

## IN THE IOWA COURT OF APPEALS

IN THE INTEREST OF )

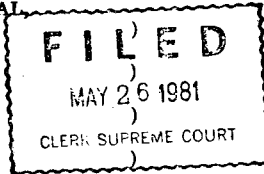
NICKIE DAVES,  
a/k/a NATASHIA NICKIE NEAL )

Filed May 26, 1981

A Child,

JOHN NEAL,

Appellant. )

1-39  
3-65518

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Appeal from Pottawattamie Juvenile Court. Gordon C. Abel, Judge.

Appellant appeals the juvenile court's order terminating his parental rights under chapter 232, The Code 1979. AFFIRMED.

Gregory L. Waggoner, of Waggoner & Walters, Council Bluffs, Ia., for appellant.

Thomas J. Miller, Attorney General of Iowa, and Brent D. Hege, Assistant Attorney General, for child.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

**PER CURIAM**

Appellant, John Neal, the natural father of Natashia Nickie Neal, appeals the juvenile court's order terminating his parental rights in the child under chapter 232, The Code 1979. We affirm.

Our review is de novo. In Interest of Voeltz, 271 N.W.2d 719, 722 (Iowa 1978); In Interest of Kelley, 262 N.W.2d 781, 782 (Iowa 1978); Iowa R. App. P.4. We give weight to the fact findings of the trial court, especially when considering the credibility of the witnesses, but we are not bound by them. In re Loeffelholz, 162 N.W.2d 415, 419 (Iowa 1968); Iowa R. App. P. 14(f)(7). Our controlling concern is the best interest of Nickie. Iowa R. App. P. 14(f)(15). A termination proceeding is not like a personal injury action where an injury must be proved before damages may be recovered. In Interest of Kester, 228 N.W.2d 107, 110 (Iowa 1975). The termination-of-parental-rights statute is preventive as well as remedial. Id. The statute mandates action to prevent probable harm to children and does not require delay until after the harm has been done. Id. The fundamental consideration in a termination decision is what the future holds for the child if he is returned to the custody of his natural parent. In Interest of Ponx, 276 N.W.2d 425, 433 (Iowa 1979). Determination of what is likely to occur in the future is based on present conditions and what has occurred in the past. Id.; In Interest of Freund, 216 N.W.2d 366, 369 (Iowa 1974).

A termination proceeding was commenced under section 232.114(5), The Code 1979. This section provides:

232.114 Grounds for termination. Except as provided in subsection 6, the court may order the termination of both the parental rights with respect to a child and the relationship between the parents and the child on any of the following grounds:

\* \* \*

5. The court finds that:

- a. The child has been adjudicated a child in need of assistance pursuant to section 232.96; and
- b. The custody of the child has been transferred from his or her parents for placement pursuant to section 232.102 for at least twelve months; and
- c. There is clear and convincing evidence that the child cannot be returned to the custody of his or her parents as provided in section 232.102.

Appellant concedes that sections 232.114(5)(a) and (b) have been satisfied, and the only

issue is whether section 232.114(5)(c) has been satisfied. Section 232.102(6) provides that a CHINA placement of a child apart from his parents should be terminated and the child should be returned to his home if a court finds by a preponderance of the evidence that the child will not suffer harm in the manner specified in section 232.2(5). In Interest of Adkins, 298 N.W.2d 273, 278 (Iowa 1980). We find that there is clear and convincing evidence that there has been no palpable change from the conditions that led to the CHINA action and that Nickie would suffer harm if returned to John's care and custody. Id.

Nickie was born on May 11, 1978 while her parents were living in Sloan, Iowa. Nickie's mother, Renee, left the family in October, 1978. On the same day Renee left, appellant transported six-month-old Nickie from Sloan to Council Bluffs, Iowa, where he left Nickie with a babysitter whom he had never met before. Appellant gave the babysitter a fictitious name, and the babysitter was unable to locate appellant when the need arose. This situation gave rise to Nickie's being adjudicated a child in need of assistance, and she has been in foster care continuously since October, 1978.

The June 9 order adjudicating Nickie a child in need of assistance mandated a home study of appellant's residence and child care plans. The study was never made, because of appellant's lack of cooperation. The result of a September 7, 1979 review hearing on the CHINA status of Nickie resulted in a September 18, 1979 court order extending Nickie's CHINA status. The order required appellant to maintain steady, full-time employment. He has not. It required him to pay the Iowa Department of Social Services support for Nickie. Social Services assessed appellant \$13.85 per month for three months as support for Nickie, and he has not paid it, even though he does furnish clothing, food, and shelter for his present girl friend and her baby. Since October, 1979, appellant has made no financial contributions to Nickie's support. Since October, 1978, until September, 1979, appellant visited Nickie only ten times, usually for twenty or thirty minutes each time, and never for more than an hour. From September, 1979, until the termination hearing in June, 1980, appellant visited Nickie only once, even though the September 18 court order required monthly visits. Nickie does not recognize appellant as her father. Appellant's arrangements for caring for Nickie while he is working are questionable, and, in any event, under appellant's arrangements appellant would not have the primary responsibility of caring for Nickie. After appellant moved to Missouri,

the Missouri Department of Social Services, in cooperation with its Iowa counterpart, attempted another home study of appellant's residence, but never accomplished the study, because of appellant's failure to cooperate. Three social workers in both Iowa and Missouri have recommended that appellant's parental rights be terminated. We agree with one of the social worker's and the trial court that appellant has voiced an attitude concerning Nickie's mixed racial parentage that could subject her to emotional abuse and harm. We also agree with the trial court's factual findings that appellant has established a history of instability in his family and personal relationships, employment, and residency.

There is clear and convincing evidence that Nickie cannot be returned to appellant's custody as provided in section 232.102.

AFFIRMED.