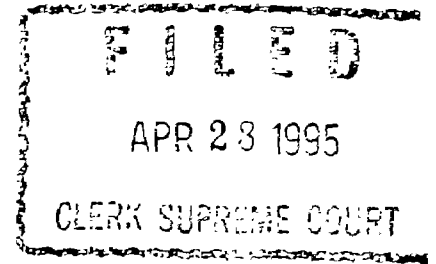


IN THE COURT OF APPEALS OF IOWA

No 5-192 / 94-1579



IN THE INTEREST OF W.O., Minor Child,

R.O. and D.O., Parents,

Appellants.

Appeal from the Iowa District Court for Cerro Gordo County, Gerald W. Magee,
Juvenile Court Judge.

The parents appeal the juvenile court order terminating their parental rights.

AFFIRMED.

Douglas R. Grabinski of the Grabinski Law Firm, Clear Lake, for appellant R.O.

Charles H. Biebesheimer of Stillman, Goranson, Stone & Lovell, Clear Lake, for
appellant D.O.

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

Katherine Evans of the Public Defender's Office, Mason City, guardian ad litem,
for minor child.

Considered by Hayden, P.J., and Sackett and Huitink, JJ.

HUITINK, J.

Richard and Donna appeal the juvenile court order terminating their parental rights to William, born in December 1986. We affirm.

The parties' parental rights to their oldest son, James, were terminated in 1992. A younger son, Jonah, still resides with them. William is a special needs child. He has several eye conditions and is legally blind. He suffers from attention deficit disorder and hyperactivity. There is evidence indicating William has also been sexually abused by a third party and as a result he engages in inappropriate sexual behavior at times. *He requires constant supervision.*

From 1988 to the time of this termination hearing, the department of human services recorded sixteen founded abuse reports, both physical and mental, pertaining to the two older boys. Fifteen reports were for physical abuse perpetrated by both Richard and Donna. William was adjudicated a child in need of assistance based on the abuse inflicted by his parents. Iowa Code § 232.2(6)(b) (1991). In September 1991 the court transferred temporary legal custody of William to the department for placement in foster care. The State filed for termination of the parties' parental rights in March 1994.

Richard was described by psychiatrists as having an explosive personality. Testimony by case workers indicated he has vented his violent temper on numerous occasions against Donna and the children, including threatening to beat the children

with sticks and a hand gun. Richard's visits with William were terminated in April 1993 after William expressed fear and anxiety with each visit.

Although DHS case workers testified Donna utilized some of the parenting services offered by the department and had made some progress, it was insufficient to justify an eventual return of custody. Case workers noted William's progress while in foster care had been phenomenal.

In September 1994 the juvenile court terminated Richard's and Donna's parental rights to William. On appeal Richard maintains he is now taking medication to control his intermittent explosive disorder. He claims that some of the problems William experienced while visiting Richard was due to William's own mental disorders.

Donna argues it is not in William's best interest to terminate her parental rights because of the bond between her and William. She asserts she was not provided with an opportunity to show she could effectively take care of William. She further claims the State set long-term foster care as the case permanency goal rather than reunification.

Appellate review of termination proceedings is de novo. *In re W.G.*, 349 N.W.2d 487, 491 (Iowa 1984) *cert. denied sub nom. J.G. v. Tauke*, 469 U.S. 1222 (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 491-92.

Our primary concern in termination proceedings is the best interest of the child. Iowa R. App. P. 14(f)(5); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). In deciding what is best for the child we look to the child's long-range as well as immediate interests. We also look to the past performance of the parents because it is an indication of the quality of care the parent is capable of providing in the future. *In re A.M.S.*, 419 N.W.2d 723, 726 (Iowa 1988).

The department has been involved with this family due to abuse reports since 1988. Despite the numerous services offered to him, Richard has refused to cooperate and has, at times, threatened those he perceives as interfering. Richard has failed to comply with court-ordered evaluations deemed necessary for him to reestablish contact with William.

William is terrified of Richard, and he suffered night terrors up until Richard's visits were terminated. Richard has not seen William for almost two years. Since William's removal in 1991 Richard has shown little remorse for the abuse he inflicted upon William. The record shows there is clear and convincing evidence that William cannot be returned to Richard's care.

Donna has received numerous services since William's removal; however, the record indicates she is unable to appreciate and provide for William's special needs. She is dependant upon and subservient to Richard, leaving her unable to protect William from any future abuse.

