

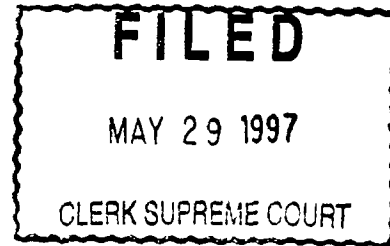
IN THE COURT OF APPEALS OF IOWA

No. 7-252 / 96-1462

000057

IN THE INTEREST OF R.J.B.
a/k/a J.B., Minor Child,

R.B., Father,
Appellant.



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

The father appeals a juvenile court ruling terminating his parental rights to his minor child. **AFFIRMED.**

Barbara E. Maness, Davenport, for appellant.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and Gerda Lane, Assistant County Attorney, for appellee State.

John O. Moeller, Davenport, guardian ad litem for minor child.

Heard by Habhab, C.J., and Cady and Vogel, JJ.

HABHAB, C.J.

Robert B. and Vicki K. are the parents of Robert B. a/k/a Joey B., born October 30, 1994. On December 20, 1994, the family came to the attention of the Department of Human Services (DHS) after it was reported Vicki had kicked one-month-old Joey in the head during an altercation with Robert. According to the report, Vicki was drunk and on cocaine at the time. The report also indicated Robert had wanted to take Joey to the hospital, but Vicki refused and later left the home with Joey and her two children from previous relationships. DHS filed an application for temporary removal and a petition requesting Joey be adjudicated a child in need of assistance. The juvenile court ordered temporary removal from the family home, noting a previous child abuse report indicated Joey was a drug-affected baby.

Joey was subsequently admitted to the hospital for observation, but no serious injuries were discovered. In February 1995, the juvenile court entered an order finding Joey a child in need of assistance and ordered him placed in foster care. Joey has remained in foster care since that time. The court based its determination on the parents' substance abuse and history of domestic violence. The court noted Robert had already served previous prison terms for domestic abuse and selling drugs. A case permanency plan called for Robert to participate in a batterer's education program and attend counseling as a condition precedent to any visitation.

Robert failed to attend either the batterer's program or family counseling sessions and again assaulted Vicki in March 1995. As a result, the district court

issued a protective order. In May 1995, Robert was arrested after he attempted to see Vicki in the hospital. Robert pleaded that he needed in-patient treatment for substance abuse. Robert was ultimately arrested in September 1995 for violations of the protective order and incarcerated in the Scott County jail following his guilty pleas to one count each of domestic assault and criminal mischief.

In prison, Robert participated in a batterer's program and substance abuse treatment. The State, however, ultimately filed a petition for termination of both parents' parental rights. Robert argued he was attempting to cooperate fully with DHS requirements, but that it was difficult while incarcerated. He maintained he would be capable of providing a safe and stable home for Joey once he was released.

The court terminated the parental rights of both Robert and Vicki. The court noted although Robert had a good track record of participating in substance abuse treatment and batterer's programs while incarcerated, once on his own he reverted back to a life of drugs and violence. Robert has appealed; Vicki has not.

Robert argues the juvenile court erred in refusing to rule that DHS failed to exercise reasonable efforts in achieving reunification with Joey. Robert next argues terminating his parental rights would not be in Joey's best interest. Robert lastly asserts the juvenile court failed to fully consider the possibility of Joey's placement with his mother-in-law, who is also the guardian of Robert's twelve-year-old daughter from a previous relationship.

I. Standard of Review. Our review of termination proceedings is de novo. *In re T.M.P.*, 528 N.W.2d 671, 673 (Iowa App. 1995). We give weight to the findings of fact made by the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. *Id.* The grounds for termination must be proven by clear and convincing evidence. *In re R.K.K.*, 544 N.W.2d 274, 277 (Iowa App. 1995). Our primary concern is the best interest of the children which include both their long-range and immediate interests. *In re A.Y.H.*, 508 N.W.2d 92, 94 (Iowa App. 1994). In making this determination:

We consider what the future holds for the child if returned to his or her parents. Insight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care the parent is capable of providing. Our statutory termination provisions are preventative as well as remedial. They are designed to prevent probable harm to a child.

In re T.J.O., 527 N.W.2d 417, 420 (Iowa App. 1994)(citing *In re R.M.*, 431 N.W.2d 196, 199 (Iowa App. 1988); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981)).

