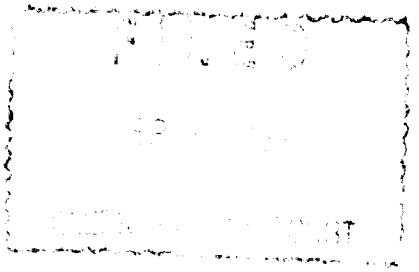
IN THE COURT OF APPEALS OF IOWA

No. 8-512 / 98-0694
Filed September 30, 1998



IN THE INTEREST OF A.C., S.C., and J.C.,
Minor Children,

B.C., Father of S.C. and J.C.,
Appellant.

Appeal from the Iowa District Court for Wapello County, Gene W. Glenn, Associate Juvenile Judge.

The father of two minor children appeals a juvenile court order terminating his parental rights. **AFFIRMED.**

R.T. Starken of Alexander & Starken, Ottumwa, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Rose Anne Mefford, Assistant County Attorney, for appellee State.

Sam K. Erhardt of Erhardt & Erhardt, Ottumwa, guardian ad litem for minor children.

Considered by Cady, C.J., and Streit and Vogel, JJ.

STREIT, J.

Barry and Cyra are the parents of Scotti, born in May 1993, and Jaime, born in December 1994. Barry appeals the decision of the juvenile court which terminated his parental rights to these children. We affirm on appeal.

Barry and Cyra are married. Cyra is also the mother of Amber, born in March 1992. The family first came to the attention of the Department of Human Services (DHS) in February 1994, due to concerns Amber and Scotti were failing to thrive. The same month, Amber was treated for alcohol poisoning. The parents failed to get immediate medical treatment for Amber, taking her to a hospital over an hour away from their home. DHS entered a founded report of denial of critical care. Amber and Scotti were placed in foster care.

In April 1994, the children were adjudicated to be children in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(c)(2). The juvenile court returned the children to the care of the parents. The parents were required to participate in homemaker services and parent skill development sessions. The parents were also to have comprehensive psychiatric and psychological evaluations.

In June 1994, Scotti suffered seizures as a result of heat stroke. The children were playing upstairs in the home, unsupervised, on a hot day. Cyra stated Amber, who was then two, was supposed to be watching Scotti. DHS issued a founded report of denial of critical care. The children were again removed from the care of the parents and placed in foster care.

Jaime was born in December 1994. In June 1995, the parents voluntarily agreed to place Jaime in foster care after Cyra admitted she hit the child and called her a "little bitch." Jaime was later returned to the care of the parents for a short period of time, but was again removed in September 1995. Jaime has also been adjudicated to be a child in need of assistance.

Barry and Cyra did not cooperate with services. The parents believed they did not need help with their parenting skills. The parents were inconsistent in attending supervised visitation. Barry did have a psychological evaluation, and was given a tentative diagnosis of antisocial personality disorder. Barry did not participate in individual counseling.

In January 1996, Barry stated the parents had separated, and sought to have separate counsel represent him in the CINA proceedings. The juvenile court refused the request, based on a finding the parents had not actually separated. Barry appealed. We affirmed the review order continuing the children in foster care. *In re J.C.*, No. 96-249 (Iowa App. Nov. 26, 1996). We remanded, however, to have the juvenile court appoint a separate attorney for Barry. *Id.* In all further proceedings, Barry was represented by separate counsel.

After January 1996, Barry was given separate visitation time with the children. He was consistent in attending visitation. However, he was passive during visits and did not interact much with the children. In June 1996, Barry felt he was unduly criticized for slapping Scotti's hand. He decided to quit attending visitation. In

August 1996, DHS decided to stop visitation due to the children's behavior. Barry has had no further participation in services since that time.

Scotti and Jaime have done very well in foster care. They have few behavioral problems. They are in a foster home together with Amber. The children are considered to be adoptable.

In February 1998, the State filed a petition to terminate the parental rights of Barry and Cyra. Cyra did not contest the termination of her parental rights. Barry appeared, but did not present any evidence. The juvenile court terminated Barry's parental rights pursuant to sections 232.116(1)(e) and (g).

Barry filed a motion pursuant to Iowa Rule of Civil Procedure 179(b), in which he alleged it was improper for the juvenile court to rely on any factual findings made in the CINA proceedings prior to the time he received separate counsel. The juvenile court denied the motion. Barry appealed.

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 E.K.,* 568 N.W.2d 829, 830 (Iowa App. 1997). Our primary concern is the best interests of the children. *In re A.B.,* 554 N.W.2d 291, 293 (Iowa App. 1996).

Barry contends the juvenile court improperly denied him separate counsel during the CINA proceedings. He asserts the court should not be able to rely in the termination proceedings on factual findings which arose during the period after he

invoked his right to counsel and before he was appointed separate counsel. Barry claims, without these facts, there is not sufficient evidence in the record to support termination of his parental rights.

The State claims Barry did not preserve error on this issue because he did not raise it prior to the rule 179(b) motion. In reply, Barry asserts any failure to raise this issue during the termination hearing was due to ineffective assistance of counsel.

Even if we assume this issue was properly preserved for appellate review, we determine the juvenile court could properly rely on all factual findings made during the CINA proceedings. In termination proceedings, a court may take judicial notice of any part of the CINA record. *In re H.R.K.*, 433 N.W.2d 46, 48 (Iowa App. 1988).

Also, in our prior decision in this case, we did not reverse the ruling of the juvenile court due to lack of separate counsel for Barry. The juvenile court's decision continuing the children in foster care was affirmed. *In re J.C.*, No. 96-249 (Iowa App. Nov. 26, 1996). The case was remanded only to allow separate counsel to be appointed for future proceedings. *Id.* Barry did have separate counsel in all subsequent proceedings. He was not denied his right to counsel.

Furthermore, in our de novo review, we find there is sufficient evidence in the record to support termination of Barry's parental rights. Barry was not cooperative with services. His parenting skills have not improved. Barry has not had any contact with the children since June 1996. Although Barry has been prohibited from having visitation with the children since August 1996, he has not attempted to telephone them

or send them letters. Barry was passive during visitation and only interacted with the children when they approached him.

Barry and Cyra together made the decision not to seek immediate medical treatment for Amber when she had alcohol poisoning. Barry, as well as Cyra, was responsible for Scotti when he was diagnosed with failure to thrive. Barry was also not able to protect Jaime from being hit by Cyra. In the past, Barry has allowed Cyra to discipline the children, even though he knew she has a temper. There is no evidence to show Barry and Cyra are divorced. We question whether Barry would be able to protect the children if he reunited with Cyra in the future.

Based on all of these factors, we conclude Barry's parental rights to Scotti and Jaime were properly terminated. We affirm the decision of the juvenile court to terminate Barry's parental rights.

AFFIRMED.