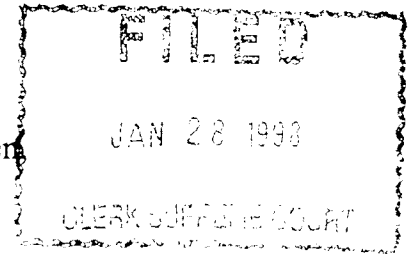


IN THE COURT OF APPEALS OF IOWA

No. 7-718 / 97-0705
Filed January 28, 1998



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

S.B., Mother,
Appellant,
K.A.P., Father,
Appellant,
K.P., Intervenor,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Alan D. Allbee,
Associate Juvenile Judge.

The mother, father, and K.H.P.'s step-mother (intervenor) appeal from the
court order terminating parental rights. **AFFIRMED.**

Kellyann M. Lekar of Randall, Griffin, Nelson & Hawbaker, P.L.C., Waterloo,
for appellant mother.

Richard K. Betterton of Snow, Knock, Sevcik & Betterton, Cedar Falls, for
appellant father.

Carter Stevens of Beecher, Rathert, Roberts, Field, Walker & Morris, P.C.,
Waterloo, for appellant intervenor.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney
General, and Jack Lammers, Assistant County Attorney, for appellee State.

Lon A. Britt, Waterloo, guardian ad litem for minor children.

Heard by Huitink, P.J., and Streit and Mahan, JJ.

HUITINK, P.J.

S.B. appeals a juvenile court order terminating her parental rights to her children, B.B., J.K., and K.H.P. K.A.P., K.H.P.'s father, appeals the termination of his parental rights to K.H.P. We affirm.

I. Background Facts and Proceedings.

S.B. is the mother of B.B., born December 27, 1986; J.K., born April 21, 1989; and K.H.P., born February 27, 1992. She is a single parent. The children were placed in foster care in September 1995, after S.B. left them with two thirteen-year-old caretakers over a weekend and did not return for them before the caretakers had to return to school Monday morning.

The record indicates S.B. struggles with a serious substance abuse problem despite extensive efforts at rehabilitation. S.B. also has a criminal history which includes convictions for prostitution, theft, interference with official acts, and driving while under suspension.

K.A.P. is K.H.P.'s father. He is currently serving a one-hundred-twelve month sentence in a federal prison in Kansas for convictions of racketeering, conspiracy to commit racketeering activity, conspiracy to distribute methamphetamine, tampering with a witness or potential witness, and violent crime in aid of racketeering activity. He is not eligible for parole until April 2002.

On February 7, 1996, B.B., J.K., and K.H.P. were adjudicated children in need

of assistance pursuant to Iowa Code section 232.2(6)(c)(2). The court ordered the children's placement continue in temporary foster care.

On April 14, 1997, the court terminated S.B.'s parental rights to her three children pursuant to Iowa Code sections 232.116(1)(e) and (k). The court also terminated K.A.P.'s parental rights to K.H.P. pursuant to Iowa Code section 232.116(1)(I). The parental rights of B.B.'s and J.K.'s fathers were also terminated.

S.B. appeals the termination of her parental rights to her three children. K.A.P. appeals the termination of his parental rights to K.H.P.¹ K.P., K.A.P.'s wife, intervenes and requests custody of K.H.P. while K.A.P. remains in prison.

II. Standard of Review.

The scope of review in termination cases is de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1994). The grounds for termination must be proven by clear and convincing evidence. *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa App. 1995). Our primary concern is the best interests of the children. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996). In seeking those best interests, we look to the child's long-range as well as immediate interests. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990).

III. S.B.'s Parental Rights.

The juvenile court terminated S.B.'s parental rights to her children pursuant to

¹ The fathers of B.B. and J.K. do not appeal the termination of their parental rights.

Iowa Code sections 232.116(1)(e) and (k)². S.B. asserts the State did not meet its burden regarding the third element of section 232.116(1)(k). She cites positive steps in her drug rehabilitation as evidence the State did not prove by clear and convincing evidence the children could not be returned to her care within a reasonable time.

