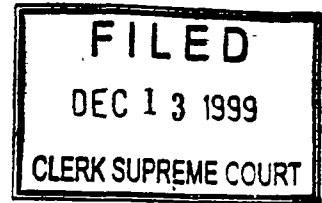


IN THE COURT OF APPEALS OF IOWA

No. 1999-421 (9-674) / 99-0804
Filed December 13, 1999



IN THE INTEREST OF

B.P.M.,
Minor Child,

P.M., Father,
Appellant.

Appeal from the Iowa District Court for Keokuk County, Lucy J. Gamon,
District Associate Judge.

Father appeals from the termination of his parental rights. **AFFIRMED.**

Lars G. Anderson of Holland Law Office, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Chris Odell and Janet Hoffman, Assistant
Attorneys General, and John Schroeder, County Attorney, for appellee-State.

Edward M. Conrad, Sigourney, guardian ad litem for minor child.

Heard by Sackett, C.J., and Zimmer and Miller, JJ.

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ZIMMER, J.

A father appeals from the termination of his parental rights. He contends that the juvenile court erred in finding clear and convincing evidence existed to terminate his parental rights pursuant to Iowa Code section 232.116 (1)(e) (1997). He also argues that even if the statutory requirements were met, termination was not mandatory or in the best interests of his child. We affirm.

I. Background Facts and Proceedings. Brian is a ten-year-old special needs child. He has a long history of extreme behavioral difficulties. Brian spent the majority of his life in his father Patrick's care. Brian's mother, Tabitha, left shortly after Brian turned one. Since the fall of 1990, Patrick and Brian have resided with Patrick's girlfriend, Paula, and her two sons, Kevin and Deal. Paula and Patrick received services in 1992 because Patrick had physically abused Kevin. On September 9, 1997, Brian was placed in emergency foster care as a result of injuries inflicted on him by Patrick. Patrick admits he spanked Brian on the buttocks on that date, leaving bruises.

On November 24, 1997, Patrick stipulated to the adjudication of Brian as a child in need of assistance ("CINA") based on the physical abuse. Since Brian's removal, Patrick has been named in two additional child abuse reports for physically abusing Deal, one of Paula's sons. These incidents allegedly occurred on April 23, 1998, and on December 28, 1998, five months before Brian's termination hearing. During the second incident, Patrick slapped Deal in the face, broke an end table, threw a board at Deal, and pulled down a large book case.

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Patrick's and Paula's relationship has also been marred by domestic abuse. In December of 1997, three months after Brian's removal, Paula reported to DHS that Patrick had "smashed her head into the wall a couple of times" and she needed a place to stay. Kevin witnessed the incident and reported that Patrick had thrown things, ripped a door off of the bathroom, broke a window, and drove his pickup truck into the porch. Although Patrick was arrested, the charge was later dismissed.

After trial was held in Brian's case on April 20, 1999, the juvenile court terminated Patrick's parental rights to Brian. At the time of the termination, a separate CINA proceeding involving Kevin had been initiated. Patrick appeals. Patrick contends the juvenile court erred in determining there was clear and convincing evidence that Brian could not be returned to his custody. Patrick also argues even if the statutory requirements were met, termination was not in Brian's best interests.

***II. Scope of Review.* We review proceedings to terminate a parent-child relationship de novo; we may review the facts as well as the law and adjudicate the parents' rights anew. *In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa App. 1998). Our primary concern is the best interests of the child; we look at both the child's long-range and immediate interests. *Id.* Our statutory termination provisions are preventative as well as remedial; the State need not delay until harm has occurred to a child. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996). The grounds for termination must be proven by clear and convincing evidence. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa App. 1997).**

III. ~~Clear and Convincing Evidence under Section 232.116(1)(e).~~

Termination may be ordered under Iowa Code section 232.116(1)(e) (1997) if all of the following have occurred:

- (1) The child is four years of age or older.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

Iowa Code section 232.102 mandates that a child remain in a parent's custody unless the child cannot be protected from physical abuse or from some harm that would result in his or her adjudication as a child in need of assistance.

Patrick disputes the juvenile court's conclusion that section 232.116(1)(e)(4) was met. He urges Brian could have been returned to his custody. The juvenile court found Brian could not be returned to Patrick's care because of his propensity for physical abuse, his mental health, and his relationship problems. We find the combination of these elements provides clear and convincing evidence to support termination of parental rights.

A. Propensity for Physical Abuse. Patrick notes there has been only one founded physical abuse report involving himself and Brian. Supervised visitation did not give rise to any concerns of physical abuse and, in fact, progressed to the point where unsupervised visitation was planned. Patrick asserts he has learned to control

his anger and points out Brian lived with him for over eight years without any reports of physical abuse,

While Patrick emphasizes there is only one report of physical abuse perpetrated on Brian, we cannot ignore the extensive abuse that has gone on in the home, both before and after that incident. Patrick claims to have control of his anger. However, he has refused to participate in any counseling up to this point. The incidents described above, where Patrick threw and broke things and even drove his vehicle into the house, demonstrate a nearly uncontrollable rage. Patrick himself was a victim of abuse as child. We fail to see how he can suddenly control his anger on his own without counseling. In fact, one of the abuse incidents involving Deal occurred a mere five months before the termination hearing in Brian's case. Three out of the four children have been removed from the family home and a CINA action has been filed concerning the fourth. Despite manifesting love for his father, Brian also consistently expresses fear of further physical abuse. The risk that Brian would be abused again by Patrick is great.

