

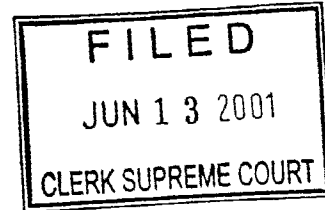
IN THE COURT OF APPEALS OF IOWA

No. 1-314 / 00-1830

Filed June 13, 2001

IN THE INTEREST OF
D.C., D.C., and R.C.,
Minor Children,

F.C., Father,
Appellant.



Appeal from the Iowa District Court for Scott County, John G. Mullen,
District Associate Judge.

Father appeals from the termination of his parental rights. **AFFIRMED.**

Carrie Coyle, Davenport, for appellant-father.

Thomas J. Miller, Attorney General, Tabitha Gardner, Assistant Attorney
General, and Gerda Lane, Assistant County Attorney, for appellee-State.

Robert J. Phelps, Davenport, guardian ad litem.

Considered by Habhab, R. Peterson, and C. Peterson, Senior Judges*

*Senior Judges assigned by order pursuant to Iowa Code section
602.9206 (2001).

C. PETERSON, S.J.

The natural father of three children appeals from an order filed on October 20, 2000, terminating his parental rights to his child, Devin. The petition to terminate parental rights was filed May 25, 2000, by the guardian ad litem appointed by the court to represent the children. The parental rights between the children, David (born November 4, 1996) and Ryan (born December 20, 1994), and the father, F.C., were terminated under authority of section 232.116(1)(a), (c), (e), and (g) of the Iowa Code after F.C. voluntarily relinquished the parent-child relationship with these children. The parental rights between Devin and F.C. were terminated under authority of Iowa Code section 232.116(1)(c). This appeal is from the order terminating the parent-child relationship of this child. F.C. asserts the trial court erred in determining that there was clear and convincing evidence to support a conclusion that the parent-child relationship with Devin should be terminated.

Scope of Review. The review of proceedings to terminate parental rights is de novo. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). This court reviews the facts as well as the law and adjudicates parental rights anew. *In re D.A., Jr.*, 506 N.W.2d 478, 479 (Iowa Ct. App. 1993). The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa Ct. App. 1997). We give weight to the findings of the juvenile court, especially with respect to the credibility of witnesses, but are not bound by them. *In re A.M.S.*, 419 N.W.2d 723, 726 (Iowa 1988).

Background Facts and Conclusions. Initially the children involved in these proceedings were Devin, David, and Ryan. F.C. is the father of all three children. Devin had a different mother than David and Ryan. F.C. became the sole custodian of the two younger children when their mother passed away on November 6, 1997. Devin's mother died in 1998, and F.C. also took physical possession of this child. On May 19, 1999, F.C. contacted the Iowa Department of Human Services requesting foster care for his children because he had no place to live and claimed to have no money. They had been residing in various motel rooms and the Salvation Army Shelter for months. The two younger children were placed in foster care and have remained in that status until the voluntary termination of the parent-child relationship by F.C. at the time of this trial. Devin remained with F.C. until June 19, 1999, when the Bettendorf Police Department took possession of Devin from a motel room where he had been left by his father. The whereabouts of the father were unknown at the time, and Devin was placed in emergency foster care. This child has also remained in foster care since that time.

An adjudicatory hearing was held on October 13, 1999, wherein the court determined the three children were children in need of assistance pursuant to sections 232.2(6)(c-2) and 232.2(6)(g) and ordered that the children remain in foster care.

The DHS urged F.C. to find suitable housing that would accommodate the boys. Efforts were made to assist him with housing arrangements, but of little avail. F.C. was often untruthful to DHS about the housing arrangements or his

financial circumstances. He was asked to provide a budget and income statement, but did not do so until the termination trial on September 7, 2000. F.C. was earning at least \$300 per week net income from employment and receiving \$1500 per month in social security benefits for the children. There is no evidence to support a conclusion that he was earning substantially more in commissions than revealed to DHS.

