

IN THE COURT OF APPEALS OF IOWA

FILED

JUN 15 1989

CLERK SUPREME COURT

IN THE INTEREST OF
L.S., JR., and H.S. II,

L.S., SR., Father

Appellant.

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Appeal from the Iowa District Court for Pottawattamie County (No. 00682), Gordon C. Abel, District Associate Judge.

The father of two boys appeals the termination of his parental rights. **REMANDED FOR ADDITIONAL EVIDENCE.**

Richard D. Crowl, Jr. of Porter, Tauke, O'Brien & Crowl, Council Bluffs, for appellant father.

Troyce Wheeler, Council Bluffs, guardian ad litem for the children.

Thomas J. Miller, Attorney General; Gordon Allen, Assistant Attorney General; and Martha Heinicke, Assistant County Attorney, for appellee State.

Heard by Oxberger, C.J., and Sackett and Habhab, JJ.

PER CURIAM

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The father, L.S. Sr., and children, L.S. Jr. and H.S. II, appeal the termination of L.S. Sr.'s parental rights. They contend the relationship should not be terminated because L.S. Jr., who is over ten years old, objects, such termination would be detrimental to the children, and that the father's absence is due to his incarceration.

The children were adjudicated in need of assistance on June 3, 1985. The petition for termination of parental rights was filed on November 20, 1986. The hearing was held on May 1, 1987. Finally, the order terminating parental rights was entered on November 1, 1988.

L.S. Sr. was incarcerated in Nebraska on a life sentence during September of 1980. The mother has abandoned the children and did not appeal the decision of the juvenile court. After L.S. Sr. was imprisoned, the children lived with their paternal grandparents until the spring of 1985, at which time due to ill health the grandparents asked for the State's assistance. L.S. Jr. was born on April 16, 1975; he is now fourteen years old. His brother, H.S. II, was born on July 30, 1977; at this time he is almost twelve years old.

We review de novo. In the Interest of W.G., 349 N.W.2d 487, 491 (Iowa 1984). We give weight to the trial court's findings of fact, but we are not bound by those determinations. Id. at 491-92.

We remand this case to the trial court for the taking of additional evidence consistent with the directions of this opinion.

The children and father contend that their relationship should not be severed pursuant to Iowa Code section 232.116(6)(b), (c), and (e) (1987), which states:

6. Notwithstanding the provisions of subsections 2 to 5 the court need not terminate the relationship between the parents and child if the court finds:

* * *

b. The child is over ten years of age and objects to such termination; or

c. There is clear and convincing evidence that such termination would be detrimental to the child at the time due to the closeness of the parent-child relationship; or

* * *

e. That the absence of a parent is due to the parent's admission or commitment to any institution, hospital or health facility or due to active service in the state or federal armed forces.

However, a review of the record reveals the evidence is too stale for us to make a review. The termination hearing was held on May 1, 1987, and the juvenile court's order was not entered until November 1, 1988. It is unclear what the children's present disposition is regarding termination; what their present emotional and behavioral status might be as bearing on their adoptability and development; and whether both children could be adopted together.

It is not in the best interests of any child adjudicated in need of assistance to be caught in the time-consuming mechanisms of legal procedure. The legislature has mandated that the children be moved through these proceedings as expeditiously as possible. See Iowa Code §§ 232.102(7) and 232.116 (1989).

We direct on remand that the trial court set this matter immediately for hearing. The trial court shall file its new findings and order forthwith and immediately forward the trial record to this court.

REMANDED FOR ADDITIONAL EVIDENCE.