II. Reasonable Services. Robert argues the State failed to provide him with reasonable services in order to reunite him with Joey. Reasonable efforts to reunite parent and child are required prior to the termination of parental rights. *In re M.B.*, 553 N.W.2d 343 (Iowa App. 1996). However, a parent must raise this issue when the services are offered prior to the termination hearing. *Id.*; *In re C.D.*, 508 N.W.2d 97, 101 (Iowa App. 1993). A case plan for each child is an integral element of the Department's implementation of reasonable efforts to reunify the family. *Id.* at n. 4.

Challenges to the plan for reunification should come when the plan is entered. *Id.* at 807.

The record reveals a myriad of services have been made available to Robert. DHS developed a case plan for Robert's reunification with Joey in April 1995. The plan required him to, among other things, complete a substance abuse evaluation and any recommended treatment, attend AA meetings three times per week, attend couples counseling, complete a psychological evaluation, and participate in domestic violence counseling. Robert made no challenge to the services offered within the plan when it was entered. After implementation of the plan, Robert's participation was, at best, sporadic. The record reflects he did not complete recommended substance abuse treatment, nor did he attend any AA meetings.

The record also reveals Robert was free to have supervised visits with Joey if he completed the batterer's education program. He was granted a visit after completing the first session in June 1995. He failed to attend the remainder of the program as he assaulted Vicki again and, as a result, was incarcerated in September 1995. Thus, he failed to have any additional visitation with Joey, although he did participate in a batterer's education program while incarcerated. He remained incarcerated at the time of the termination hearing.

Robert did not challenge the services offered to him prior to the termination hearing. Clear and convincing evidence within the record has established Robert continues to lack the ability and willingness to respond to necessary services. In our

de novo review of the record, we find reasonable services were provided to Robert prior to termination of his parental rights.

III. Best Interests of the Child. Robert contends termination of his parental rights is not in Joey's best interests. We disagree.

Joey has a variety of emotional, behavioral, and physical problems which are likely the result of Vicki's use of codeine, morphine, amphetamines, and methamphetamine while pregnant. He needs close supervision and a very safe, stable home and nurturing environment to meet his special needs. Despite his contentions, Robert has been unwilling to provide any type of suitable home for Joey in the past. He has shown no ability to provide appropriate parenting for Joey in the future. Past behavior of a parent is an important factor to consider when determining whether or not termination of parental rights is warranted. *In re M.H.*, 367 N.W.2d 275, 278 (Iowa App. 1985).

Robert has a severe substance abuse problem. He also has a history of violent and criminal behavior. Although he purports to have successfully completed substance and domestic abuse programs while incarcerated, he has a long history of completing a program and reverting back to the same behaviors.

Insight into what the future holds for a child if the child is returned home is gained from a parent's past performance. *In Interest of S.N.*, 500 N.W.2d 32, 34 (Iowa 1993).

We recognize Robert's attempts to conquer his problems with violent behavior and substance abuse. We encourage his efforts. However, we must reasonably limit the time for parents to be in a position to assume care of their children because patience with parents can soon translate into intolerable hardship for a child. *See In re A.Y.H.*, 508 N.W.2d at 96. "Iowa case law clearly holds we do not allow children 'to suffer indefinitely in parentless limbo.'" *In re R.C.*, 523 N.W.2d 757, 760 (Iowa App. 1994)(citing *In re T.A.L.*, 505 N.W.2d 480, 485 (Iowa 1993); *Long v. Long*, 255 N.W.2d 146, 149 (Iowa 1977)).

Robert's past performance causes us to believe it is very unlikely Joey will be safe or his special needs will be met if he is placed in Robert's care and we have no assurances this situation will change any time in the near future. The court cannot allow Joey to remain in temporary foster care in hopes that Robert will be able to maintain sobriety and refrain from violent behavior after he is released from prison.

From our de novo review of the record, we find Robert has shown an alarming lack of insight into the seriousness of his problems with domestic and substance abuse, not to mention Joey's needs. Robert has had more than ample time and opportunity to make the necessary changes in his life to assume Joey's care, but has repeatedly failed to do so. We find termination is in Joey's best interests. We affirm the juvenile court's termination of Robert's parental rights.

Finally, we reject Robert's request to place Joey in the care of his mother-in-law, Sharon Crouse. We note Sharon is the mother of Robert's present wife. She is

not a blood relative to Joey, although she is the guardian of Robert's older daughter from a prior relationship. The record reveals it has been necessary for Sharon to obtain injunctions against Robert in the past. In our de novo review, we find the juvenile court did not err in failing to place Joey with Sharon.

AFFIRMED.