Throughout the period the children were in foster care, DHS was concerned about any gambling, alcohol, or domestic violence problems. F.C. denied existence of any such problems. After being confronted with substantial evidence of a gambling problem, F.C. finally admitted he had a gambling problem. He indicated to the DHS that he would not have the urge to gamble if the department had allowed him to see his children on the weekends. At the request of the DHS, he began attending gambling counseling and continues to do so. Contrary to F.C.'s denial of any history of domestic violence, the DHS discovered shortly before the termination hearing that there was a history of domestic violence complaints from DuPage County, Illinois. In October 1999 F.C. plead guilty to assault of a woman whose injuries included a broken rib and two dislocated ribs. Contrary to F.C.'s denial of any alcohol problem, the criminal records reflect a number of alcohol related offenses, as well as numerous other contacts with the criminal court system. Recently F.C. attempted suicide on two occasions, and uses the threat of suicide if he does not obtain custody of Devin.

Throughout the year prior to the termination hearing, numerous appointments for visitations by F.C. with his children arranged by DHS were

missed. Drug counseling appointments were missed or forgotten. Other counseling sessions by F.C. were cancelled at his request.

F.C. withheld information from DHS that he was infected with hepatitis B requiring treatment. F.C. has a history of deceit, secrecy, and unreliability in his reporting to the agencies charged with the supervision and recommendations to be made concerning the relationship of F.C. with his children. His history of domestic violence, alcohol abuse, and criminal behavior reflects a lack of respect for social conduct that would be conducive to adequate parenting of children.

In addition to the sons identified in these proceedings, F.C. has two daughters from an earlier relationship with whom he has had little or no recent contact.

Devin has been described as a “parentified” child required to seek the resolution of his own need and safety and periodically responsible for the care, protection and supervision of his siblings. He is described by a therapist as a young person with a lot of anger, resistant, scared, uncertain of his relationship with his father, and at the same time protective of his father. Expert witnesses have recommended that the parent-child relationship between F.C. and Devin be terminated.

Our primary concern is the long-term best interests of the children, not just the immediate interests. *In re L.L.*, 459 N.W.2d 493-94 (Iowa 1990). The future can be gleaned from evidence of the parent’s past performance and motivation. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000). Reasonable efforts to reunite the parent and child are required prior to termination. *In re C.L.H.*, 500 N.W.2d 449,

453 (Iowa Ct. App. 1993). However, a child's rights and needs are paramount in parental termination proceedings. *In re S.A.*, 502 N.W.2d 23, 25 (Iowa Ct. App. 1993).

Services were offered to F.C. for sixteen months prior to the termination proceedings to assist in establishing an appropriate parenting relationship with Devin. The overall response to the recommendations has been resistive and negative. Devin has been out of the F.C.'s home for more than one year and little progress has been made to resolve the problems that exist which are interfering with an appropriate parent-child relationship. The State has a duty to see that every child within its borders receives proper care and treatment and must intercede when a parent fails to provide it. *In re I.L.G.R.*, 433 N.W.2d 681, 689 (Iowa 1988). Children deserve a safe, healthy, and stimulating environment in which to grow and mature. *In re J.W.D.*, 456 N.W.2d 214, 217 (Iowa 1990). F.C. has not demonstrated the ability to provide that environment in the past, and there is little indication he will do so in the future.

F.C. urges the court to consider the application of section 232.116(3)(b) of the Code which states the court need not terminate the relationship between a parent and child if the child is over ten years of age and objects to the termination. The factors in section 232.116(3)(b) have been interpreted to be permissive, not mandatory. It is in the court's discretion, based upon the unique circumstances of each case and the best interests of the child, whether to apply the factors in section 232.116(3). *In re A.J.*, 553 N.W.2d 909, 916 (Iowa Ct. App. 1996). This matter languishes while the father makes feeble efforts to resolve

the problems that are affecting his ability to take custody and provide for the needs of the child. There is little in the record to support a conclusion that the problems will ever be sufficiently resolved. It is time for permanency in the life of Devin. The trial court was correct in terminating the parent-child relationship of Devin with his father, F.C. The decision of the trial court should be affirmed.

AFFIRMED.