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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

No. 3-289 / 93-197

IN THE INTEREST OF A.R.K., A Minor child,

L.H. and B.K., Mother and Father,

Appellants.

Appeal from the Iowa District Court for Muscatine County, James A. Weaver, District Associate Judge.

The natural parents appeal the district court's termination of their parental rights with respect to their minor child, A.R.K. **AFFIRMED.**

Clifford R. Rhodes, Jr. of Muscatine Legal Services, Muscatine, for appellant L.H.

Esther J. Dean, Muscatine, for appellant B.K.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, Judy Sheirbon, Assistant Attorney General, and Christine Dalton, Assistant County Attorney, for appellee State.

Jeffrey M. Johnson, Muscatine, guardian ad litem for minor child.

Considered by Oxberger, C.J., and Schlegel and Hayden, JJ.

HAYDEN, J. 000142

The natural parents of A.R.K. appeal the juvenile court's termination of their parental rights to A.R.K., born October 18, 1990. L.H. is the mother and B.K. is the father of this child.

The record reveals the Department of Human Services (DHS) became involved with this family within a couple months of A.R.K.'s birth. In December 1990 A.R.K. was the subject of two unfounded abuse reports prepared by DHS. One report arose from an incident in which B.K. poured bleach into a fish tank, exposing A.R.K. to dangerous fumes. On December 14, 1990, A.R.K. was admitted to the hospital for dehydration and slow weight gain. Services focusing on parenting skills were started immediately.

In February 1991 a founded abuse report involving A.R.K. was prepared by DHS. The report, which was filed in April 1991, resulted from a domestic dispute between L.H. and B.K. During the fight, B.K. allegedly stepped on A.R.K.'s leg as he lunged toward L.H. to assault her. B.K. then fled the residence with A.R.K. DHS investigators were unable to locate B.K. and A.R.K. for twenty-four hours. Neither parent sought medical attention for A.R.K. to determine if he had been injured in their dispute. Two days after the domestic dispute, DHS set up a medical examination of A.R.K. The examination revealed the child had suffered no injuries during the domestic dispute. On February 5, 1991, L.H. and B.K. agreed to voluntarily place

A.R.K. into foster care while they worked on domestic violence issues through services provided by the DHS.

In April 1991 the State filed a child in need of assistance (ChINA) petition. At the adjudication hearing, the court determined A.R.K. would be imminently likely to be abused if returned to the parental home. The court adjudicated A.R.K. to be a child in need of assistance pursuant to Iowa Code section 232.2(6)(b) (1991). A visitation schedule was established, and various services were arranged.

During the following year, B.K. continuously failed to achieve the dominant dispositional need: the elimination of domestic violence demonstrated through attendance at the batterer's treatment group. L.H.'s counselor felt the mother could be reunited with A.R.K. as long as B.K. was not present in the home. L.H. tried to break off her relationship with B.K. by moving to Georgia in March 1992. However, she soon returned to Iowa and resumed living with B.K. by June of 1992. In August 1992 the State filed a petition to terminate the parental rights of L.H. and B.K. On January 6, 1993, the juvenile court terminated the parents' rights pursuant to Iowa Code sections 232.116(1)(g) and (h) (1991).

L.H. and B.K. appeal. They argue the record contains no allegations of physical abuse inflicted on A.R.K. by either of them. They also note no findings of injury to A.R.K. as a result of physical abuse have been made.

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Furthermore, the parents contend there have been no incidents of domestic violence since September 1991.

L.H. asserts she has been cooperative with services and benefited from them. B.K. contends he completed the nurturing program and benefited from it. He believes he was cooperative with services, even though he failed to complete the batterer's program. B.K. alleges the woman in charge of the program picked on him and disliked him. B.K. finally asserts reasonable efforts were not made to keep A.R.K. in the home. B.K. cites, for example, the State removed the child without directly telling the parents either of them could leave.

The State argues, among other things, L.H. and B.K. have not progressed in admitting and addressing the domestic violence issues in their relationship. The main concern expressed by the State is if A.R.K. is returned to the parental home, the child is likely to suffer injury as the unintended target of L.H. and B.K.'s violent disputes.

Our review of the trial court's findings in termination proceedings is de novo. Although we are not bound by the fact findings of the juvenile court, we give weight to them, especially when considering the credibility of witnesses. In re L.L., 459 N.W.2d 489, 493 (Iowa 1990). The primary concern in termination proceedings is the best interests of the child. In re J.K., 495 N.W.2d 108, 110 (Iowa 1993); Iowa R. App. P. 14(f)(15).

I. The juvenile court terminated the parental rights of L.H. and B.K. to A.R.K. pursuant to Iowa Code sections 232.116(1)(g) and (h) (1991). Section 232.116(1)(g) permits termination if the child is three years of age or younger, has been adjudicated in need of assistance, has been placed outside the parents' custody for at least six of the last twelve months, and clear and convincing evidence shows the child cannot be returned to the parents' custody at the present time. Iowa Code § 232.116(1)(g) (1991); see In re Z.T.D., 478 N.W.2d 426, 427 (Iowa App. 1991).

The juvenile court also terminated the parental rights of L.H. and B.K. pursuant to Iowa Code section 232.116(6)(h) (1991). This section permits termination if the child meets the definition of child in need of assistance based on a finding of abuse or neglect of the child by a parent and clear and convincing evidence shows the circumstances surrounding the abuse or neglect of the child constitutes an imminent danger to the child. Iowa Code § 232.116(1)(h) (1991).

