

IN THE COURT OF APPEALS OF IOWA

No. 0-536 / 90-558

FILED

OCT 23 1990

CLERK SUPREME COURT

IN THE INTEREST OF R.L., Jr., AND I.L., Minor Children,

R.L., Natural Father,

Appellant.

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Appeal from the Iowa District Court for Pottawattamie County, Gary K. Anderson and James S. Heckerman, District Associate Judges.

Father appeals termination of parental rights. The children's mother does not appeal even though her parental rights were terminated. **AFFIRMED.**

Daniel J. McGinn of McGinn, McGinn & Jennings, Council Bluffs, for the appellant father.

Thomas J. Miller, Attorney General; Gordon E. Allen, Deputy Attorney General; and Kathrine S. Miller-Todd, Assistant Attorney General, for the appellee State.

Considered by Schlegel, P.J., and Hayden and Habhab, JJ.

HABHAB, J.

This case involves two children, boys born in October 1985 and October 1986. Their parents were formerly married to each other but separated in about 1988. Even before the separation, the marriage was unstable and was marked by frequent and severe domestic violence. Both parents profoundly neglected the children's physical and emotional needs. The children were filthy, and their home was grossly unsanitary. The parents provided inadequate medical care. The father was suspected of sexually abusing one of the children, but this was never proved. (The father's sexual abuse of these children's younger sister was proved, however; the father is presently serving a prison term for that offense. He was also convicted of a sexual offense involving his niece in 1985.)

The children were adjudicated to be children in need of assistance in 1987. They have been in foster care continuously since October of that year.

In 1989 the State filed a petition to terminate the parental rights of both natural parents with regard to both children. After hearing, the juvenile court terminated the rights of both parents. The juvenile court relied on Iowa Code sections 232.116(1)(e) and 232.116(1)(g); those subsections permit termination if, after a CINA adjudication and extended foster care, the children still cannot safely be returned to the parents' home.

The father has appealed from the termination order. The mother has not appealed.

The father challenges the sufficiency of the evidence to establish that the children cannot safely be returned to his care at some time in the future.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984), cert. denied, 469 U.S. 1222, 105 S. Ct. 1212, 84 L. Ed. 2d 353 (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 491-492. This family first received services from DHS in June of 1986 and these two boys have been in foster care since October of 1987. Although the father contends the state did not present sufficient evidence to demonstrate the children could not safely be returned to his care at some point, we find there was sufficient evidence and affirm the ruling of the district court.

With regard to the termination of the father's rights, the pertinent statute is Iowa Code section 232.116(1)(e), which states:

Except as provided in subsection 6, the court may order the termination of both the parental rights with respect to a child and the relationship between the parents and the child on any of the following grounds: * * *

The court finds that all of the following have occurred"

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The custody of the child has been transferred from his or her parents for placement pursuant to section 232.102 for at least twelve of the last eighteen months.

(3) There is clear and convincing evidence that the child cannot be returned to the custody of his or her parents as provided in 232.102.

The issue of whether the children are children in need of assistance or whether they have spent the last twelve of eighteen months in foster care is not at issue here. The evidence is clear in showing these elements have been complied with. However, the father contends the state did not meet it's burden with regard to the third and final issue. In this de novo proceeding after a thorough review of the facts and the record we reach the same result as the trial court.

When this matter was first reported to the Department of Human Services, the parents refused services and the case was eventually closed. However, after the family was reported again in January of 1989, the family accepted services and a CINA action was subsequently commenced. During the period that the boys have been foster care the parents have shown little cooperation. They did not attend counseling consistently and when in-home services started they often were not at home for the therapist.

In March of 1989 criminal charges were filed against R.L. Sr. for sexually abusing his nineteen-month-old daughter. He was convicted and began serving a two-year sentence.

After testing, psychological reports showed that both R.L. Jr. and I.L. have severe developmental and emotional problems. Since being in foster care, these problems have improved. However the record reflects that visitation by the father causes them to act in an oppositional and destructive manner. The boys have been in foster care consistently since 1987.

These children should not be forced to endlessly await the maturity of their father. The mother has expressed no further interest. In re T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). Termination must occur if twelve to eighteen months have elapsed since the child was removed from the home and the parent still cannot take care of the child. Id. Evidence of the parent's past performance may be indicative of the quality of future care he or she is capable of providing. In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

The state has clearly proven that it would not be in the best interest of the children to return them to their father's care. Most central to this determination are the child's best interest. We agree with the trial court that R.L. Jr. and I.L.'s best interest would be provided for by terminating R.L. Sr.'s parental rights.

AFFIRMED.