

IN THE COURT OF APPEALS OF IOWA

No. 1-313 / 00-1645

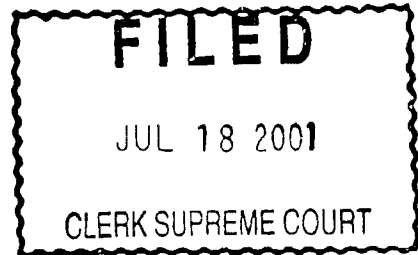
Filed July 18, 2001

IN THE INTEREST OF

R.L.H., III, Minor Child

R.L.H., Jr. and B.E., Parents

Appellants.



Appeal from the Iowa District Court for Woodbury County, Patrick H. Tott,
District Associate Judge.

Parents appeal the termination of their rights to their son. **AFFIRMED.**

William L. Binkard, South Sioux City, Nebraska, for appellant father.

Patrick T. Parry of Forker & Parry, Sioux City, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
attorney General and Dewey Sloan, Assistant County Attorney for appellee-
State.

Robert Rehan, Sioux City, for the minor child.

Considered by Hayden S.J., Harris, S.J. and Honsell, S.J*

Senior judges assigned by order pursuant to Iowa Code Section 602.9206
(2001).

000110

HONSELL, S.J.

The parents of R.L.H., III, appeal the decision of the juvenile judge terminating their parental rights. They challenge the statutory grounds relied upon by the juvenile court asserting that there was not clear and convincing evidence to support the decision. Additionally they claim that it is not in the best interests of the child to terminate their parental rights. B.E. also asserts that her counsel was ineffective in the assistance he provided her.

I. Facts and Background.

R.L.H., III was born on October 28, 1998. On September 22, 1999, a petition alleging child in need of assistance was filed, and on September 24, 1999, R.L.H., III was removed from his parental home pursuant to court order entered after a temporary removal hearing. R.L.H., III has remained outside of the parental home since that time, first in the care of a relative and in the care of a foster family since May 16, 2000. An adjudicatory hearing was held and the child was adjudicated to be a child in need of assistance. A petition to terminate parental rights was filed and the termination hearing was held on July 17 and August 21, 2000. The court's decision terminating parental rights was filed September 6, 2000.

R.L.H., Jr. is thirty-three years old. At time of trial he was incarcerated at the Clarinda Correctional Facility at Clarinda, serving a five-year sentence for a forgery conviction. He anticipated being paroled during January 2001. He has a history of substance abuse involving methamphetamine and marijuana. Before being incarcerated he was twice offered outpatient services at Gordon Recovery Center. He started treatment on October 10, 1999, and was discharged against medical advice on November 23, 1999. He started again in December 1999 and

again was discharged due to nonattendance on December 20. He has completed a Batterer's Education Program and has been exposed to a parenting skill development program. However, he also has a history of failing to keep appointments involving other social services offered to him. While in prison he has been participating a program identified by him as The Other Way. It involves dealing with his criminal conduct and getting a GED. As of the time of trial he had not involved himself in a substance abuse program, although he indicated that he intended to do so. His past history reflects that he has not dealt with his substance abuse problem and he has not been able to provide a safe and secure environment within which to raise a child.

B.E. is a thirty-one-year-old woman who also has a substance abuse problem involving amphetamine and marijuana dependence. She has been offered the opportunity to receive treatment for this problem; however, she was discharged from the program for failing to attend scheduled sessions. She also failed to keep appointments with regard to social services programs intended to provide her with skill development and therapy issues. One evaluation she completed recommended inpatient treatment. She entered the Synergy Center in Cherokee, Iowa, on June 5, 2000 and left June 19, 2000, without completing the program. She was requested to keep contact with the Department of Social Services on a weekly basis and did not honor this request. Her past history reflects that she has not dealt with her substance abuse problem, and she has not been able to provide a safe and secure environment within which to raise a child.

II. Scope of Review. The review in termination proceedings is de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). Although they do not bind us, we

give weight to the trial court's findings of fact, especially when considering credibility of witnesses. Iowa R. App. R. 14(f)(7); *In re M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993). The primary interest in termination proceedings is the best interests of the child. Iowa R. App. P. 145(f)(15); *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998).

To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence. See Iowa Code § 232.116. "Clear and convincing evidence" means there are no serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence. See *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa Ct. App. 1983).

III. Best Interests. Our primary concern in a termination proceeding is the best interests of the child. *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa Ct. App. 1995). Those best interests are determined by looking at the child's long-range as well as immediate interests. We consider what the future likely holds for the child if that child is returned to his or her parents. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981); *In re T.T.*, 541 N.W.2d 552, 555 (Iowa Ct. App. 1995). A good prediction of the future conduct of a parent is to look at the past conduct. *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). The parent's past performance may indicate the quality of care the parent is capable of providing in the future. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). Case history records are entitled to much

probative force when a parent's record is being examined. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993).

IV. Statutory mandates. Iowa Code section 232.116 (1) (g) provides:

(1) Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds: . . . (g) The court finds that 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.

When the 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 S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (citing *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996)).

V. Ineffective assistance of counsel. The test for ineffective assistance of counsel in termination cases is generally the same as in criminal proceedings. *In re D.W.*, 385 N.W.2d 570, 579 (Iowa 1986). In order to establish an ineffective assistance claim, it must be shown that (1) counsel's performance is deficient, and (2) actual prejudice resulted. *Id.* at 580. We presume that counsel's conduct falls within the range of reasonable competency. *Id.* at 580. The burden of proving ineffectiveness is on the claimant. *In re J.P.B.*, 419 N.W.2d 387, 392 (Iowa 1988).

It is our determination that counsel's representation was not ineffective in any way. The case histories of both parents were relevant. *S.N.*, 500 N.W.2d at

34. Nor do we find that the documents referred to by counsel for B.E. were such that there was unfair prejudice caused by trial counsel's failure to object to their introduction. See *In re Dameron*, 306 N.W.2d 743,745 (Iowa 1981).

V. Return of child to parental care. Reasonable services must be provided to attempt to reunite a family before the State can terminate parental rights. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994). While the State has an obligation to make reasonable efforts, it is a parent's responsibility to demand services if they are not offered prior to the termination hearing. *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa Ct. App. 1997). Preserving families is the underlying principle behind these proceedings. *In re C.D.*, 508 N.W.2d 97, 100 (Iowa Ct. App. 1993). A parent's challenge to services should be made when they are offered. *In re H.H.*, 528 N.W.2d 675, 678 (Iowa Ct. App. 1995).

Family centered services, parenting skill development, mental health counseling, supervised visits and marital counseling have been made available R.L.H., Jr. and B.E. There has not been reasonable improvement in areas which would lead to R.L.H., III being provided with a safe, sanitary and stable living environment. Reasonable services were provided, however, while the State fulfilled its responsibility, R.L.H., Jr. and B.E. did not follow through. It is in the long-range best interests of R.L.H., III that the parental interests of R.L.H., Jr. and B.E. be terminated.

We affirm the decision of the juvenile court removing R.L.H., III from the care of his parents and the termination of their parental rights.

AFFIRMED.

000125