In determining what the future holds for the child if returned to his or her parent, the parent's past performance may indicate the quality of care the parent is capable of providing in the future. *In re L.L.*, 459 N.W.2d at 494. There is substantial evidence of S.B.'s history of substance abuse, including the use of cocaine, marijuana, and methamphetamine. Despite intensive out-patient and in-patient substance abuse programs, the record indicates S.B. has been unable to overcome her drug addiction. S.B. admitted the continued use of methamphetamine and her son's Ritalin while undergoing her most recent treatment efforts at the Bernie Lorenz halfway house. S.B. left the house before completing the program because of alleged transportation problems. A substance abuse counselor at the house gave S.B. a poor prognosis for

² Section 232.116(1)(k) provides the court may terminate parental rights when it finds the following elements:

- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.
- (2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.
- (3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

controlling her addiction and recommended S.B. enter a primary residential treatment program which may take four years to complete.

We find the State has met its burden of proving by clear and convincing evidence the children cannot safely be returned to S.B.'s care within a reasonable time period. The court properly terminated S.B.'s parental rights pursuant to section 232.116(1)(k). When a juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996). Accordingly, we need not address whether the court properly terminated S.B.'s rights under section 232.116(1)(e).

S.B. argues termination does not serve her children's best interests. In support of her argument, she cites her close relationship with her children. Although the record contains evidence a strong bond exists between S.B. and her children, we find termination of S.B.'s parental rights is in the children's best interests. The evidence shows S.B.'s problem with substance addiction continues. We find S.B. is not ready to assume parental responsibility for her children. Moreover, "[c]hildren simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable." *In the Interest of L.L.*, 459, N.W.2d at 495. It is not in a child's best interests to continue to keep him or her in temporary foster homes. *In the Interest of J.L.P.*, 449 N.W.2d 349, 353 (Iowa 1989).

Children should not be forced to endlessly suffer the parentless limbo of foster care.

In the Interest of D.J.R., 454 N.W.2d 838, 845 (Iowa 1990).

S.B. also contends termination was improper because the State did not present the court with options to termination. However, she cites no authority for this assertion in her brief. Accordingly, S.B. is deemed to have waived this issue, and we need not address it. Iowa R. App. P. 14(a)(3).

We affirm the juvenile court on this issue.

IV. K.A.P.'s Parental Rights.

A. Due Process. K.A.P. contests the juvenile court's termination of his parental rights to K.H.P. He argues the court's refusal to allow him to be personally present at the termination hearing denied him due process of law.

K.A.P.'s argument lacks merit. K.A.P. was represented by counsel at the termination hearing and presented his own testimony via telephone. Accordingly, we find K.A.P. was not denied due process of law. *See In the Interest of J.S.*, 470 N.W.2d 48, 51 (Iowa 1991)(holding an imprisoned parent not present at a termination hearing was not denied due process where he received notice of the hearing, was represented by counsel who attended the hearing, and was afforded the opportunity to present testimony).

B. Ineffective Assistance of Counsel. K.A.P. also contends K.H.P.'s guardian ad litem had a conflict of interest because the same person represented all

three children. He states K.H.P.'s best interests may differ from that of the sibling group as a whole.

"A juvenile claiming ineffective assistance of counsel in a civil proceeding must prove both prongs of the *Strickland* test, i.e., deficiency in counsel's performance and actual prejudice." *In the Interest of J.P.B.*, 419 N.W.2d 387, 392 (Iowa 1988). Our review of the record shows substantial evidence the children's best interests are served by terminating their parents' rights and placing the children together. The guardian ad litem noted the family therapist, the case worker, and the visitation supervisor feel strongly the children should not be separated from each other. Charlene Struckman, a licensed social worker, evaluated the children and recommended they be placed together. We find the guardian ad litem acted in the children's best interests in favoring termination and placing the children together.

Because K.A.P. has not proven prejudice resulted from the children's common representation, his ineffective assistance claim must fail. We affirm on this issue.

V. K.P.'s Claim for Custody of K.H.P.

K.P., K.A.P.'s wife, intervenes and requests custody of K.H.P. while K.A.P. remains in prison. K.P. and K.A.P. argue it is in K.H.P.'s best interests to be placed with K.P. until K.A.P. is released.

The record indicates K.P. is unwilling and financially unable to care for all three children. We have determined it is in the children's best interests to remain together. Therefore, removing K.H.P. from the sibling group and placing him with

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K.P. is not in K.H.P.'s best interest. Furthermore, we have determined the court correctly terminated K.A.P.'s parental rights. Accordingly, granting K.H.P.'s custody to K.A.P. upon his release from prison is not in K.H.P.'s best interests. We deny K.P.'s request for custody of K.H.P.

The decision of the juvenile court is affirmed.

AFFIRMED.