IN THE COURT OF APPEALS OF IOWA

No. 3-053 / 92-1638

FILED
MAR 30 1993
CLERK SUPREME COURT

IN THE INTEREST OF C.K., A Minor Child,

B.K., Father,

Appellant.

Appeal from the Iowa District Court for Johnson County, John R. Sladek, Judge.

The father appeals a juvenile court order terminating his parental rights. **AFFIRMED**

M. Rebecca Seidl, Iowa City, for appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Attorney General, Judy A. Sheirbon, Assistant Attorney General, and Deborah Minot, Assistant County Attorney, for appellee State.

Heard by Oxberger, C.J., and Donielson and Hayden, JJ.

OXBERGER, C.J.

B. K. appeals the termination of his parental rights to C.K. At the time of C.K.'s birth in 1987, the mother was sixteen years old and B.K. was twenty-six years old. B. K. was convicted of sexual abuse based upon his relationship with C.K.'s mother and was incarcerated.

C. K. was alternatively in the custody of the Department of Human Services (DHS) and her mother was without involvement with B.K. through September 1989. At that time, the case permanency plan was modified to allow B.K. visitation with the eventual goal of reunification. The juvenile court also ordered B.K. to submit to random urine analysis in order to monitor his substance abuse problem.

The following year C.K. was placed in B.K.'s custody under the supervision of DHS. Shortly thereafter, B.K. was incarcerated once again and was unable to care for C.K. C. K. was placed in foster care. B. K. was later acquitted of the charges.

In September 1992, the juvenile court terminated B.K.'s parental rights pursuant to Iowa Code § 232.116(e). C.K.'s mother consented to termination of her parental rights and has not appealed B.K's appeals.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984) cert. denied sub nom. J.G. v. Tauke, 469 U.S. 1222 (1985). We give weight to the findings of fact of the juvenile court,

especially when considering the credibility of witnesses, but we are not bound by those determinations. Id. at 491-92.

B.K. first contends the juvenile court erred in finding clear and convincing evidence upon which to terminate his parental rights.

Iowa Code section 232.116(1)(e) (1991) permits the juvenile court to terminate the parent-child relationship if the court finds all of the following have occurred:

> (1) The child is four years of age or older.
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (3) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
> (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

B.K. concedes the first three elements have been satisfied. However, he claims C.K. may safely be returned to his care at the present time.

C.K. was first removed from home while B.K. was incarcerated for sexual abuse of C.K.'s mother. At that time, he admitted having a drug and alcohol problem and was referred for treatment. He failed to follow through at that time but entered treatment six months later. He failed to follow aftercare recommendations after completing treatment. He was subsequently referred for additional treatment following an OWI charge.

In July 1990 C.K. was placed in her father's custody. The court admonished B.K. to continue his sobriety. In November 1990 B.K.'s parenting skills instructor observed marijuana in B.K.'s home. B.K. denied usage, but tested positive for marijuana use. He was referred for additional services but inclined to follow through. Shortly thereafter C.K. was removed from his care for alleged sexual abuse, although he was later acquitted.

The next two years B.K. reported drinking as many as 12 beers per day and smoking marijuana regularly. He was offered numerous treatment services but only partially cooperated and declined such opportunities. He was once again arrested for OWI. He made statements indicating he understood why people snapped and went on shooting sprees. B.K. is presently receiving Social Security Insurance due to the severe health problems he has experienced as a result of his alcoholism. He has been diagnosed with hepatitis C and cirrhosis of the liver.

At the termination hearing, several witnesses testified having grave concerns about B.K.'s ability to parent C.K. One witness noted C.K. had been in foster care 82% of her life.

We find ample evidence to support the juvenile court's finding clear and evidence that C.K. cannot be returned to B.K.'s care. C. K. can no longer be required to wait for her father to make the changes necessary to recover from his alcoholism. In addition, B.K.'s unstable, inconsistent

behavior causes us concern for C.K.'s safety. B.K. was given every opportunity to become a successful custodial parent. His unwillingness to comply with basic requirements mandates termination of his parental rights.

We have considered the other issues presented on appeal and find them without merit. We affirm the decision of the district court.

AFFIRMED.