FILED
SEP 26 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-480 / 90-556

IN THE INTEREST OF J.P. and K.P., Minor Children,

J.Q., Father,

Appellant.

Appeal from the Iowa District Court for Dubuque County, Lawrence H. Fautsch, Associate Judge.

Natural father appeals the termination of his parental rights. **AFFIRMED.**

Jeffrey L. Walters of Reynolds & Kenline, Dubuque, for appellant.

Thomas J. Miller, Attorney General; Gordon E. Allen, Deputy Attorney General; Judy Sheirbon, Assistant Attorney General; for appellee.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

SCHLEGEL, J.

Appellant J.Q., natural father of J.P. and K.P., appeals a juvenile court order terminating his parental rights. Appellant raises three arguments on appeal: (1) whether he was denied due process when the trial court determined that there had been a lack of contact while appellant was imprisoned awaiting criminal trial; (2) whether Iowa Code § 232.116(1)(d) (Supp. 1989) is unconstitutionally vague; and (3) whether Iowa Code § 232.116(1)(d) (Supp. 1989) unconstitutionally denies detainees substantive due process. We affirm the decision of the juvenile court.

J.Q. and D.P. met in 1986 and moved to Dubuque in 1987. Although they were never married, they had two children, K.P., born in May 1988, and J.P., born in January 1989.

In February or March 1989, J.Q. was incarcerated in the Dubuque County jail on theft and burglary charges. On April 19, 1989, D.P. abandoned the children to the care of friends who contacted the Iowa Department of Human Services (DHS). On DHS's application, the juvenile court entered an ex parte order placing the children in foster care. On May 9, 1989, the court adjudicated K.P. and J.P. to be children in need of assistance (CINA) pursuant to Iowa Code § 232.2(6)(c)(2) (failure to provide care) and § 232.2(6)(g) (failure to provide essentials). The record for the CINA hearing included evidence of neglect of the children by

both parents, a pattern of criminal activity by both parents, and the father's alleged violence toward the mother.

During the children's foster care the father has had only occasional and sporadic contact with them. During some of this time, but not all of it, the father has been in jail in either Iowa or New Hampshire, awaiting trial on criminal charges in both states. Upon release in June 1989, J.Q. had two authorized visits with his children. Following a June 1989 dispositional hearing, J.Q. was ordered to undergo psychological evaluation and counseling, but he failed to complete these sessions. In July, while charges were still pending in Iowa, J.Q. went to New Hampshire to bail D.P. out of jail. J.Q. turned himself in to authorities to face charges in New Hampshire and was later extradited to Iowa. He was unable to post bond.

In November 1989 the State filed a petition to terminate the parental rights of both parents with respect to the children. D.P. consented to termination of her parental rights. J.Q. contested the termination.

After a hearing, the juvenile court on March 14, 1990, terminated the parental rights of both parents. J.Q.'s rights were terminated on the grounds stated in Iowa Code §§ 232.116(1)(d) and 232.116(1)(g). J.Q. appeals the termination order.

J.Q. argues he was denied due process when the trial court determined that there had been a lack of contact

while appellant was imprisoned awaiting criminal trial. Specifically, he notes the grounds for termination include lack of contact and present unavailability to take custody, and he argues that the State should not be allowed to deny an indigent detainee visitation and use lack of contact as grounds for termination.

J.Q. contends Iowa Code § 232.116(1)(d) (Supp. 1989) is unconstitutionally vague. He challenges the phrases which permit termination if the parents "have not maintained significant and meaningful contact with the child" and "have made no reasonable efforts to resume care of the child despite being given the opportunity to do so."

J.Q. also contends Iowa Code § 232.116(1)(d) (Supp. 1989) unconstitutionally denies detainees substantive due process. He argues that the private interests of a detainee outweigh the governmental interests.

Appellate review of termination proceedings is de novo. Iowa R. App. P. 4; see In re W.G., 349 N.W.2d 487, 491 (Iowa 1984), cert. denied, 469 U.S. 1222 (1985). We give weight to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. W.G., 349 N.W.2d at 491-92; In re R.M., 431 N.W.2d 196, 199 (Iowa App. 1988). The primary concern is the best interests of the child. Iowa R. App. P. 14(f)(15); In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981). Our statutory termination provisions are preventative as well as remedial. Dameron,

306 N.W.2d at 745. Evidence of the parent's past performance may be indicative of the quality of future care he or she is capable of providing. Id.

In its March 14 order the juvenile court held that J.Q.'s parental rights could be terminated under either § 232.116(1)(d) or § 232.116(1)(g). J.Q. only challenges the court's determination under subsection (d). We agree with the State that the court's determination under subsection (g) is sufficient to support the order of termination.

As the State points out, § 232.2(1)(g), which requires a CINA adjudication of a child under age three and essentially a six month separation from the parent's home with no prospect for return, were found to apply and proven by clear and convincing evidence. The record shows that J.Q. has a history of failing to provide support for his children or to maintain contact with his children. The evidence suggests that he may have a history of committing domestic violence. His past criminal record speaks for itself. The record also clearly demonstrates his unwillingness to comply with court ordered efforts to help him.

Having reviewed the record de novo, we find that the trial court properly ordered the termination of J.Q.'s parental rights under Iowa Code § 232.116(1)(g). We agree with the State that we should not reach the constitutional issues if a narrower ground can be dispositive. In re

Kramer, 297 N.W.2d 359, 361 (Iowa 1980); In re D.L.B., 345 N.W.2d 147, 149 (Iowa App. 1983). Moreover, J.Q.'s constitutional challenges to subsection (d) were not properly preserved.

AFFIRMED.