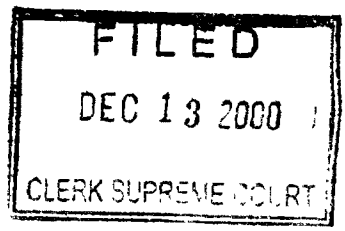
IN THE COURT OF APPEALS OF IOWA

No. 0-565 / 00-0899
Filed December 13, 2000



IN THE INTEREST OF A.F., J.F. and B.F., Minor Children,

B.F., Father,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Patrick H. Tott, Associate Juvenile Judge.

The father, Br. F. appeals the juvenile court's termination his parental rights. **AFFIRMED.**

William L. Binkard, South Sioux City, Nebraska, for appellant.

Thomas J. Miller, Attorney General, Tabitha Gardner, Assistant Attorney General, and Rhoda Tenuta, Assistant County Attorney, for appellee-State.

Elizabeth Rosenbaum, Sioux City, for mother.

Marchelle Denker, Sioux City Juvenile Office, Sioux City, for minor children.

Considered by Huitink, P.J., and Streit, J., and R. Peterson, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

R. PETERSON, S.J.

Br. F. appeals from the juvenile court order terminating his parental rights. He contends (1) the court erred in terminating his rights pursuant to Iowa Code section 232.116(1)(a), (c), (d), (e), and (g) (1999) because not all the elements for each respective code section were proven by the State by clear and convincing evidence. He also contends the termination of his parental rights is not in the children's best interests. We affirm on appeal.

Br. F. and J.F. are the mother and father of A.F., who was born on June 2, 1993, and J.F., who was born on August 30, 1994, and B.F., who was born on May 28, 1996. At the termination proceedings, they were six, five, and three years of age respectively.

Br. F. and J.F. were married in May of 1993, and their marriage was dissolved on April 15, 1999. The paternal rights of J.F. are not in issue in this appeal.

Background and Proceedings. This family came to the attention of the department of human services following the birth of B.F. in May of 1996. Shortly after her birth, it was discovered she had a hypoplastic heart syndrome. She was stabilized. She was then transferred to the Children's Hospital in Omaha, for the first of a series of surgical procedures which are designed to correct the problem.

Because of the surgery, it was necessary B.F. receive extraordinary care because of additional required surgeries. Br. F. said neither he nor J.F. would be able to provide this care.

On July 15, 1996, B.F. was removed from parental custody because of her serious medical needs and her parents' inability to appropriately provide for them. On the following day, a child in need of assistance petition was filed concerning A.F., J.F. and B.F. At the temporary removal hearing on July 25, 1996, both Br. F. and J.F., as well as the guardian ad litem, agreed B.F. should remain in family foster care and A.F. and J.F. remain with Br. F. and J.F. and in-home services be implemented.

On October 14, 1996, an adjudicatory hearing was held and the parties stipulated A.F., J.F., and B.F. were children in need of assistance. The family would be provided with services concentrating on parenting skills.

In 1983, Br. F. had been involved in a motorcycle accident in Phoenix, Arizona. He was not wearing a helmet at the time and received serious injuries and was paralyzed on the right side of his body for a period of time. As a result of the injury, he has memory problems which include short-term memory loss.

In November 0f 1996, a psychological evaluation was completed. According to that report, Br. F. began using marijuana when he was eleven or twelve years of age. In 1984, he was sent to the Cherokee Mental Health Institute as a result of being caught smoking marijuana at work. He did not work again until 1988, when he held a job for a few months and then lost it due to his drug usage. In the same year, he began using cocaine, crank, crystal, and methamphetamines. Br. F. attended A.A. meetings from 1986 through 1988, and began to take the program seriously in 1991. He remained drug free while dating J.F., but began using marijuana again in October of 1995. J.F. was aware Br. F.

was using drugs. J.F. was the primary caretaker in the family and there was some concern regarding Br. F.'s parenting. It was felt he could not effectively parent the children alone and he was extreme in his parenting. He was either very nurturing or used extreme discipline. Br. F. and J.F.'s home may be a health concern due to the large amount of clutter. This was because of Br. F.'s practice of bringing items home from the dump which he felt would be useful to the family.

On December 16, 1996, the dispositional hearing was held. Br. F. had quit his job. Br. F. and J.F. were continuing to participate in parenting services and were visiting B.F. twice a week. The visitations took place in the foster parent's home and were proceeding satisfactorily.

