

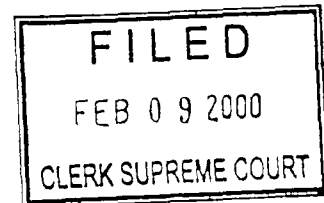
IN THE COURT OF APPEALS OF IOWA

No. 1999-522 (9-779) / 99-1062
Filed February 9, 2000

IN THE INTEREST OF

T.B and T.B.,
Minor Children,

M.B., Father,
Appellant.



Appeal from the Iowa District Court for Mahaska County, Michael R. Stewart, District Associate Judge.

A father appeals from the juvenile court's termination of his parental rights.

AFFIRMED.

Allen A. Anderson of Spayde, White & Anderson, Oskaloosa, for appellant.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and Vernon G. Stejskal, Assistant County Attorney, for appellee-State.

Randy DeGeest, Oskaloosa, for minor children.

Considered by Vogel, P.J., and Vaitheswaran, J., and Peterson, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code § 602.9206
(1999).

PETERSON, S.J.

Marty and Tarrie are the parents of Toni, born in December 1988, and Timothy, born in July 1991. Marty appeals the decision of the juvenile court which terminated his parental rights. He claims the State did not present sufficient evidence to warrant termination of his parental rights.

The family originally came to the attention of the Department of Human Services (DHS) in March 1992, when DHS issued a founded report Marty had physically abused Toni. In April 1992, DHS issued a founded report of denial of critical care against the parents for failure to provide adequate shelter.

The parents later separated and the children lived with Tarrie. In June 1993, the children were placed in foster care due to Tarrie's inability to care for them. Tarrie thereafter dropped out of the children's lives, and they have not seen her for many years.¹ Marty participated in services, and in August 1995, the children were returned to his care. Marty received family-centered services until February 1997. The juvenile court case was closed in March 1997.

In May 1997, Toni reported she had been repeatedly sexually abused by Marty. She also reported she was worried about Timothy's safety because Marty was very rough with him. The children were removed from the home and placed in foster care. DHS issued a founded report of sexual abuse of Toni by Marty. Toni was adjudicated to be a child in need of assistance pursuant to Iowa Code section 232.2(6)(d) (1997) (child was sexually abused). Timothy was adjudicated

¹ Tarrie's parental rights were terminated under Iowa Code section 232.116(1)(b) (abandonment). She has not appealed.

to be a child in need of assistance pursuant to section 232.2(6)(b) (parent has physically abused or neglected child).

In June 1997, Marty attended a supervised visit with the children. After the visit, the children stated they did not care to have any further visits. On the advice of the children's therapists, no further visits were held. The children each attend individual therapy. Timothy revealed to his therapist he had been physically abused by his father. Marty did not receive any services because he told social workers he did not wish to receive any.

In October 1998, after a jury trial, Marty was convicted of three counts of sexual abuse in the second degree due to his sexual abuse of his daughter, Toni. On each count, Marty was sentenced to a term of imprisonment not to exceed twenty-five years, the sentences to run concurrently.

After Marty's criminal conviction, the State filed a petition to terminate his parental rights. The juvenile court terminated Marty's parental rights under sections 232.116(1)(e) (child cannot be returned safely to home), (i) (parent imprisoned for crime against child), and (l) (parent convicted of felony for abusing child). The court found that giving primary consideration to the physical, mental, and emotional condition and needs of the children, Marty's parental rights should be terminated. Marty appealed.

The scope of review in termination cases is de novo. *In re J.L.W.*, 570 N.W.2d 787, 780 (Iowa App. 1997). The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa App.

1997). Our primary concern is the best interests of the children. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

Marty contends the State did not present sufficient evidence to support termination of his parental rights. He claims the State failed to show the children could not be returned safely to his care, which is an element of section 232.116(1)(e). Marty claims the children could be returned to his care because he was wrongfully convicted of sexual abuse in the second degree. He states there are inconsistencies between Toni's deposition testimony and her trial testimony.

A good prediction of the future conduct of a parent is to look at the past conduct. *In re N.F.*, 579 N.W.2d 338, 341 (Iowa App. 1998). The parent's past performance may indicate the quality of care the parent is capable of providing in the future. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997).

Toni reported many details regarding the sexual abuse by her father and her statements seem credible. She was able to provide social workers with an anatomically correct drawing of her father's private parts. Marty should not be able to collaterally attack his criminal conviction through this juvenile court action. A collateral attack on a conviction may be made only by a postconviction action. *Emery v. Fenton*, 266 N.W.2d 6, 10 (Iowa 1978). We find there is sufficient evidence to show Toni was sexually abused by Marty. Also, Timothy reported several incidents of physical abuse by Marty. We conclude the children could not safely be returned to Marty's care.

In addition, Marty will be in prison for some period of time into the future and will be unable to care for the children. Marty testified he would like his mother or a niece to care for the children. However, the maternal grandmother had not had any contact with the children since about February 1997. She lives in a home which is too small for the children. She does not drive and does not have a telephone. The niece does not know the children, and lives with the grandmother. We determine Marty's parental rights were properly terminated under section 232.116(1)(e).

When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996). Because we have determined Marty's parental rights were properly terminated under section 232.116(1)(e), we need not address his claims regarding sections 232.116(1)(i) and (l).

We affirm the decision of the juvenile court which terminated Marty's parental rights to Toni and Timothy.

AFFIRMED.