abuse as a consequence of the [parents'] substance abuse and continued failure to obtain treatment therefore.

In terms of the "child in need of assistance" statute, we think the first four of these harms come within the ambit of Iowa Code section 232.2(6)(b) as concerning parents who are imminently likely to abuse or neglect the child. The fifth harm mentioned by the juvenile court is the concern of section 232.2(6)(c)(2) as harm imminently likely from the failure of the parents to exercise reasonable care in supervising the child. The final two harms relate to section 232.2(6)(c)(1)'s concern with harm imminently likely as a result of conditions created by the child's parents. Proof by clear and convincing evidence of any one of these types of harm is sufficient to support the juvenile court's termination order.

In Interest of K.L.C., 372 N.W.2d at 228.

Pursuant to a disposition order entered in this case, the parents were to complete parenting classes, undergo a substance abuse evaluation and appropriate subsequent treatment, and participate in family therapy, including marital counseling. The parents attended seven of the nine scheduled parenting classes. Although they completed the substance abuse evaluation, they refused the inpatient treatment and psychological evaluation which were subsequently recommended due to T.B.'s "severe" problem with psychoactive chemicals and J.B.'s "serious" drinking problem. Family therapy was initiated but terminated when the parents moved to Oklahoma in November 1985 after being evicted from their home and escorted out of town by a local sheriff. Once in Oklahoma, the parents participated in individual mental health evaluations, but refused subsequent counseling. The parents refused participation in both a chemical dependency program and marital counseling.

The record contains documentation by the Oklahoma Department of Human Services of continued violence in the parental home following the move there, problems with substance abuse, T.B.'s patent inability to provide child care, and insufficient income. Although J.B. told case workers at one point that he could not actively seek employment due to T.B.'s inability to care for their child and the consequential necessity for him to stay at home, we note the parents refused the day care services offered by the Oklahoma Department of Human Services. The case worker who handled this case while the parents were in Iowa and who monitored the parents' progress following the move to Oklahoma testified at the termination hearing that she did not think the circumstances which led to the original child-in-need-of-assistance adjudication had changed at all and that she saw no progress at all in improving the home environment.

We think that the intervening dissolution of the parents' marriage changes neither this diagnosis nor the dubious prognosis involved in any possible return

of J.J.B. to the care of either parent. Evidence of a parent's past performance gives us an insight into what the future probably holds for a child returned to that parent. In Interest of C.W., 342 N.W.2d 885, 887 (Iowa Ct. App. 1983). We look to such evidence in recognition of the preventative nature of termination actions which does not require us to wait until harm occurs. Dameron, 306 N.W.2d at 745. The evidence in this case clearly shows J.B.'s violent nature, its probable psychological bases, and its frequent manifestations. There is substantial evidence of his rough treatment of J.J.B., J.J.B.'s younger brother, and of the assortment split lips, bruises, and swollen features suffered by T.B. At one point, J.B. apparently attempted to strangle T.B.; at another, the parents accused each other of rough treatment of J.J.B.'s younger brother which led to an undetermined child abuse investigation in Oklahoma. We have no reason to believe that J.B.'s character will undergo a metamorphosis as a result of the marital dissolution sufficient to render him an acceptable guardian of J.J.B. The evidence of his violent character and inability to provide for J.J.B.'s minimal care is stark, its nature apparently indelible.

Similarly, the evidence clearly establishes that T.B. possesses a woeful lack of ability to provide for J.J.B.'s care. This is sufficient to support a termination order. See In Interest of C. and K., 322 N.W.2d 76, 77-81 (Iowa 1982), appeal dismissed, St. Marie v. Iowa, 459 U.S. 1094, 103 S. Ct. 71, 74 L. Ed. 2d 942 (1983). Her past conduct, which includes several attempted and successful temporary desertions of her family, has demonstrated her lack of interest in her family or her inability to function as a parent, or both. The evidence before us resounds with concerns expressed by all familiar with this case with her inability to properly care for the child. The possibility that her divorce signals a future stabilization is insufficient security for J.J.B.'s best interests. In Interest of C.W., 342 N.W.2d at 889.

A decision involving a child's permanent home cannot be postponed indefinitely. In Interest of Welcher, 243 N.W.2d 841, 845 (Iowa 1976). These parents, together and individually, have been provided the opportunity to mend their ways and demonstrate even minimal competency to parent. They either have failed to appreciate that opportunity or have shown, by their indolence, their inability to benefit from it.

T.B. presents us with a second issue. She argues that Iowa Code sections 232.116(5)(c) and 232.102(6), when read together, require a showing by clear and convincing evidence that the Iowa Department of Human Services has made every effort to return the child to the parental home as quickly as possible before termination is possible. Iowa Code section 232.116(5)(c) requires a showing, prior to termination, that

[t]here 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.

Iowa Code section 232.102(6) provides, in relevant part, that, following a disposition hearing,

[i]f the court orders the transfer of the custody of the child to the department of human services or other agency for placement, the department or agency shall submit a case permanency plan to the court and shall make every effort to return the child to the child's home as quickly as possible.

(emphasis added).

We reject T.B.'s argument which would engraft an additional requirement for termination onto those previously enunciated in the statutes as interpreted by our case law. That case law has delineated on several occasions the requisite proofs for termination of parental rights. E.g., In Interest of K.L.C., 372 N.W.2d at 227. In addition, the evidence in this case shows conclusively that the Department of Human Services made extensive and comprehensive efforts to afford

the parents an opportunity to improve their situation and allow J.J.B. to be returned home. All parents have a burden of providing a safe and nurturing environment for their children. Failing that, the State must intervene. In Interest of Dameron, 306 N.W.2d at 745. T.B. and J.B. have failed in their parental burden; the State has met its statutory one.

AFFIRMED.