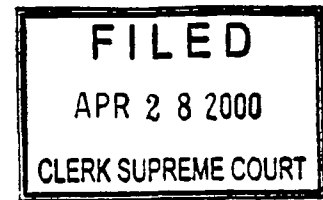


IN THE COURT OF APPEALS OF IOWA

No. 0-134 / 99-1455
Filed April 28, 2000



IN THE INTEREST OF B.M.
Minor Child,

Q.B., Father,
Appellant.

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

Father appeals from the juvenile court order terminating his parental
rights. **AFFIRMED.**

D. Bradley Kiesey, Washington, for appellant.

Thomas J. Miller, Attorney General, Diane M. Stahle, Special Assistant
Attorney General, Tabitha Gardner, Assistant Attorney General, and Barbara
Edmondson, County Attorney, for appellee-State.

Janice Becker of McMurray & Becker Law Offices, Coralville, guardian ad
litem for ~~minor child~~.

Heard by Vogel, P.J., and Mahan and Miller, JJ.

000239

MAHAN, J.

Father appeals from the juvenile court order terminating his parental rights. **He** contends (1) there is not clear and convincing evidence the child cannot be placed in his custody, (2) the court erred in failing to grant him three months to comply with the case plan, (3) the court failed to adequately consider the child's need to be exposed to her biracial heritage, and (4) the court erred in refusing to place the child in Quinn's mother's custody while he complied with the case plan or after terminating his rights. We affirm.

Krista is the mother of Brianna who was born May 1997. Quinn and Krista had a one-night relationship in which Brianna was conceived. After Brianna was born, she remained with Krista and had no contact with Quinn until August 25, 1997, when it was alleged Quinn was her father. A paternity test was done. The results of a DNA report dated October 17, 1997, determined Quinn is Brianna's biological father.

Due to an inappropriate living environment, Brianna and her half brothers, Nels and Colton, were voluntarily placed in foster care on June 3, 1997. They were to remain in foster care until the safety hazards from their home were removed and their housing made more suitable. The children were returned to Krista on July 2, 1997.

On July 25, 1997, Brianna and Colton were adjudicated to be children in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) with regards to Krista. The court found the allegation of Krista's lack of proper supervision of the children to be true. Brianna and Colton were ordered to remain in Krista's care.

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A dispositional hearing was held September 24, 1997, in which Quinn appeared without counsel. Custody continued with Krista. It was at this hearing the court ordered Quinn to undergo paternity testing.

In November 1997, Brianna was adjudicated a child in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) with regards to Quinn on the basis he had failed to exercise a reasonable degree of care in supervising her. On July 29, 1998, Brianna and Colton were again voluntarily placed in foster care for thirty days after Colton had been found in the street unsupervised and Krista was found to be asleep. The court determined despite the many services Krista received, the children still could not be returned to her care. Quinn then asked the court to place Brianna with him.

After two contested hearings concerning Quinn's visitation with Brianna, the court determined it would be in Brianna's best interest to have a single two-hour supervised visit each week. When Quinn showed little or no interest in his visitation rights with Brianna, a petition was filed in August 1998 to terminate these visits. After the hearing in September 1998, the court determined Quinn had only been present at eleven of the twenty-four scheduled visitation periods and there was no excuse for the missed visits. It was also determined during Quinn's visitation period with Brianna, he would watch television and let others entertain her. The court further found Quinn to have broken Krista's nose on August 14, 1998, although Quinn's version was he merely held out his hand and she ran into it. This incident resulted in a domestic abuse assault conviction. Quinn's visitations were stopped and he was ordered to undergo a drug and

alcohol evaluation and follow any recommendations. He was also ordered to follow a schedule of services for at least eight weeks. Visitations were to resume only if all court orders were satisfied.

Despite the requirements set out by the court at the hearing on visitation, Life Skills, Inc. reported Quinn was "extremely resistant to participating in skill development services" and the ninety-day-progress report states despite continual prompting from the staff, Quinn made minimal effort to schedule skill-development meetings. In addition, Quinn failed to consistently attend appointments and family-centered service counselor Dawn Garthwaite concluded he did not show consistent interest in being a part of Brianna's life.

Quinn finally began to make progress in December of 1998 and January of 1999, and supervised visits with Brianna resumed in March 1999. During these visits, Quinn was observed to be genuinely interested and interacted appropriately with Brianna. In addition, Quinn commenced employment at the Steak Escape in January 1999, where he earned \$7.75 an hour and expected to be promoted to a salaried position. Quinn bought a car in July 1999 through a bank loan. He did not have a driver's license but admitted he drove to and from work everyday.

