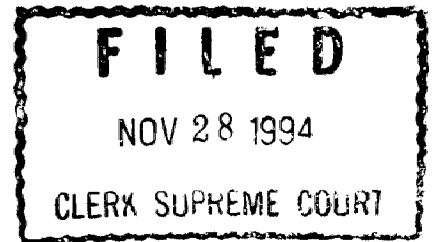


IN THE COURT OF APPEALS OF IOWA

No. 4-479 / 94-0079



IN THE INTEREST OF S.W., V.W., and A.W., Minor Children,
J.W., Father,
Appellant.

Appeal from the Iowa District Court for Scott County,
Michael A. Woods, Associate Juvenile Judge.

J.W., the father, appeals from a termination of his
parental rights to S.W., V.W. and A.W. **AFFIRMED.**

Carol J. Walker, Davenport, for appellant-father.

Bonnie J. Campbell, Attorney General, Gordon E. Allen,
Deputy Attorney General, Charles K. Phillips, Assistant
Attorney General, and Gerda Lane, Assistant County
Attorney, for appellee-State.

John Aitken of VanderVennet, Motto & Aitken, P.C.,
Davenport, guardian ad litem, for minor children.

Considered by Sackett, P.J., and Habhab and Huitink,
JJ.

SACKETT, P.J.

James, the father of Shannon, born in 1982, Victoria, born in 1989, and Amy, born in 1991, appeals from an order terminating his parental rights. James contends the State failed to prove by clear and convincing evidence the circumstances that led to the children being found children in need of assistance still exist. James further contends he was denied visitation. The mother, who did not appear at trial, has not appealed. We affirm.

The children were found to be children in need of assistance as defined under Iowa Code section 232.2(6)(b), 232.2(6)(c)(2), and 232.2(6)(n) in February 1993. The guardian ad litem filed a petition for termination of parental rights and, on December 13, 1993, the parental rights of both James and the children's mother were terminated.

The children were put in foster care in December 1992. An officer with the Davenport Police Department had interviewed Shannon in early November 1992. Shannon has a mental disability that makes it difficult for her to learn to do tasks. After extensive questioning, Shannon told the investigator James had touched her in both the genital area and the rectum. A physical examination was conducted and the findings were consistent with the history of possible sexual abuse. Because of this evidence, it was determined to be necessary to keep James away from the children.

James did not stay away. There also was evidence Shannon had sexual contact with several boys near her age. The children were left alone while their parents went to bars. School attendance of Shannon was poor.

After the children were placed in foster care, their mother entered a drug and alcohol rehabilitation program in Hannibal, Missouri.

In December 1993, James was given a case plan and he was told he needed to do something to show he was trying to gain custody of the children.

In May 1993, James contacted the department of human services about visitation. Because of the sexual abuse allegations, there was concern by the department about how to handle the situation. Then on June 11, 1993, James was sentenced to five years in prison for violating probation by ADC fraud and lascivious acts with a child. James had been placed on probation in February 1984 for indecent contact with a child. He had a driving under the influence of alcohol charge and six charges for public intoxication.

On June 21, 1993, Shannon's therapist determined Shannon should not see her father. Apparently, by this time, James was incarcerated and no effort was made to establish visitation. There is nothing in the record showing James requested further visitation.

When the petition for termination of parental rights was filed, James was incarcerated at the Oakdale Medical Facility.

James was not present for the termination hearing but was represented by counsel. The State made its record through the admission of a number of exhibits. Many were reports and letters which included the conclusion of the maker of the report or the writer of the letters that James had made no effort to follow up with programs and he had sexually abused Shannon. James's attorney made no objection to the admission of exhibits.

James's attorney said James did not wish to appear at the hearing but told the court he was still incarcerated and was currently in Mt. Pleasant and was involved in drug and alcohol treatment programs, a parenting class, and some general education courses. The attorney also advanced James was contesting termination of his parental rights, but was not able to take the children.

We review de novo. Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984) cert denied, sub nom. J.G. v. Tauke, 469 U.S. 1222, 105 S. Ct. 1212, 84 L. Ed. 2d 353 (1985). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. Id. at 491-92. The right to raise one's children is an essential, basic civil right, a right "far more precious than property rights." Stanley v. Illinois, 405 U.S. 645, 651, 92 S. Ct. 1208, 1212, 31 L. Ed. 2d 551, 558 (1972). Termination is a drastic, final step which improvidently employed can be

fraught with danger. Termination must only occur where more harm is likely to befall the child by staying with his or her parents than by being permanently separated from them. Alsager v. District Court, 406 F. Supp. 10, 24 (S.D. Iowa 1975). The state's interest in protecting children must be balanced against the parents' countervailing interest in being able to raise their children in an environment free from government interference. Alsager, 406 F. Supp. at 22. The issue of whether or not to legally sever the biological ties between parent and child is an issue of grave importance with serious repercussions to the child as well as the biological parents. In re R.B., 493 N.W.2d 897, 899 (Iowa App. 1992). The goal of a child in need of assistance proceeding is to improve parenting skills and maintain the parent-child relationship. Id.

The State bears the burden of proving the allegations of its petition by clear and convincing evidence. See In re Chad, 318 N.W.2d 213, 219 (Iowa 1982); In re T.B.B., 460 N.W.2d 881, 882 (Iowa App. 1990).

James first contends the State did not meet its burden because there was no evidence concerning James's success in the programs in which he participated in prison. We find no basis to this argument. The only evidence at trial was James was not able to take the children at this time. James's attorney advanced James was taking classes but there was no mention of any successes in the programs.

James's next contention is the State did not make reasonable efforts to reunite the family. We agree with James that there is evidence he asked for visitation and it was denied because by that time his probation had been terminated. The problem is James's challenge reasonable efforts were not being made should have been raised earlier. Other than the record of one request, there is no evidence James objected to or requested additional contact with the children. Preserving families is the underlying principle behind these proceedings. In re C.D., 508 N.W.2d 97, 100 (Iowa App. 1993). A parent's challenge to services should be made when they are offered. Id. at 101; see also In re S.A., 502 N.W.2d 23, 25 (Iowa App. 1993).

We affirm the termination. We cannot assume termination guarantees adoption. In re B.H., 517 N.W.2d 715, 717 (Iowa App. 1994). There is no evidence as to the possible future for these children. We trust the state will make an immediate effort to see the children are in secure and permanent placements.

AFFIRMED.