It was ordered the custody of B.F. be with the department of human services for placement in foster family care and the custody of A.F. and J.F. be with the parents subject to protective supervision by the department.

The initial visitations with Br. F. and J.F. and B.F. were consistent. However, by March of 1997, there was concern because of the frequent cancellations by Br. F. and J. F. By April of 1997, the foster family was concerned about the visitations continuing in their home, and they were moved to the service provider's office. Br. F. and J.F. rarely took part in the playtime and there was concern about their appearances at the visitations. These concerns involved dirty hair and clothing and body odor.

In March of 1997, Br. F. was given a neuropsychological evaluation. The report indicated the following:

> [Br. F.] has experienced a significant brain injury. This affects his ability to deal with stress and adapt for changing situations. The neuropsychological data suggests there is significant difficulties with impulsivity and reduced mental flexibility. This would make him more prone to having a low frustration tolerance and to be more prone to express anger in inappropriate ways. There are certain recommendations which must be completed before [Br. F.] would be able to handle the stress of childrearing and in particular, the stress of having a special-needs child. This low frustration tolerance may result in angry striking out and yelling. Given the degree of impairment [Br. F.] shows, this is a possibility for him. There were also indications in [Br. F.'s] report of significant depression, distrustfulness, rumination, and worry.
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> . . . .
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> There is certainly low frustration tolerance which would make [Br. F.] more prone to angry outbursts, however with appropriate behavioral training and medications he could learn to go for walks or other activities to help him in counting down before addressing a situation or a problem. . . . Therefore, at this time, I would state that [Br. F.] probably does not have control [over his bouts of anger] but that control could be developed with appropriate treatment and the use of medications as recommended.

On May 7, 1997, Br. F. and J.F. filed a motion requesting the proceedings concerning A.F. and J.F. be dismissed and requested B.F. be returned to parental custody subject to a continuing jurisdiction of the juvenile court.

At the hearing, the parties reached an agreement. It provided increased visitation for B.F., and Br. F. would participate in individual therapies to address anger control issues and he was not to be left in the position as a sole caretaker for B.F. at any time. The department was also to arrange for educational training for Br. F. concerning B.F.'s special needs.

One of the problems raised at this time was a cleanliness of Br. F. and J.F.'s residence. It had been described as extremely cluttered, generally unkept, dirty, and unsanitary. As part of the agreement, arrangements were to be made for a thorough cleaning of the family residence by a professional cleaner.

Thereafter, Br. F. and J.F. were to cooperate with the in-home service provider in maintaining the cleanliness.

Br. F. began working with the therapist to address the anger issues. The therapist felt while Br. F. was open to suggestions and personal disclosure, his brain impairment was impeding his progress in learning anger management techniques. Br. F. acknowledged he understood conversations, but later had difficulty recalling specific details. He realized he had a low frustration tolerance, explosive anger, and impulsive behaviors.

At approximately this time during a visit with an in-home worker, he became angry and pulled B.F. out of her highchair. This was with sufficient force to leave a bruise on her thigh.

In October of 1997, a consolidated dispositional review modification and partial dismissal hearing was held. The parties were in agreement B.F. could be returned to parental custody. On October 15, 1997, the court entered an order specifying certain visitation and upon completion of that visitation schedule, the temporary custody of B.F. should be returned to Br. F. and J.F. and denied the motion for partial dismissal of the proceedings involving A.F. and J.F.

On November 9, 1997, Br. F. assaulted J.F. Law enforcement officers were summoned, and Br. F. was arrested. Br. F. was extremely hostile to the law enforcement officers as well as the others in the home. A.F. and J.F. were present during the incident and witnessed the confrontation.

The department investigated the incident and during the course of interviewing the parties, it was determined there had been other instances of

domestic abuse. As a result of the investigation, the department secured an order for temporary removal of A.F. and J.F.

On November 19, 1997, a temporary removal hearing was held. There was no resistance to the reasons and circumstances for a removal of A.F. and J.F. The court also noted the custody of B.F. was to be returned to her parents on November 10, 1997, but due to the removal of A.F. and J.F., that did not take place and consequently, B.F.'s custody remained with the department. The order also provided for visitation for Br. F. and J.F.