B. Patrick's History of Mental Illness. Patrick states the juvenile court's findings on this issue are based almost entirely on events which occurred before 1988. He notes the court-ordered psychological evaluations found Patrick suffered from no 'serious psychiatric disorder' and needed no medication.

We disagree that this information is irrelevant. Patrick himself was the victim of extensive physical and sexual abuse as a child. Patrick has been in several psychiatric hospitals and group homes and was the subject of an involuntary

~~commitment in 1987~~ after an attempted suicide. At that time, he was diagnosed as a paranoid schizophrenic but he has never taken medication. Another test given him in December 1997 revealed a possible diagnosis of schizoid personality. In the evaluations ordered in this case, Patrick denied most psychiatric symptoms and refused any medication. The record reveals Patrick withheld information during these evaluations. The juvenile court found the evaluators may not have been aware of the past diagnoses and one evaluator states, "[i]t is my opinion that until this man admits to more symptoms or more guilt or more involvement or more need for medication, that it is probably not appropriate to try to give him medication for psychiatric treatment." Patrick continues to deny psychiatric problems. His resistance to counseling and his denial of problems diminishes any hope he might have of progressing with court-ordered services to deal with his propensity for violence.

C. Relationship Issues. Patrick contends the juvenile court also based its conclusions in this regard on outdated information. The evidence cited by the court consisted of a dismissed domestic abuse charge in 1997 and the psychosocial evaluations done in this case. He argues there was no new evidence about his and Paula's relationship and he testified conflict had greatly diminished:

~~We disagree with his contentions.~~ Both Patrick and Paula reported a great deal of volatility in their relationship. Patrick admitted he has been physically aggressive with Paula. Psychological tests reveal that both have problems with relationships. Paula was also extensively sexually abused in childhood and now suffers from depression that immobilizes her for days at a time. At the outset of Brian's case, the

~~juvenile court recommended marital counseling for the couple, but they never attempted it.~~ These problems present an obstacle to providing proper care for Brian and are symptomatic of greater anger management needs the pair has. The fact they continue to live together and refuse to deal with their problems only contributes to the potential for further abuse of Brian. We have previously recognized that a parent must recognize the presence of abuse before meaningful change can occur. *See In re H.R.K.*, 433 N.W.2d 46, 50 (Iowa App. 1988). Such lack of insight supports termination of parental rights. *See In re C.C.*, 538 N.W.2d 664, 667 (Iowa App. 1995) (finding mother's continuation of abusive relationship supported termination of her parental rights).

"Our statutory termination provisions are preventative as well as remedial." *A.B.*, 554 N.W.2d at 293. We find the volatile combination of Patrick's abusive propensity, his mental history and his relationship difficulties provides clear and convincing evidence Brian cannot be returned to Patrick's custody because of the risk of repeated physical abuse.

IV. Best Interests of B.P.M. Patrick complains Brian should be returned to him with additional services in place. Patrick also asserts his sister could take Brian.

~~Patrick has refused most services in the past. Patrick was on the path to receiving additional unsupervised visitation with Brian when his own actions resulted in the curtailment of visitation. Patrick progressed little with the services he did receive. He had nineteen months between Brian's removal and the termination hearing to deal with his issues, yet he denied all counseling. There is no reasonable~~

~~basis for believing he would progress with additional services.~~ We have already detailed ~~why~~ Brian cannot be returned to Patrick's custody.

We do not find Patrick's sister, Delores, would be a proper placement for Brian. When Patrick first voluntarily placed Brian in foster care after his initial removal, Patrick specifically indicated he did not want Brian placed with Delores. Patrick and Delores have had their differences and did not speak to each other for nearly a year, despite the fact they live across the street from one another. Delores never attended any of the hearings in this case, except the termination hearing. The juvenile court indicated it was never made aware of her interest in having Brian before that time. Delores acknowledged she had not had much interaction with Brian since his removal and she was planning to move to New Jersey. Brian also indicates concerns about living with his aunt. There is no evidence she has the ability to provide for Brian's special needs.

Furthermore, Brian is bonded with his foster parent, Rebecca, with whom he has lived since June 9, 1998. She works as his individual aide at school. Brian's behavior has stabilized in her home. She has indicated a willingness to adopt Brian and has ~~extended~~ family support in this decision. She has previously adopted a special needs child and is aware of the demands. Although Brian expresses love for his father, ~~he fears him.~~ Brian displays extreme behavioral problems and needs structure and consistency his father cannot provide. After a de novo review, we find

it is in Brian's best interests that Patrick's parental rights be terminated.

AFFIRMED.

Miller, J., concurs; Sackett, C.J., specially concurs without opinion.