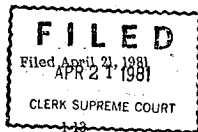


IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF)

KEVIN LEON McCOY, DAWN MICHELEE)
McCOY, and COLIN PATRIC McCOY,
Children,)RICHARD LAVERNE McCOY, Father,)
Appellant.)

64500

Appeal from Scott District Court - Don A. Petrucelli, Judge.

Natural father appeals from trial court's order terminating his parental rights to his three children pursuant to section 600A.8(b), The Code 1977. He alleges that the evidence is insufficient to justify termination of his parental rights on the ground that reasonable efforts under the direction of the juvenile court failed to correct conditions giving rise to an earlier child-in-need-of-assistance adjudication under chapter 232, the Code. REVERSED.

Randy J. Hohenadel of Newport, Fortini & Hohenadel, Davenport, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; John G. Black, Special Assistant Attorney General; and Brent Hege, Assistant Attorney General.

Jerald Feuerbach of Gomez, Feuerbach, May & Pries, Davenport, Iowa, attorney for the children.

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

JOHNSON, J.

Natural father, Richard LaVerne McCoy, appeals from trial court's order terminating his parental rights to his three children pursuant to section 600A.8(b), the Code 1977. He alleges that the evidence is insufficient to justify termination of his parental rights on the ground that reasonable efforts under the direction of the juvenile court failed to correct conditions giving rise to an earlier child-in-need-of-assistance adjudication under chapter 232, the Code. We reverse.

The Department of Social Services first became involved in this case in 1975 when Richard requested help in caring for his children following his wife's death. Homemaking and counseling services were provided until May, 1977, when Richard requested discontinuation of the service. In October, 1977, a child abuse report was filed based on an alleged beating of one child; in November, 1977, the Scott County Department of Social Services received a report that one of the children was wandering about the neighborhood after school. A second child abuse report was filed in March, 1978, alleging that Richard had beaten one of the children. After investigations of these reports, the three minor children were adjudicated children in need of assistance as defined in section 232.2(13)(b), the Code 1977, in that they were in need of special care and treatment required by their physical or mental condition which the parent is unable to provide. On May 1, 1978, Richard entered a Service Agreement with Bethany Home of Davenport, Iowa, which delineated criteria for Richard to meet and demonstrate in establishing an acceptable environment for the children.¹

Richard missed appointments set up to counsel him in child management and missed visits with his children. He was unemployed for much of the period between 1975

¹ By the Service Agreement terms, Richard agreed to:

1. Evidence an ability to provide a stable living situation;
2. Evidence an ability to be financially responsible;
3. Evidence an ability to have learned appropriate ways to discipline the children;
4. Evidence an ability to develop and maintain the relationship with the children;
5. Evidence an ability to develop and maintain a warm relationship with the children.

The Bethany Home agreed to:

1. provide on-going counseling and in home parenting training;
2. provide appropriate referrals;
3. provide reports to the court regarding progress and change;
4. provide a recommendation to the court regarding further disposition of the children;
5. arrange visitation of the children initiated by father;
6. supervise the foster care placement.

and 1979 and consequently became delinquent in paying his bills. The condition of his residence remained essentially unchanged. Social workers also observed little progress in his method of discipline or interaction with his children.

On December 1, 1978, a hearing was held concerning Richard's progress. The court apparently ordered a new service agreement between Bethany Home and Richard, but this agreement was never completed. On August 10, 1979, trial court terminated Richard's parental rights in accordance with the provisions of section 600A.8(6), the Code 1977.

I. Scope of Review. Our review in this matter is *de novo*. Iowa R. App. P. 4; In the Interest of Abbott, no. 64697 (Iowa Mar. 18, 1981); In Interest of Kelley, 262 N.W.2d 781, 782 (Iowa 1978). In reviewing the evidence we give weight to the trial court's findings of fact, but we will not abdicate our function as trier *de novo* on appeal. Iowa R. App. P. 14(f)(7).

