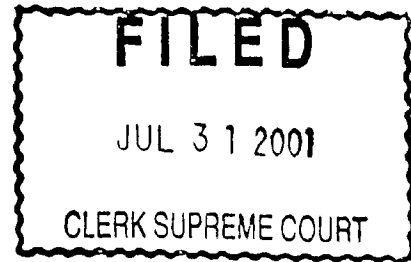


IN THE COURT OF APPEALS OF IOWA

No. 1-395 / 00-1737
Filed July 31, 2001



IN THE INTEREST OF G.P. and A.P., Minor Children,
R.P., Father,
Appellant.

Appeal from the Iowa District Court for Linn County, Susan Flaherty,
Associate Juvenile Judge.

Father appeals the juvenile court order terminating his parental rights to
two of his children. **AFFIRMED.**

Anne M. Lavery of Mullin & Lavery, P.L.C., Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney
General, and Kelly Kaufman, Assistant County Attorney, for appellee-State.

Hanna Weston of Nadler & Weston, Cedar Rapids, for minor children.

Considered by Vogel, P.J., and Zimmer and Hecht, JJ.

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VOGEL, P.J.

A father appeals the decision of the juvenile court which terminated his parental rights to his two minor children. He claims the State did not present sufficient evidence to warrant termination of his parental rights. We affirm on appeal.

Ron and Monica are the parents of Gabrielle, born in March 1996, and Adrian, born in January 1998.¹ The parents are married, but have a tumultuous relationship and have separated many times. Ron has an extensive criminal history.

After Gabrielle's birth, there were concerns Monica was not following through with proper medical treatment for her. There were also concerns that Monica had reunited with a former boyfriend, Dennis, who was physically abusive to Monica. In December 1996, Gabrielle was adjudicated to be a child in need of assistance (CINA) under Iowa Code sections 232.2(6)(c)(2), (e), and (n).

Gabrielle remained in Monica's care until March 1997, when she was placed in Ron's care due to Monica's continuing relationship with Dennis, despite a no-contact order. Gabrielle was placed in foster care in April 1997 because Ron allowed Monica to care for her, in violation of a juvenile court order. In May 1997, Gabrielle was returned to Ron's care.

When Adrian was born in January 1998, he tested positive for marijuana. Adrian was also adjudicated to be CINA under sections 232.2(6)(n) and (o). Beginning in March 1998, Ron assumed the care of Adrian. Ron received

¹ Ron and Monica also have three older children, and their parental rights to these children were previously voluntarily terminated.

parenting education and skill development services to assist him in taking care of the children. The children were placed in foster care for a short period of time in May 1998, when Ron was in jail on a charge of driving while barred. DHS issued two founded reports of denial of critical care against Ron for leaving the children with inappropriate caretakers.

In January 1999, Ron was arrested on two counts of burglary. He was subsequently sentenced to two five-year terms of imprisonment, to be served concurrently. The children were returned to foster care. Ron remained in prison at the time of the termination hearing.

Gabrielle is developmentally delayed. She needs one-on-one assistance to help her progress in her development. She has done very well in foster care, and is in a home which is considering adoption. Adrian has slight developmental delays. He is considered to be adoptable.

In March 2000, the State filed a petition to terminate the parental rights of Ron and Monica to Gabrielle and Adrian. On September 26, 2000, the juvenile court terminated Ron's parental rights to Gabrielle under sections 232.116(1)(c) and (e), and to Adrian under sections 232.116(1)(c) and (g).² The court found:

[Ron] has the intellectual ability to understand his children's needs and to provide for them. However, he has not demonstrated a willingness to make the effort to do so on a consistent basis. His decision to engage in criminal activity has made him unavailable as a caretaker for his children. It is extremely unlikely that any additional services or time will change either parent's situation and allow for these children to be returned to parental care.

Ron appeals.

² Monica's parental rights were also terminated. She does not appeal.

The scope of review in termination cases is de novo. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). The grounds for termination must be proven by clear and convincing evidence. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Our primary concern is the best interests of the child. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

Ron contends the State did not present sufficient evidence to justify termination of his parental rights. He points out he was the children's caretaker for a substantial period of time. He asserts he met all the requirements of the case permanency plan, except for his burglary convictions. Ron testified he may be released shortly. He would like to resume care of the children when he is released from prison.

A court must reasonably limit the time for parents to be in a position to assume care of their children because patience with parents can soon translate into intolerable hardship for the children. *In re A.Y.H.*, 508 N.W.2d 92, 96 (Iowa Ct. App. 1993). The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems. *In re D.A.*, 506 N.W.2d 478, 479 (Iowa Ct. App. 1993). At some point, the rights and needs of the child rise above the rights and needs of the parents. *J.L.W.*, 570 N.W.2d at 781.

We find the State presented sufficient evidence to warrant termination of Ron's parental rights. Because Ron is in prison, he is clearly not able to have the children returned to his care at the present time. Ron's decision to engage in criminal conduct made him unavailable as a caretaker for the children. However,

even if Ron were released shortly from prison, there are concerns about whether he could adequately meet the children's special needs in order to overcome their developmental delays. Ron testified he did not believe Gabrielle was as delayed as the State asserted. There are also concerns about the parents' ongoing marital problems. At the termination hearing, Ron testified he would like to reunite with Monica when he is released from prison. Monica testified she wanted to divorce Ron, but did not have the finances to do so at that time. Furthermore, there were concerns about Ron's previous care of the children; he sometimes left them with inappropriate caretakers. The children need stability and parents who can adequately attend to their special needs. Ron is unable to provide this stability. For all of these reasons, we conclude the juvenile court properly terminated Ron's parental rights to Gabrielle and Adrian.

We affirm the decision of the juvenile court.

AFFIRMED.