J.F. was initially placed in shelter care, and A.F. was placed in foster care. J.F. was found to have viral gastroenteritis and he was treated and then placed in foster care with A.F. It was also discovered J.F. was not toilet trained, and both A.F. and J.F. awaken at night with nightmares relating to their parents' domestic violence.

On January 14, 1998, there was a consolidated dispositional review concerning all of the children. At this time, there were ongoing concerns about the conditions and cleanliness of the family home. Br. F. and J.F. were visiting with the children and it reportedly went well. However, some concerns were expressed about the children's behavior after the visits because they seem to be more aggressive and were swearing.

Br. F.'s psychologist reported Br. F. had been advised he needed to continue with individual psychotherapy but he had not returned for ongoing treatments since December 16, 1997.

On March 18 and 19, 1998, a modification hearing was held concerning A.F. and J.F. During the hearing, the parties reached a stipulated settlement of the matter and a visitation schedule which was approved by the court. It was reported A.F. and J.F. were making improvements in their behavior and development but J.F. was still having difficulties with toilet training. A.F. indicated she did not want to return to her parents' home and described Br. F. as scary looking and sometimes frightened by his behavior.

Both children exhibited physical aggressive problems and A.F. continued to act out after visitations. A.F. and J.F. were to begin play therapy and Br. F. was to attend and complete the batterer's program. The custody of A.F. and J.F. was to be placed in the department for placement in family foster care.

On June 10, 1998, a dispositional review hearing was held. Br. F. had begun the batterer's program but discontinued his anger management counseling sessions with his last session being on March 23, 1998. Br. F. was discharged from services at the Gordon Recovery Center on March 17, 1998.

Subsequent to the March hearing, the children began receiving play therapy. In June 1998, the therapist noted the children displayed a lot of anger during their sessions with increasing anger by A.F. as the visits with the parents increased. It was the opinion of the therapist the children were being "re-traumatized" when they attended visitations and recommended all visitations with Br. F. and J.F. be suspended at that time. On June 11, 1998, the court suspended parental visitation.

J.F.'s aggressive behavior decreased. Information was developed indicating inappropriate sexual behavior by Br. F.

On September 3, 1998, the dispositional review hearing was held as well as a hearing on J.F.'s request to resume visitation. This hearing was continued for various reasons until March 3, 1999.

In December of 1998, Br. F. and J.F. participated in psychological evaluations. The psychologist concluded Br. F. was a person denying many things including common human frailties. He presents himself in an improbably favorable light and has a genuine lack of awareness and lack of insight. An individual of this type tends to be somewhat defensive and reluctant to admit to problems.

On March 24, 1999, a ruling was filed on the hearing that had commenced in September of 1998. In that ruling, concern was expressed about the extended suspension of visitation but the court found a great deal of the blame for the suspension of the visits in the first place was because of the actions of the parents. The court was not convinced Br. F. had his anger under control. The court ordered the care, custody, and control of the children remain with the department of human services for placement in family foster care and a play therapist be established for the children. The new therapist recommended visitation between Br. F. and the children remain suspended. In January of 1999, Br. F. began meeting with the therapist of the children. There was some concern by the therapist Br. F. was only attending A.A./N.A. meetings once a month and he had not been planning on obtaining employment but would find a part-time

job. Br. F. was told by the therapist the two older children requested they did not want to see him and for that reason he would not be able to participate in their play therapy. At that point, Br. F. said he saw no point in continuing services and left.

On April 16, 1999, the marriage between Br. F. and J.F. was dissolved. Since that time, Br. F. has not been in contact with the Crittenton Center who were providing the parent's survival program, the nurturing program, and the parent skill development program, as well as the in-home services, although attempts had been made to contact him.

Between May 1999 and January 2000, there were five instances of physical abuse by Br. F. against his girlfriend. At one time, she obtained a temporary protective order against him and one resulted in the arrest of Br. F. Upon routine inspection at the jail, it was found Br. F. had a crack pipe in his pocket. It was his contention he found it.

During the hearing on termination of parental rights, Br. F. was asked, "And is it your testimony then that confusion is so great it prohibits you from working?", to which he answered, "Sometimes." He was then asked, "Would that confusion also be so great that it would prohibit you from parenting children?" Br. F. responded, "I would try my darndest so that it wouldn't." He was also asked, "Would that confusion prohibit you from appropriately parenting your children?", to which Br. F. responded, "I don't know."

