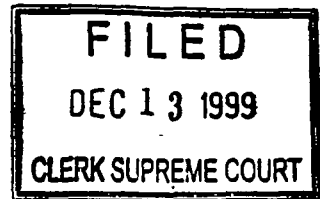


IN THE COURT OF APPEALS OF IOWA

No. 1999-422 (9-675) / 99-812
Filed December 13, 1999



IN THE INTEREST OF H.N.B. and A.J.B., Minor Children,

D.J.B., Jr., Father,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Mary L. Timko,
Associate Juvenile Judge.

Father appeals from the juvenile court order terminating his parental rights.
He contends that termination is not in his children's best interests. **AFFIRMED.**

Douglas L. Roehrich, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman and Chris Odell,
Assistant Attorneys General, Nikki Aden, Legal Intern, and Dewey Sloan, Assistant
County Attorney, for appellee-State.

Marchelle M. Denker of the Juvenile Law Center, Sioux City, guardian ad
litem for minor children.

William Giles IV, Sioux City, for mother.

Considered by Streit, P.J., and Vogel and Vaitheswaran, JJ.

000031

STREIT, P.J.

Domestic abuse, missed visits, lack of financial support, failed efforts at services, and denial of responsibility prevents Hannah and Alyssa's return to their father. Daniel's parental rights were terminated after numerous reuniting efforts failed. Daniel now appeals claiming termination was not in the children's best interests. We find the contrary to be true and affirm.

I. Background Facts & Proceedings.¹

^o Daniel B. and Randi B. are the unmarried parents of two children, Hannah, born March 12, 1996, and Alyssa, born October 26, 1997. Randi was sixteen years old and Daniel twenty-six at the initiation of their relationship. Randi became pregnant with Hannah shortly thereafter.

Hannah was first removed from Randi's care in May of 1996. The Iowa Department of Human Services (DHS) removed the child due to Randi's frequent attempts to run away from her father and her unhealthy relationship with Daniel, who had a criminal history, allegedly abused Randi, and had taken advantage of her financially. By the end of May 1996 Hannah was adjudicated a child in need of assistance pursuant to Iowa Code sections 232.2(6)(c), 232.2(6)(g), and 232.2(6)(n) (1995) and remained in foster care. During this period of removal, Daniel made little attempt to visit his daughter.

¹ The subsequent recitation of facts will be limited to Daniel's involvement in this case as he is the only party seeking appellate review.

Randi was ~~then~~ placed in the House of Mercy, a residential program designed to address ~~her~~ co-dependency on Daniel, her substance abuse, and her parenting skills. Hannah was returned to Randi under the careful guidance of the program. During her stay Daniel, contrary to the rules of the program, attempted to contact Randi by posing as her father. Randi was discharged from the program and after running away from various foster homes awaited placement in the Villa Maria Program. In the interim Daniel was arrested for contempt of court on an earlier domestic assault conviction and five counts of interference with official acts. He also allegedly threatened Randi with physical harm and assaulted her on two separate occasions. Immediately prior to Randi's placement in the Villa Maria Program police again arrested Daniel for failure to appear on his interference charges.

Upon completion of the Villa Maria Program, Randi and Hannah began living with Randi's father. Daniel was ordered to have no unsupervised contact with the child until he completed a batterer's education program. Ignoring the court's order, Daniel visited Hannah multiple times without supervision. Responding to Daniel's disregard for the court and Randi's inability to follow through with services, the court again removed Hannah. Hannah was later returned to Randi subject to strict supervision. A month after Hannah's return Randi and Daniel had their second child, Alyssa. Randi and the children returned to the Villa Maria Program.

During Randi's second stay at Villa Maria service providers attempted to immerse Daniel in their family-oriented programs. Daniel, however, would make

unscheduled visits despite the flexibility of the staff, refused home care services, missed eight of the ten budgeting skill development classes and did not attend any of the child care skill development classes, failed to pay any child support, and attended only one of three couple therapy sessions. Randi was discharged from Villa Maria for failure to comply with services. The next day Alyssa was adjudicated a child in need of assistance pursuant to Iowa Code sections 232.2(6)(b), 232.2(6)(c), and 232.2(6)(n) (1997), and both children were removed.

During the pendency of this removal, Daniel was late for four visits, missed eleven visits, and was arrested for domestic assault on Randi. His visitation rights were eventually suspended. In July of 1998 the State filed a termination petition on behalf of both children. Prior to the termination hearing Daniel was again arrested for domestic abuse on Randi. In January of 1999 the court offered the parents one last opportunity by continuing the termination proceedings for an additional six months. Three months later, social workers were unable to locate Daniel, the two were again romantically involved, and Daniel's assaultive behavior resurfaced—this time breaking a neighbor's nose. In late March the court re-opened the proceedings and terminated Daniel's and Randi's parental rights pursuant to Iowa Code sections 232.116(1)(c), 232.116(1)(d), and 232.116(1)(g) (1997).

Daniel appeals, contending termination was not in his children's best interests.²

² Daniel correctly bypassed any specific claim of error as to the statutory grounds for termination and rests his argument solely on the children's best interests.

II. Standard of Review.

Appellate review of proceedings to terminate a parent-child relationship is de novo; thus, "it is our duty to review the facts as well as the law and adjudicate rights anew on those propositions properly preserved and presented to us." *In re O'Neal*, 303 N.W.2d 414, 422 (Iowa 1981). We accord weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses whom the court heard and observed firsthand, but we are not bound by those findings. *Long v. Long*, 255 N.W.2d 140, 143 (Iowa 1977).

III. Termination Was in the Children's Best Interests.

Even if the statutory requirements for termination are met, the decision to terminate must still be in the best interests of the child. *In re N.H.*, 383 N.W.2d 570, 574 (Iowa 1986); *In re D.W.K.*, 365 N.W.2d 32, 34-35 (Iowa 1985). The best interests of the child are paramount considerations in determining whether to terminate parental rights. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *In re N.H.*, 383 N.W.2d at 574. We give primary consideration to the physical, mental, and emotional condition and needs of the child. *In re J.W.D.*, 456 N.W.2d 214, 217 (Iowa 1990). **Because the Indian Child Welfare Act applies, the State must show Daniel's parental rights should be terminated beyond a reasonable doubt.** *In re J.W.*, 528 N.W.2d 657, 662 (Iowa App. 1995).

Terminating Daniel's parental rights was in the best interests of Hannah and Alyssa. The mere notion of returning the children to Daniel's custody evokes a litany

~~of problems.~~ Daniel has consistently failed to take advantage of those services offered by DHS. He feels services are inappropriate in his case as he knows the proper care of children. Daniel refuses to offer any financial support for the children. He refused to accept the proper protocol for child support, and his informal support was meager at best. Daniel's consistency in visitation was sporadic. Irrespective of his explanations, eleven absences demonstrates lukewarm regard for the emotional health and development of his children. Daniel is unable to control his assaultive behavior. His history of domestic abuse presents a viable threat to his children. Not only are they in direct danger due to his poor anger management, but his inability to remain free from incarceration jeopardizes the constant support the children require. The trial court found Daniel completely lacking in credibility. The court found Daniel's testimony to be among the most evasive and misleading it had ever heard.

Hannah's and Alyssa's early years have been pockmarked with irregular moves, numerous placements, and constant parental change--stability must be imposed. Daniel has been given a plethora of services and opportunities to regain custody of his children. Daniel failed to take advantage of the efforts of DHS, the court, and the multitude of other organizations committed to his self-improvement. ~~Termination of~~ Daniel's parental rights was in the children's best interests, and the district court is affirmed.

AFFIRMED.