During the pendency of this case, Quinn has moved five different times. The most recent move was from his mother's home in April 1999, following an argument with her over whether he could have a female friend spend the night. He then moved out and took up residence with four other people in a two-bedroom apartment.

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Although Quinn exhibited progress in Dec. 1998, and Jan 1999, his consistency soon deteriorated. In June 1999, a petition to terminate parental rights was filed in which three grounds were alleged for termination. The court considered each of the grounds and terminated Quinn's parental rights on one of those grounds. The termination occurred on August 12, 1999, pursuant to Iowa Code section 232.116(1)(g). Krista's parental rights were also terminated at this time, however, she does not appeal the termination. Quinn appeals.

I. Standard of Review. Termination proceedings are reviewed de novo. Iowa R. App. P. 4; *In re M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993). Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. Iowa R. App. P. 14(f)(7); *M.M.S.*, 502 N.W.2d at 5. The primary interest in termination proceedings is the best interests of the child. Iowa R. App. P. 14(f)(15); *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). The State has the burden to prove the allegations of the petition by clear and convincing evidence. Iowa Code § 232.96 (1999).

II. Termination. Under Iowa Code section 232.116(1)(g) (1997), the juvenile court can terminate parental rights if the court finds all of the following have occurred:

- (1) The child is three years of age or younger.
- (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 six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) ~~There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.~~

Iowa Code § 232.116(g). Quinn does not dispute the first three requirements. However, he argues the court erred in determining Brianna cannot be returned to his custody at the present time under section 232.102. At the time of the termination hearing, Quinn was living in a two-bedroom apartment with four other people and the court found this would not be an appropriate home for Brianna. We agree. Quinn, himself, admitted he did not have appropriate housing for Brianna at the time of the termination hearing and that was why he needed three more months. All the parties concede, including the guardian ad litem at oral arguments, for the purposes of this section "at the present time" means time of the termination hearing.

Quinn contends he could find appropriate housing if given another three months. We find no evidence to support this. The record indicates Quinn has been involved in this case since at least October 1997. He has had ample time to find appropriate housing if his goal was to get custody of Brianna. The courts have said children should not be forced to endlessly suffer the parentless limbo of foster care and to continue to keep them in temporary foster homes would not be in their best interest. *In re S.N.*, 500 N.W.2d 32, 35 (Iowa 1993). There are times when extensions are appropriate, but in considering that, a judge must bear in mind if an extended plan fails, that time must be subtracted from an already shortened life in a more permanent home. *Id.*

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In addition to the domestic abuse assault mentioned previously, Quinn has an aggravated assault conviction. This was for an incident in which he brandished a knife and verbally threatened to beat another youth who stared at him. We find such actions to be more than just a mere overreaction as Quinn wants this court to believe. Quinn spent time in jail for these convictions and was ordered to complete the Batterer's Education Program. He had not yet attended the orientation portion of this program at the time of the termination hearing. Quinn had made two attempts to start this program, but he slept through the first and scheduled a second appointment the same day as the termination hearing.

Quinn contends the juvenile court erred in failing to consider his mother as a placement for Brianna to give him additional time to demonstrate consistency in his life. In making this argument, Quinn refers to Iowa Code section 232.116(3)(a). The relevant portion of this section states:

3. The court need not terminate the relationship between the parent and child if the court finds any of the following:
 - (a) A relative has legal custody of the child.

Iowa Code § 232.116(3)(a) (1999). A termination, otherwise warranted, may be avoided under this section. *In re D.E.D.*, 476 N.W.2d 737, 738 (Iowa App. 1991). The factors under section 232.116(3) have been interpreted by the courts as being permissive, not mandatory. *In re A.J.*, 553 N.W.2d 909, 916 (Iowa App. 1996). The words "need not terminate" are clearly permissive. The court has sound discretion, based on the unique circumstances of each case and the best interest of the child, whether to apply the factors in this section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa App. 1993).

Irrespective of these guidelines, it is clear Quinn's mother did not, at any time, have custody of Brianna. We have carefully reviewed this case and conclude the juvenile court did not err on this issue.

Quinn further contends the court erred in underestimating the importance of Brianna's exposure to the African-American heritage since she is a mixed race child. Although we consider this factor important, we agree with the juvenile court that Brianna's immediate needs require termination of parental rights.

We find Quinn's other arguments to be without merit. Quinn has made minimal effort in complying with services and court orders. We conclude the juvenile court correctly terminated Quinn's parental rights to Brianna who deserves the opportunity to have a stable home life.

AFFIRMED.

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