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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF C.W.A.,
A Minor,

C.A., Natural Father,

Appellant.

Filed April 20, 1988

8-58
87-1230

Appeal from the Iowa District Court for Polk County (Juv.) (JU 6844-14) - Vincent Hanrahan, Judge.

The district court terminated the parental rights of both parents, and the father has appealed. **AFFIRMED.**

Ronald Baybayan, Des Moines, for the appellant father.

Thomas J. Miller, Attorney General; Charles K. Phillips, Assistant Attorney General, and Rebecca A. Belcher, Assistant Polk County Attorney, for appellee State

David Backstrom, Des Moines, for the child.

Heard by Oxberger, C.J., and Donielson and Hayden, JJ.

HAYDEN, J. 2

C.A., the father of C.W.A., a four-year-old boy, appeals the ruling of the juvenile court terminating his parental rights pursuant to Iowa Code section 232.116(5). He asserts the State failed to show by clear and convincing evidence C.W.A. cannot be returned to his custody. We affirm.

C.W.A. was born October 30, 1983, to D.A., his mother, and C.A. At the time of his birth, C.W.A.'s parents were apparently separated and D A was unable to care for him. Shortly after his birth, therefore, C.W.A. was left in the care of a friend of D.A. On January 27, 1984, C.W.A. was hospitalized with pneumonia and was also diagnosed as being afflicted by severe infantile apneic spells. These spells can cause cessation of breathing and, ultimately, death if not closely monitored. Due to the life-threatening nature of these spells and the parents' history of failing to care for C.W.A., he was removed from the custody of his parents in February 1984. On May 18, 1984, C.W A and his older brother, A.A., were adjudicated children in need of assistance This status as to C.W.A. was confirmed on July 13, 1984, January 24, 1985, and June 26, 1986.

In February 1987 the State brought this action to terminate the parent-child relationship between C.W.A. and both C.A. and D.A. The state alleged D A had abandoned C.W.A. and termination with respect to C.A. was warranted pursuant to Iowa Code section 232.116(5). The juvenile court terminated the parental rights of both parents on these grounds. This appeal by C.A. followed D A. has not appealed.

Iowa Code section 232.116(5) provides:

> Except as provided in subsection 6, the court may order the termination of both the parental rights with respect to a child and the relationship between the parents and the child on any of the following grounds:
>
> ***

5. The court finds that:

a. The child has been adjudicated a child in need of assistance pursuant to section 232.96; and

b. The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least twelve of the last eighteen months; and

c. 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.

It is not disputed C.W.A. has been adjudicated a child in need of assistance and custody of him has been transferred from his parents for the requisite period of time. C.A. contends the State has not shown by clear and convincing evidence C.W.A. cannot be returned to his custody.

Our review of the juvenile court is de novo. We review the facts as well as the law and adjudicate rights anew on those propositions properly preserved and presented to us. In re O'Neal, 303 N.W.2d 414, 422 (Iowa 1981). Central to our determination in this matter are the best interests of C.W.A. In re Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

The record reveals the following. During most of the time pertinent to this proceeding, C.A. has had custody of A.A., C.W.A.'s older brother. This is significant to our determination of what the future likely holds for C.W.A. if returned to C.A. "Insight for this determination can be gained from evidence of the parent's past [and present] performance, for that performance may be indicative of the quality of future care that parent is capable of providing." Id.

It is apparent C.A. has had problems caring for A.A., who is autistic. These problems have been manifested primarily in numerous child protective investigation referrals made on A.A. Most of these referrals were made by the school where A.A. is a student and were related to bruises on A.A.'s face, back, hip, and bottom. At least one referral was related to marks resembling

rope burns on his neck. C.A.'s problems caring for A.A. have also been manifested by difficulties regarding cleanliness, proper supervision and a safe environment, and the provision of nutritional meals. These difficulties have also affected C.W.A. when he has visited C.A.

Specifically, the record shows C.A. has frequently failed to change C.W.A.'s diaper during visits, returning him to the foster home in the same diaper in which he left. Also, C.A.'s home has not been consistently clean. At one point, it had to be sprayed for lice and fleas, which had bitten A.A. all over his body. There is evidence C.W.A. and A.A. would on occasion play in the kitty litter box and C.A. would have to be reminded to get them out. Lack of proper supervision also was evidenced by A.A.'s frequent attempts to bite C.W.A. and by the numerous times A.A. and C.W.A. were caught with nails, razor blades, and curtain hooks they had found in the home. The provision by C.A. of nutritional meals has also been sporadic. Lunch during most of C.W.A.'s visits consisted of hot dogs and potato chips. Rarely was there much food in the house and what was present was usually obtained through government services, despite C.A.'s financial ability to purchase more food.

Our review of the record convinces us, as it did the juvenile court, there is clear and convincing evidence C.W.A. cannot be returned to the custody of C.A. We are persuaded the best interests of C.W.A. require more attention and care than C.A. has shown he is capable of providing. This is particularly significant in light of C.W.A.'s medical condition. If returned to C.A., we are convinced C.W.A. would suffer harm. See Dameron, 306 N.W.2d at 747. We therefore affirm the decision of the juvenile court.

AFFIRMED.