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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

Filed March 31, 1986

411

IN THE INTEREST OF M.V. AND L.V., Minor Children;

R.V., Natural Father,

Appellant.

5-689
85-127

Appeal from the Iowa District Court for Pocahontas County (J 9-0182) - Mark S. Cady, Judge.

Appellant father appeals a district court order terminating the parent-child relationship between him and his two children, M.V. and L.V. **AFFIRMED.**

William H. Habhab, Fort Dodge, Iowa, for appellant.

Thomas J. Miller, Attorney General of Iowa, and Charles K. Phillips, Assistant Attorney General, for appellee.

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

SCHLEGEL, J.

Appellant father appeals a district court order terminating the parent-child relationship between him and his two children, M.V. and L.V. We affirm.

On November 12, 1982, approximately a month after appellant's three children were adjudicated to be in need of assistance, an emergency removal order was entered removing M.V. and L.V. from their home. The emergency order was based upon the fact that appellant had been accused of murdering his child, C.V., and his own father, the children's grandfather. Subsequently, the children were placed with appellant's cousin, Linda V. Appellant has been convicted of murdering his father and his child and is presently serving two life sentences.

On June 21, 1984, a petition was filed to terminate appellant's parental rights. At the termination hearing, the social worker testified that M.V. has been visiting with a professional counselor to work out a behavioral problem, and that L.V. was a little hyperactive, but that both were doing well in school. During the course of his testimony, the social worker was asked whether, in his opinion, the children should be returned to appellant if he were released from jail. The social worker was allowed to give his opinion over a lack of foundation and hearsay objection. The social worker stated that in order to protect the children physically and emotionally, they should not be returned to their father's care.

The next witness, Linda V., appellant's cousin and the children's foster parent since July 1983, stated that although she had not known of the children's condition prior to July 1983, since they had been with her, their emotional needs had become more fully satisfied and their hyperactivity had subsided. She also

acknowledged that appellant has kept a regular communication with his children through letters, telephone calls, and visits.

On appeal, appellant father argues that there was not clear and convincing evidence to support the trial court's decision to terminate his parental rights; and, in fact, that there is clear and convincing evidence that a termination of his parental relationship at this time would be detrimental to the children.

The statutory procedures that must be followed in terminating parental rights are found in Iowa Code section 232.116(5)(a)-(c) (1985). At issue in this case is whether there is clear and convincing evidence that the children cannot be returned to the custody of appellant according to section 232.116(5)(c). The appropriate appellate considerations most relevant to the matter before us today were discussed by the supreme court in In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981):

> Appellate review of proceedings to terminate a parent-child relationship is de novo; thus "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 O'Neal, 303 N.W.2d 414, 422 (Iowa 1981). We accord weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses whom that court heard and observed firsthand, but we are not bound by those findings. Long v. Long, 255 N.W.2d 140, 143 (Iowa 1977).
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> Central to a determination of this nature are the best interests of the child. Id. In this connection, we look to the child's long-range as well as immediate interests. Hence, we necessarily consider what the future likely 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 that parent is capable of providing. O'Neal, 303 N.W.2d at 423; In re Ponx, 276 N.W.2d 425, 433 (Iowa 1979).
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> Furthermore, it is our view that the current statutory termination provisions applicable here, like those they replaced, are preventative as well as remedial. The provisions therefore mandate action to prevent probable

> harm to a child and do not require delay until after harm has occurred. O'Neal, 303 N.W.2d at 423; In re Kester, 228 N.W.2d 107, 110 (Iowa 1975).

Appellant challenges the value of the evidence because there was no expert testimony presented on the State's behalf. However, appellate has not provided, nor have we found any statutory language requiring such expertise in a termination proceeding. In this case, the trial court decided that the testimony of the social worker and the children's present custodian, L.V., provided clear and convincing evidence that appellant's parental rights should be terminated. We affirm that decision primarily because the crucial issue presented here is whether the two children could be returned to the custody of a father serving two life sentences for the murder of a third child and the murder of the children's grandfather. We are reminded that the statutory termination provisions are preventive as well as remedial. See Dameron, at 745. Therefore, based upon the testimony of L.V. and the social worker, we are satisfied that there is clear and convincing evidence that termination of appellant's parental rights is in the children's best interests. See id. at 745; Long v. Long, at 143.

Appellant also contends that the trial court improperly considered previous CHINA proceeding records in arriving at its decision.

In order for a court to properly consider evidence in a prior judicial proceeding, the papers must be marked, identified, and made part of the record. See In the Interest of Adkins, 298 N.W.2d 273, 277-78 (Iowa 1980).

Although the above procedure was not followed in this case, we find no reversible error. Our review is de novo; see Dameron, at 745, and we arrive at the same result as did the trial court, without resort to the prior CHINA proceedings evidence.

We hold, therefore, it has been established by clear and convincing evidence that it is in the best interests of M.V. and L.V. that appellant's parental rights be terminated. The trial court's decision is affirmed.

AFFIRMED.