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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF J.R.K., A Child;	)	Filed March 31, 1987
	)	208
R.B., Natural Father,	)	7-45
Appellant.		86-1172

Appeal from the Iowa (Juvenile) District Court for Polk County (6150-13) - Vincent M. Hanrahan, Judge.

The natural father of a six-year-old boy appeals from a juvenile court order terminating his parental rights pursuant to Iowa Code section 232.116(5). **AFFIRMED.**

Kenneth D. Benhart, Des Moines, Iowa, for appellant.

Thomas J. Miller, Attorney General of Iowa; Gordon E. Allen, Special Assistant Attorney General; Charles K. Phillips, Assistant Attorney General; and Rebecca A. Belcher, Assistant Polk County Attorney; for appellee State of Iowa.

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

J.R.K. was born on April 9, 1980, to J.K.J. and appellant. The parties had been living together but they separated shortly after J.R.K. was born, with the mother, J.K.J., taking J.R.K. On April 8, 1982, a petition was filed with the Polk County Juvenile Court alleging J.R.K. a child in need of assistance. When this petition was filed appellant was incarcerated in the State Penitentiary at Fort Madison, Iowa. J.R.K. was adjudicated a child in need of assistance pursuant to Iowa Code sections 232.2(5)(a) and 232.2(5)(c)(2) (1981) on October 7, 1982. Custody was ordered to remain in the Polk County Department of Social Services and he was eventually placed with a foster care family.

Appellant was released from incarceration on March 19, 1985. During his last few months of incarceration, while at Riverview Release Center in Newton, he arranged to have some visits with J.R.K. After his release the undisputed goal of both appellant and the department of human services was the eventual return of J.R.K. to appellant. The attempt to return J.R.K. was unsuccessful.

On January 2, 1986, a petition to terminate the parental rights of J.R.K.'s natural parents was filed in Polk County Juvenile Court. Trial was held on April 2, 3, 4 and 11, 1986. In an order filed July 10, 1986, the court terminated the parental rights of J.R.K.'s natural parents. From this order R.B., the natural father, has appealed.

Appellant contends no clear and convincing evidence exists in the record to show the child would suffer harmful effects as the result of the father's inability to supervise the child. We disagree.

Our review of parent-child terminations is de novo. In re Interest of K.L.G., 372 N.W.2d 223, 227 (Iowa 1985). We give weight to the findings of the juvenile court, but are not bound by them. Iowa R. App. P. 14(f)(7).

Appellant's parental rights were terminated pursuant to Iowa Code section 232.116(5) (1985), which permits termination if the court finds:

> a. The child has been adjudicated a child in need of assistance pursuant to section 232.96; and
>
> b. 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; and
>
> c. There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102.

Section 232.102(3)(a)(b) provides:

> 3. Whenever possible the court should permit the child to remain at home with his or her parent, guardian or custodian. Custody of the child should not be transferred unless the court finds there is clear and convincing evidence that:
>
> a. The child cannot be protected from physical abuse without transfer of custody; or
>
> b. The child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance and an adequate placement is available.

Child in need of assistance is defined pursuant to section 232.2(6)(c) as an unmarried child:

> c. Who has suffered or is imminently likely to suffer harmful effects as a result of:
>
> (1) Conditions created by the child's parent, guardian, custodian; or
>
> (2) The failure of the child's parent, guardian, or custodian to exercise a reasonable degree of care in supervising the child.

(Iowa Code section 232.2(5) (1981) has been renumbered section 232.2(6) (1985).)

In order to have a termination pursuant to these code sections, the child must have been adjudicated in need of assistance, has been placed outside of the natural parents' custody for more than twelve months, and clear and

convincing evidence exists that the child will suffer a harm specified in section 232.2(6) if returned to the parent. In Interest of K.L.C., 372 N.W.2d 223, 227 (Iowa 1985). Appellant concedes that J.R.K. has been adjudicated in need of assistance and has been out of his custody for more than twelve months. The State had the burden of establishing by clear and convincing evidence that J.R.K. will suffer the harm specified in section 232.2(6)(c) if returned to appellant. Id.

When considering termination proceedings, our decision is controlled by the best interests of the children. In re Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). There is a presumption that the best interests of the child will be served by continued parental supervision, but this presumption is not conclusive. In re Interest of T.D.C., 336 N.W.2d 738, 740 (Iowa 1983). It must also be remembered that the State, as parens patriae, has a duty to assure that every child in this state receives proper care and treatment. Dameron, 306 N.W.2d at 745. The state must intercede when the natural parents neglect their duties. Id. In considering the future prospects for the children, if returned to the parents, we may review evidence of the parents' past performance, for that performance may be indicative of the quality of future care. In Interest of M.H., 367 N.W.2d 275, 278 (Iowa Ct. App. 1985).

On his release from jail on March 19, 1985, appellant immediately arranged to begin visitation with J.R.K. The first visitation happened on the weekend of March 22, 1985. Weekend visitation proceeded on a regular basis until May 10, 1985. During this period appellant was late several times when picking up J.R.K., the child was returned early to the foster home, and the visitation was once completely canceled. On May 10, while the child was visiting, appellant and his wife allegedly committed false use of a financial instrument. Appellant's wife allegedly went into a grocery store in an attempt to cash

certain checks, while appellant and J.R.K. waited in the car. As she fled the store, several employees tried to stop her; appellant intervened and a fight ensued. Appellant was arrested on five counts of assault and conspiracy to commit false use of a financial instrument. Appellant was also arrested on July 2, 1985, for burglary in the second degree and robbery in the first degree on August 11, 1985. The charges of burglary and robbery have been dismissed, but at the time of the termination proceeding, the conspiracy charge was still pending. Another weekend visitation occurred on May 30th, but then visitation stopped altogether.

From May 30th to December 12th, no visitation took place between appellant and J.R.K. During this six-month period appellant twice agreed to pick J.R.K. up for weekend visitation, but never arrived. Both failures had a devastating affect on the child. Appellant had a number of excuses for his failure to comply with the visitation schedule. He strongly contends his problems arise from a personal conflict he had with an employee at the department of human services.

As a result of the treatment he received at the hands of his natural mother, J.R.K. is an emotionally fragile child. The long disruption in the visitation schedule had nothing but a negative affect on him. After the May 10, 1985, arrest and the several missed visitations, J.R.K.'s behavior was directly effected. The organization which, three years of foster care had provided, had begun to dissolve; J.R.K. began to lie, steal, experienced a return to obsessive behavior, and reflected a general negative behavior pattern.

All of the experts involved in this dispute agree the child needs a very structured environment. As is apparent from the record, appellant cannot provide such an environment. This is evidenced by: appellant's failure to comply with the parental contract; his failure to cooperate with the department of

human services; his failure to provide regular visitation; and by his recent involvement in criminal activity. Appellant has, in the past, consistently displayed anti-social behavior, as evidenced by his extensive criminal record. This behavior could, ultimately, have a detrimental effect on the child. At the termination hearing a foster care specialist, a social worker, and a juvenile probation officer all recommended termination. J.R.K. has been in foster care for more than four years and under this care he has flourished. We find the child cannot be protected from the harmful effects created by appellant and appellant does not possess the ability to properly supervise J.R.K.'s development. The child's best interests will be served by termination of appellant's parental rights. The state sustained its burden and therefore we affirm.

AFFIRMED.