Donna has exercised supervised visitation, but caseworkers report William controls the interaction. They describe Donna's participation as merely "superficial." Many times Donna ignored William and concentrated her attention on Jonah, who accompanied her on the visits. Despite the regular visitation, William's attachment to Donna is not strong. He is more bonded to his brother Jonah and expresses more concern for Jonah than Donna. Donna's parenting abilities remain limited, and social workers opined she is unable to control more than one child at a time.

The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems. *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). At the time of the termination hearing William had been in foster care for over three years. The record shows William needs a supervised, secure, and stable home in which to grow. *See In re R.J.*, 436 N.W.2d 630, 636 (Iowa 1989). Richard and Donna cannot provide this type of home for William.

Our de novo review reveals there is clear and convincing evidence showing William cannot be returned to the care of his parents now or in the future. The statutory grounds for termination have been met. It is in William's best interests to terminate Richard's and Donna's parental rights. The decision of juvenile court is affirmed.

AFFIRMED.

Hayden, P.J., concurs; Sackett, J., concurs specially.

SACKETT, J. (concurring specially)

I concur specially.

There is absolutely no assurance William will be adopted.

The record made on this issue is as follows:

Sept. 7, 1994, trial court's findings of fact, app. page 118:

William will not be easy to adopt because of his special needs.

Sept. 7, 1994, trial court's conclusions of law, app. page 123:

Despite William's problems and special needs he is adoptable as described by the State's witnesses, Ms. Boone, Ms. Oordt, Mr. Kollman, and Mr. Bliss.

Cross-examination of Ms. Boone, app. pages 150, 151:

Q. Would you agree that with these special needs it would be more difficult for William to be adopted than what I would call a normal child?

A. As I look at William as a whole person, yes, those would make it difficult. He has got a personality that people love, so there could be an equal. I'm not saying that he would be adopted tomorrow. But I think there is a possibility. Everybody seems to fall in love with him because of his personality. Other clients who are sitting in the waiting room at the time seem to really enjoy him. So I think there would be a balancing-out there.

I have thought about this an awful lot.

But you are right. Most people who want to adopt, want a perfect child, and they usually want a baby. We do have some people who are willing to take older kids, though not as often.

Q. So do you think the fact that he is seven I believe now -- A. Yes. Seven and a half.

Q. -- that is also a factor in adoptability? A. Yes, the older they are, the harder it is. He is still in that adoptable age. He is still kind of cute.

Michael McGuire, foster father, on app. pages 189-90:

Q. I guess this is kind of in the nature of a hypothetical. But based on your experience with William as his foster parent, what do you kind of foresee down the line should the Court terminate this child's parental rights? A. My hope for William would be that a family would adopt him, would take him in, that could provide for his special needs and also provide the nurturing environment that he needs.

Q. In light of the special needs and structure, would you think it would take a special kind of family to take in a child like this? A. I think so.

Q. Have you and your wife either talked about or do you have any ideas about whether or not you would be interested in adopting William? A. We have talked about it. We have reached no conclusion.

Ms. Oordt, app. pages 199-200:

Q. From those experiences in sitting in and working as an adoption specialist for a short period of time, and recognizing William's special needs that he has, is it a fair statement to say he would be a more difficult child to place in an adoptive home than a standard -- I guess you can call a child, standard child? A. Almost all of the children that the department places anymore are special needs children.

Even though I have had some experience with adoption staffings and directly with adoption, I still don't necessarily feel that I would have the qualifications to tell anybody whether he would be difficult to place or how difficult or how easy it may be. If I had to give an answer to that question, I would probably, you know, just kind of go down the middle of the road and would guess that they would say that he would be difficult to place. But I don't think that it would be impossible to place him.

* * *

Q. I think you would agree, wouldn't you, that it would take an above-average family in terms of commitment and parenting skills to have a child like William placed in their home due to his special needs? A. Yes.

Q. And he [William] is a difficult-to-place child because of his special needs? A. I believe so, yes.

Q. So realistically at the very soonest, he would be practically eight years old by the time there would be an adoptive family for him if the parental rights were terminated; is that correct? A. Yes.

Q. And is it also correct then, my assumption that if it were more difficult, he would be at least maybe ten or eleven years old by the time the adoptive family was found? A. I suppose it's possible.

Q. Is it possible that William could never be adopted, they could never find an adoptive home? A. That's always possible, and I honestly don't know what the chances of that are.

Q. You testified a little bit earlier that it would be difficult but not impossible for him to be placed? A. That's my feeling. But again, I don't really feel I have the expertise to --

Q. So it wouldn't surprise you, because of those feelings, that William might never be placed? A. To be honest, it would surprise me if he were never placed, yes. The department has placed some very difficult children.