We review the facts to determine if the requirements of these sections have been met. With regard to subsection (g)(1)-(3), A.R.K. was two years of age at the time of the termination hearing, the child had been adjudicated in need of assistance pursuant to Iowa Code section 232.2(6)(b) (1991), and had been placed outside his parents' custody for the previous twenty-one months. With regard to

subsection (h)(1), we find A.R.K. meets the definition of child in need of assistance. Evidence in the record shows A.R.K. may have suffered a skull fracture, and A.R.K. was admitted to the hospital for dehydration and fear of B.K.'s previous actions, such as exposing the child to dangerous bleach fumes, and L.H. previously stated B.K. had stepped on A.R.K. during one of their fights. We must determine, pursuant to subsection (g)(4), whether clear and convincing evidence shows A.R.K. cannot be returned to the custody of his parents, or if, under subsection (h)(2), the circumstances create an imminent danger to A.R.K. if returned to the home.

The parents argue the State failed to show by clear and convincing evidence A.R.K. could not be protected from harm if returned to his parents. We disagree. There is clear and convincing evidence in the record to show A.R.K. is imminently likely to be abused or neglected by his parents if returned to their home. The parents of this child have a long history of violent and mutually assaultive behavior toward each other. A.R.K. is present during their disputes and often becomes the means by which one party may prevail. The district court noted one method of prevailing during the disputes was to obtain physical custody of A.R.K. This finding is supported by the February 3, 1991, incident in which B.K. and L.H. were arguing and physically fighting when B.K. took A.R.K. and fled the residence. This type of attitude and disregard for the child's welfare

places the child at a great risk of injury. We look to the parents' past performance because it may indicate the quality of care the parent is capable of providing in the future. In re L.L., 459 N.W.2d at 494. L.H. and B.K. admit they had a violent relationship in the past.

The parents contend there have been no incidents of domestic violence since September 1991. The juvenile court, however, was not convinced. In its termination order the court stated "B.K. and L.H. report their relationship is no longer adversely affected by discord. The last known incident was on September of 1991. Nonetheless, their reports are not credible. Each now recognizes the disadvantages to them from further disclosures." Although not bound by these or other findings of the juvenile court, we give weight to them in determining whether to terminate the parental rights of L.H. and B.K. See id. at 493.

The parents still have not confronted the abuse and violence problems. "The requirement that the parents acknowledge and recognize the abuse before any meaningful change can occur is essential in meeting the child's needs." In re H.R.K., 433 N.W.2d 46, 50 (Iowa App. 1988).

> There are a number of stern realities faced by a juvenile judge in any case of this kind. Among the most important is the relentless passage of precious time. The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems. Neither will childhood await the wanderings of the judicial process. The child will continue to

> grow, either in bad or unsettled conditions or in the improved and permanent shelter which ideally, at least, follows the conclusion of a juvenile proceeding.

In re A.C., 415 N.W.2d 609, 613 (Iowa 1987), cert. denied sub nom. A.C. v. State, 485 U.S. 1008 (1988). We particularly note the fact B.K. has failed to complete the domestic violence group program. He has started the group five times but has failed to successfully complete the program. DHS caseworkers noted the parents' failure to recognize the seriousness of the domestic fighting. The record and testimony of the parents show they fail to recognize and tend to minimize this problem.

In light of the pattern of violence the parents exhibited in the presence of this young child and their failure to recognize and adequately address the problem over the past two years, we find termination of their parental rights is in the best interests of A.R.K. We find clear and convincing evidence supports the termination of the parental rights of B.K. and L.H. to A.R.K. We affirm the juvenile court on the issue of termination.

II. The parents argue they were not provided adequate services to prevent the need for termination of their parental rights. We disagree.

The record shows DHS provided the parents with numerous services. Since December 1990 the services offered to this family by DHS have included: relationship therapy, visiting nurse services, individual counseling, domestic

violence counseling, parental nurturing classes, in-home family therapy, supervised visitation, and foster care services. DHS initially provided services to the parents through Mississippi Valley Counseling Associates. This agency emphasized family violence and safety issues. This agency, however, withdrew its services in August 1991 due to minimal motivation by A.R.K.'s parents and B.K.'s failure to participate in the domestic violence group program. DHS then transferred this case to Family Resources. This agency provided supervised visitations, parenting education, and domestic abuse counseling. Community Nursing also provided supervised visitations and a nurturing program.

In a March 4, 1992, report an in-home family counselor stated:

> [T]he first in-office visit was canceled by the parents. B.K. then missed the next visit as well. Since the court hearing, eight (8) visits have been scheduled in the office and six (6) have been canceled. L.H. has been present for five individual counseling sessions, canceled two and did not show up or call for one. B.K. requested that he meet with this counselor on one occasion and then canceled the appointment. B.K. attended one of the Batterer's groups on January 13, 1992 and missed the remaining nine (9) sessions. This was his third attempt to participate in the group. As of this date, he has not contacted the group facilitators.

The record shows DHS has made reasonable efforts to return A.R.K. to his parents' home.

We affirm the termination of L.H. and B.K.'s parental rights to A.R.K. pursuant to Iowa Code sections 232.116(1)(g) and (h) (1991).

Costs of this appeal are taxed one-half to B.K. and one-half to L.H.

AFFIRMED.