

IN THE COURT OF APPEALS OF IOWA

No. 1-839 / 11-1432
Filed November 9, 2011

**IN THE INTEREST OF S.G. and J.G.,
Minor Children,**

**R.R.G., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Colin J. Witt, District Associate Judge.

A father appeals the juvenile court's ruling terminating his parental rights.

AFFIRMED.

Erin M. Carr of Carr & Wright, P.L.C., Des Moines, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Jennifer G. Galloway, Assistant County Attorney, for appellee State.

Susan R. Stockdale, Des Moines, for appellee mother.

Nicole Garbis Nolan of Youth Law Center, attorney and guardian ad litem for minor children.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

A father appeals the juvenile court's termination of his parental rights to two children. The father asserts the juvenile court erred in: (1) finding termination was in the children's best interests; (2) terminating his parental rights in spite of his bond with his children and the children's placement with their mother; and (3) failing to determine beyond a reasonable doubt that his continued custody of the children was likely to result in serious emotional or physical damage to the children, as required by Iowa Code section 232B.6(6)(a) (2009).

The father was in and out of jail during the pendency of these proceedings and was in jail at the time of trial on the petition to terminate his parental rights. The children were in their mother's custody at the time of trial and were making good progress. The record reflects the father had a history of substance abuse and domestic violence, including violence with the children's mother in the children's presence. The father violated a no-contact order between him and the children's mother while attempting to see the children. Following this incident, a no-contact order was issued between the father and the children until the father engaged in services with the Iowa Department of Human Services (DHS). The father made himself largely unavailable to the children during the course of these proceedings and refused to consistently engage in services.

II. Best Interests of the Children

We find the juvenile court properly determined termination of the father's parental rights was in the children's best interests pursuant to Iowa Code section

232.116(2). The father has an unstable lifestyle and has failed to consistently participate in services or visit his children. We agree with the juvenile court's conclusion that nothing in the record indicates the father has or soon will have the ability to provide a safe or long-term nurturing environment for the children. Termination of the father's parental rights best provides for the children's long-term nurturing and growth as well as their physical, mental, and emotional needs.

III. Factors Weighing Against Termination Under Section 232.116(3)

We find termination to be appropriate in spite of the father's alleged bond with his children. See Iowa Code § 232.116(3)(c) (stating the court need not terminate when termination would be detrimental to the child due to the closeness of the parent-child relationship). The father participated in services inconsistently and canceled most scheduled visits with the children. The DHS case worker assigned to this case noted, "These few attempts to be involved in the lives of his children during the two years that this case has been open are not enough to develop a significant relationship." We conclude the children do not possess such a strong bond with their father that termination would be detrimental to them.

We also find the juvenile court properly exercised its discretion in finding the children's placement with a relative did not override the conclusion that as a result of safety concerns and "the father's refusal to undertake any efforts," termination was necessary in this case. We acknowledge that because the children's mother maintained custody of the children, termination of the father's parental rights was not necessary in this case. See Iowa Code § 232.116(3)(a). In spite of this, we believe this is a case where termination is still in the children's

best interests. We believe the father's continued involvement in the children's lives would interfere with the mother's proven ability to provide a safe and stable home for the children. In reaching this conclusion, we do not consider the potential loss of financial support to the mother. See *In re H.S.*, ___ N.W.2d ___ (Iowa 2011) (“[T]he anticipated loss of child support funds in and of themselves . . . as a result of termination should not be part of the section 232.116(2) best interests analysis.”). The juvenile court properly ordered termination rather than entering a permanency order under Iowa Code section 232.104(2)(d).

IV. Compliance with Iowa Code Section 232B.6(6)(a)

We agree with the father that pursuant to Iowa Code section 232B.6(6)(a), termination of parental rights over Indian children cannot be ordered in the absence of a determination, supported by evidence beyond a reasonable doubt, including qualified expert testimony, that the continued custody of the children by the children's parent is likely to result in serious emotional or physical damage to the children.

The record shows the father was an enrolled member of the Peoria of Oklahoma Indian tribe and the children were eligible for membership at the time of trial. Thus, the children qualified as Indian children, as it is defined in Iowa Code section 232B.3(5) and (6). Accordingly, the juvenile court should have made a determination pursuant to section 232B.6(6)(a). However, the juvenile court's failure to do so is not “fatal” as the father alleges, as on our de novo review we conclude the record shows beyond a reasonable doubt that continued custody of the children by their father is likely to result in serious emotional or physical damage to the children. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010)

("[T]he proper standard of review for all termination decisions should be de novo.").

Douglas Journeycake testified as an expert witness for the Peoria of Oklahoma tribe. Journeycake's testimony along with the testimony of the DHS caseworker and the rest of the record in this case, as detailed above, establish beyond a reasonable doubt that the continued custody of the children by their father is likely to result in serious emotional or physical damage to the children.

AFFIRMED.