FILED
MAY 28 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF P.B., A Child;	)	Filed May 28, 1987
P.B., Natural Mother, and D.B., Natural Father,	)	7-74 / 86-706
Appellants.	)	

Appeal from the Iowa District (Juvenile) Court for Linn County (JT 572-1285), Robert E. Sosalla, Associate Judge.

The natural parents of a three-year-old girl appeal the juvenile court order which terminated their parental rights pursuant to Iowa Code section 232.116(5). **AFFIRMED.**

Gerald J. Kucera of Bennett, Kucera & Taylor, Cedar Rapids, for appellant P.B., Jr.

Walter J. Steggal, Jr., of Holden, Steggall & Heckel, Cedar Rapids, for appellant D.B.

Thomas J. Miller, Attorney General of Iowa; Gordon E. Allen, Special Assistant Attorney General; Valencia Voyd McCown, Assistant Attorney General; and Sue Flaherty, Assistant Linn County Attorney; for appellee, State of Iowa.

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

SCHLEGEL, J.

The natural parents of a three-year-old girl appeal the juvenile court order which terminated their parental rights pursuant to Iowa Code section 232.116(5).

P.B. was born on November 15, 1983. After P.B.'s birth, a visiting nurse was requested to make home visits to the family. The home visits were designed to provide the family with child care and assist the medical status of the baby. The first visit was made November 23, 1983. Seven visits were made, the last on January 6, 1984. On December 30, 1983, the visiting nurse noticed a significant loss in P.B.'s weight. On January 6th the nurse insisted that the baby be taken to a doctor. The doctor's diagnosis was malnutrition. Subsequently, a failure to thrive report was filed.

The visiting nurse had been requested to see the parents and child by the hospital which was aware of the mildly retarded status of both the mother and father. The nurse worked with the parents during her visits and attempted to teach skills such as feeding, changing diapers, and recognizing symptoms that might indicate the baby had medical problems. The nurse saw evidence of learning on the part of the parents, however, she found it necessary to repeat things frequently to reinforce the learning process. The parents were advised on each visit to take the child to the doctor but they did not do so until the nurse, on her January 6 visit, demanded that the father act immediately. The nurse believed that if the situation had been allowed to continue, there was a potential danger to the baby's life.

On January 16, 1984, a child abuse investigator was assigned to investigate the situation. The investigator, based on imminent danger to the child as evidenced by failure of the parents to visit at the hospital or demonstrate an ability to properly care for the child, requested that the child be removed from

parental care and placed in foster care. This was done on January 26, 1984. On January 27, 1984, the State of Iowa filed a petition alleging that P.B. was a child in need of assistance. On January 31, 1984, the juvenile court decided that temporary custody would remain with the Department of Human Services.

The parents stipulated that the child was in need of assistance and, pursuant to this stipulation, the child was adjudicated a child in need of assistance as provided in Iowa Code section 232.2(6)(c)(2) (failure of the child's parents to exercise a reasonable degree of care in supervising the child). A case plan was prepared for the parents which outlined the services that would be provided to the family as well as what was expected from the parents. A case permanency plan was filed on December 4, 1984. A petition for termination of parental rights was filed December 30, 1985. Following trial on March 24-27, 1986, an order terminating parental rights was filed April 24, 1986. At the time of the termination, the parents were living apart and the dissolution of their marriage was pending.

Our review of this action for termination of parental rights is de novo. In the Interest of K.L.C., 372 N.W.2d 223, 227 (Iowa 1985). We accord weight to the fact finding of the juvenile court, especially when considering the credibility of witnesses whom that court heard and observed firsthand, but we are not bound by them. In re Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

Iowa Code section 232.116(5) (1987) provides that if a court finds that a child has been adjudicated in need of assistance, and the child's custody has been transferred from the parents for twelve of the last eighteen months, and there is clear and convincing evidence that the child cannot be returned to the custody of the parents, then termination of parental rights may be ordered. There is no dispute that the child was adjudicated in need of assistance and that the child had been transferred from the parents for more than the requisite

time period. The parties disagree whether clear and convincing evidence shows that the child cannot be returned to the custody of the parents as provided in section 232.102.

Central to our determination of this matter is the best interests of the child. In re Interest of Dameron, 306 N.W.2d at 745. Clear and convincing evidence must be presented to show that a child placed in foster care after having been adjudicated in need of assistance would suffer harm if returned to the parents. Id. at 744.

The juvenile court, in its thoughtful and precise findings and conclusions, emphasized that its decision to terminate was not based on the mental limitations imposed upon the parents from the time of their birth and that the evidence presented demonstrated that each has sufficient mental capabilities to acquire and apply adequate parenting skills. Rather, the court concluded, the evidence demonstrated that the parents showed a pattern of poor judgment, lack of commitment and lack of stability that clearly established that they were unwilling to effectively parent P.B. at that time or in the foreseeable future. We agree.

It is not necessary to here provide a lengthy rendition of all the record evidence which supports the conclusion that P.B. cannot be returned to these parents. We do note the following: the parents had up to twenty-four months to accomplish some degree of parental commitment and responsibility; the father testified that it would be in the best interest of the child to have parental rights terminated; visitations with the child were not conscientiously made; both parents testified they understood the expectations that the State had of them, yet the record shows they were either uncooperative or unconcerned in performing these responsibilities; a case worker assigned to the mother found that the mother could perform the necessary skills but was not motivated to do so. The testimony of appellant's expert witness does not diminish the weight

of this evidence. This expert had not met any of the parties and felt he did not have enough information to address what the best interests of the child were in this matter. Given his testimony, one could conclude that the services provided in this case should have been sufficient for assisting a mildly retarded person to acquire the necessary child caring skills.

We are firmly convinced that it is not in P.B.'s best interests to wait any longer for her natural parents to develop the necessary responsibility and commitment to adequately provide for her needs.

AFFIRMED.