At the time of the termination hearing, Br. F. was living in a one bedroom apartment. When asked about the lack of bedrooms, he responded the living

room could be turned into a bedroom. His source of income is social security disability benefits in the sum of $500 a month. The rent for his apartment is $200, and he has a utility bill of $55 a month all year. He does not have a motor vehicle and walks for transportation. He has his meals at the soup kitchen or the mission.

Br. F. has secured two jobs in the immediate past. He had left both of those jobs. One of them because they "would not take him off the cash register" and the other one because they wanted him to work more hours.

Standard of Review. Termination proceedings are reviewed on appeal de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). We give weight to the findings of a juvenile court, especially with respect to the credibility of witnesses but are not bound by them. Iowa R. App. P. 14(f)(7); *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995).

Termination. The primary concern in termination proceedings is the best interest of the child. *Id.* These interests are determined by looking at the child's long-range as well as immediate interests. We will consider what the future likely holds for the child if that child is returned to his or her parent. Insight for that determination can be gained from the evidence of the parents' past performance for that may be indicative of the quality of the future care the parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990). Case history records are entitled to much probative force when a parents' record is being examined. *S.N.*, 500 N.W.2d at 34. To support a termination of parental rights, the State must establish grounds for termination under Iowa Code section 232.116 by clear

and convincing evidence. "Clear and convincing evidence" means there is no serious or substantial doubt after the correctness of conclusions of law to be drawn from the evidence. *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa App. 1983).

When the district court terminates parental rights on more than one statutory ground, we only need to find grounds to terminate parental rights under one of those sections cited by the district court to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996).

Discussion. The court terminated Br. F.'s parental rights in A.F., J.F. and B.F. pursuant to Iowa Code sections 232.116(1)(a), (c), (d), (e), and (g).

Iowa Code section 232.116(1)(d) provides termination may be entered when the child has been removed from the custody of a parent for a period of at least six consecutive months and there is clear and convincing evidence the parents have not maintained meaningful and significant contact with the child during that period of time and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so. Significant and meaningful contact includes but is not limited to providing financial support in a continuing effort to complete the responsibilities prescribed in a case permanency plan, a continuing effort to maintain communications with the children may require the parent to maintain a place of importance in the children's life. With respect to Br. F., there is clear and convincing evidence he does not possess the financial abilities to provide the necessities for A.F., J.F. and B.F. He has failed to make a

genuine effort to complete the responsibilities that have been prescribed for him in the various case permanency plans.

Iowa Code sections 232.116(1)(e) and (g) are basically the same. Section 232.116(1)(e) pertains to a child who is four years of age or older which would be A.F. and J.F. Section 232.116(1)(g) pertains to a child who is three years of age or younger which would be B.F. Both subparagraphs provide the child must have been removed from the parents' custody, for a given period of time, and A.F., J.F. and B.F. had been removed for the appropriate periods of time. Clear and convincing evidence then must be established that the child cannot be returned to the custody of the parents as provided in section 232.102. That section provides the child should not be returned to the parent if the child cannot be protected from some harm that would justify the adjudication of the child as a child in need of assistance. Section 232.2(6) defines a child in need of assistance.

Br. F. has caused mental injury to A.F. and J.F. by the abuse he has perpetrated upon J.F. B.F. is in need of medical treatment to alleviate a serious physical disability, and Br. F. is unable to provide the treatment or the care necessary as a follow-up necessary to that treatment. Br. F. has failed to and is unable to provide a minimal degree of care in supplying the children with adequate food, clothing, and shelter and is currently refusing assistance from the department. Br. F. is in need of continuing treatment for chemical dependency and has not been faithful in attending N.A. and A.A. meetings.

Br. F. has suffered a serious head injury and, as a result of that, he becomes confused. Confusion is such it prohibits him from working at times. He does not know if that confusion would prohibit him from appropriately parenting the children. Br. F. also has difficulty controlling his anger, and at the termination hearing he conceded he did not have that problem under control.

We believe there is clear and convincing evidence at this time there exists grounds which support an adjudication A.F., J. F., and B.F. are still children in need of assistance. We believe there also exists clear and convincing evidence to terminate the parental rights of Br. F. according to sections 232.116(1)(d), 232.116(1)(e), and 232.116(1)(g).

We also feel the reasons that support the termination of Br. F.'s parental rights support the conclusion termination of his parental rights are in the best interests of the children. Accordingly, we conclude the trial court did not err in terminating the parental rights of Br. F. We affirm.

AFFIRMED.