FILED
AUG 27 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF T.G., A Minor,	)	Filed August 27, 1986
J.G., Natural Father,	)	6-254 85-1558
Appellant.	)	

96

Appeal from the Iowa District Court for Black Hawk County (T-501) - Stephen C. Clark, Judge.

The natural father of a six-year-old boy appeals the juvenile court order terminating his parental rights pursuant to Iowa Code section 232.116(5) (1985). **AFFIRMED.**

Susan B. Keith of Waterloo, Iowa, for J.G., appellant.

Charles K. Phillips, Cedar Falls, Iowa, for petitioner-appellee.

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

SCHLEGEL, J.

The natural father of a six-year-old boy appeals the juvenile court order terminating his parental rights pursuant to Iowa Code section 232.116(5) (1985). The father asserts that there was not clear and convincing evidence that the child could not be returned to him, that the Department of Human Services failed to apprise him of its expectations, and that the court failed to consider the interest of siblings in their mutual association. We affirm.

On January 25, 1980, the father was sentenced (for an armed robbery conviction) to prison for a term not to exceed twenty-five years but no less than five years.

T.G., the minor child, was born February 2, 1980. The child resided with his mother and brother for the first year of his life. In March, 1981, T.G. was admitted to the University Hospitals in Iowa City and treated for abetalipoproteinemia, a very serious illness which prevents the body from processing fats. When the child was ready for discharge, the hospital could not locate his mother and the father was in jail. At this time the father did request a visitation with T.G. but since the father and mother apparently were not married it was not clear that the father was entitled to such a visitation without taking legal action.

On April 28, 1981, the child was adjudicated a child in need of assistance and was placed in the custody of the Iowa Department of Human Services for placement in a foster home. On September 3, 1981, a dispositional hearing was held and it was determined that the child would remain in foster care. He has remained in foster care since that date. The child's mother has never visited T.G. since he was placed in foster care. She has made no effort to regain custody of the child and has not responded to the letters from the department asking for his involvement.

The father has been in jail for almost the child's entire life. The record shows that the father has not maintained minimal contact with T.G. The child continues to suffer from his serious illness and is on a rigorous diet and nutritional program. The illness that T.G. has is a life-threatening one and his nutritional program as well as his emotional nurturance is a delicate and complicated one.

On August 14, 1985, the referee terminated the parental rights of both parents pursuant to Iowa Code sections 232.116(5) and 232.2(1) (1985) (abandonment). On September 24, 1985, the district court affirmed the findings of the juvenile court. The father appeals this decision.

Our review is de novo. We give weight to the findings of the juvenile court, but we are not bound by them. Iowa R. App. P. 14(f)(7); In the Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). Iowa Code section 232.116(5)(a)-(c) provides that in order to obtain termination of parental rights the State must show:

> a. The child has been adjudicated a child in need of assistance pursuant to section 239.96; 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.

In child custody cases, the first and governing consideration of the court is the best interests of the child. Iowa R. App. P. 14(f)(15); In re Marriage of Winter, 223 N.W.2d 165, 167 (Iowa 1974). The only issue in this case is whether there is clear and convincing evidence that the child can be given to the natural father. See In the Interest of Chad, 318 N.W.2d 213, 219 (Iowa 1982). We do not believe that the second grounds for termination of parental rights, abandonment, cited by the juvenile court as an alternative to a section 232.116(5) termin-

ation, was clearly established by the evidence. A finding of abandonment requires clear and convincing evidence of abandonment, including proof of the intention to abandon. Iowa Code § 232.2(1) (1985). As relates to the father's intent, such evidence was not clearly and convincingly developed in the record.

The original CHINA proceedings found that, pursuant to Iowa Code section 232.2(6) (1985), T.G. had been neglected by his parents, was in need of medical treatment, and that his parents were unwilling or unable to provide such treatment. The parties stipulate that subsections (a) and (b) of 232.116(5) have been met. We must only decide whether there is clear and convincing evidence that the child cannot be returned to the father. We conclude that there is such evidence.

The father's conduct during incarceration does not demonstrate an attempt at understanding the nature of the son's illness or gaining an acquaintance with the vitally necessary procedures to sustain the son's life. The father states that he would like the chance to try to help his child although he is not sure if he can "accept" the disease or not. The grandmother on whom the father plans to heavily rely is ambivalent about the care she will be able to give the child. Departmental personnel, having evaluated the care potential to be offered in the grandmother's home, strongly suggest that she would be unable to handle the added burden of T.G.'s rigorous health demands. The grandmother herself was not firmly convinced that her son could adequately deal with the care of T.G. In this context, and with no evidence presented that any relevant factors will change in the near future relating to the ability of the father or grandmother to care for T.G., we agree that the clear and convincing evidence absolutely requires that T.G. not be returned to the custody of his father and that his parental rights be terminated.

We find no merit in appellant's contention that the department failed to apprise the father of his expectations. The father's legal status in relationship to the child was initially unclear. The record shows that later attempts to involve the father in visitation and foster care decisions were ignored by the father. The department performed its duties toward the father in a satisfactory manner.

We also find little merit in appellant's contention that the juvenile court should have given greater consideration to placing T.G. with his brother. Bonding and its effects are important matters in custodial decisions but such considerations are not conclusive. Such matters are considered and weighed in making an overall determination. Matter of the Interest of L.G.T., 318 N.W.2d 200, 202 (Iowa 1982). T.G.'s severe health problems and the clear inability of the father or grandmother to deal with these problems certainly outweigh the bonding consideration. Furthermore, T.G. and his brother have virtually never lived together and hence it is not a matter of maintaining a previously established relationship.

The evidence is clear and convincing that the best interests of T.G. demand that he be given the opportunity to be raised in an optimal environment. No evidence suggests that the father is now or in the future will be able to provide such an environment. The decision of the juvenile court is affirmed.

AFFIRMED.