II. Sufficiency of the Evidence. In parental termination cases the primary but not exclusive consideration is the welfare and best interests of the child. In re Lewis, 257 N.W.2d 505, 510 (Iowa 1977). Balanced against this interest is the parent's right to maintain the integrity of the family relationship, unless forfeited by conduct. Id. There is a presumption that the interests of children are best served by leaving them with their parent, however, that presumption must give way when, under the evidence, it conflicts with the state's duty as *parens patriae* to assure proper treatment to every child within its borders. In re Long, 255 N.W.2d 140, 143 (Iowa 1977); In re Kester, 228 N.W.2d 107, 109 (Iowa 1975).

The basis for termination applicable to the present case is set forth in section 600A.8(6), The Code 1977:

6. if following an adjudication that the child is in need of assistance under chapter 232, reasonable efforts under the direction of the juvenile court have failed to correct the conditions giving rise to this adjudication

A court may not grant a petition for termination unless the statutory grounds are established by clear and convincing evidence. In re Pony, 276 N.W.2d 425, 433 (Iowa 1979); In re Voeltz, 271 N.W.2d 719, 723 (Iowa 1978). Doubts are usually resolved in favor of the parents. In re Scarlett, 231 N.W.2d 8, 12 (Iowa 1975).

Having reviewed the record *de novo*, we conclude that the asserted ground for termination has not been established by clear and convincing evidence. While we concede the evidence shows that Richard is far from an ideal parent, we believe that

the effort he made under impoverished circumstances precludes termination at this time. Although his cooperation with the Department of Social Services has been sporadic, his commitment less than zealous, and progress in developing his parental skills slower than desired, the evidence shows his progress has not been insignificant. Commuting via bus, he pursued a degree at Scott Community College with the hope of improving his earning capacity so that he could comply with the financial requirements of his agreement. The time spent commuting, preparing and attending school limited the time he had available to attend counseling sessions and made it difficult for him to participate in supervised child visits away from home. His lack of telephone services made it difficult to arrange for social services assistance at flexible hours. He remained at his impoverished dwelling in an attempt to save money so he could meet the financial requirements of the agreement. On this record, we believe that the State has failed to meet its burden by clear and convincing evidence and consequently reverse trial court's judgment.

REVERSED.

All judges concur except Donielson, J., who dissents.

DONIELSON, J. (dissenting)

Although I agree with almost all the points made by the majority, I cannot agree with the result. It is abundantly clear to me that termination of the appellant's parental rights is in the best interests of these children.

The appellant, who is in his late fifties, is far from being an acceptable parent. Of seven children once entrusted to his care, four ran away. His parental rights were terminated with respect to two of those four children. He consistently resisted help from the Department of Social Services and cooperated reluctantly, if at all, with department workers. Reports of child abuse in 1977 and 1978 resulted in the three remaining children being adjudicated children in need of assistance on March 3, 1978, after which they were placed in foster care.

Subsequent to his children's being adjudicated in need of assistance, an agreement was worked out with the Department of Social Services whereby the appellant agreed to attempt to create an environment suitable for his children's care. According to this agreement, the appellant was to create a stable living situation, find and maintain employment, demonstrate a sense of financial responsibility, learn appropriate methods of discipline and other parenting skills, and attend child management counselling sessions. Three social workers testified that the appellant had failed to meet these goals. He continued to live in a residence with no stove, no refrigerator, no working locks on the doors, little if any furniture, and a leaky roof. He remained unemployed for four years and became employed only shortly before the termination hearing. He missed counselling sessions and visits with his children; in fact, appellant did not visit his children at all from February 1979 to June 1979. All three social workers testified that the appellant has shown little or no progress in parenting ability; two of the three recommended that his parental rights be terminated and the third testified to his impression that the appellant did not want his children back.

The record is replete with evidence that for the past two years the appellant has been unable or unwilling to create a suitable environment for the care of his children. The majority in effect seems to recognize this fact, but proceeds to the conclusion that the evidence justifying termination is not clear and convincing because the appellant obtained further schooling and because he did not have a telephone in his home with which he could arrange for social services assistance. The result reached by the majority is unwarranted in light of the strong record presented to this court. I

therefore would affirm the trial court order terminating the parental rights of the appellant.