IN THE COURT OF APPEALS OF IOWA

No. 3-1188 / 13-1691
Filed January 9, 2014

IN THE INTEREST OF B.D. and W.D.,
Minor Children,

B.D., Father,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Daniel L. Block, Associate Juvenile Judge.

A father appeals from the order terminating his parental rights. **AFFIRMED.**

Christopher Nydle of Forcier Law Office, P.L.L.C., Waterloo, for appellant father.

Theodore Stone, Cedar Falls, for mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kathleen Hahn, Assistant County Attorney, for appellee State.

Nellie Omara-Morrissey, Waterloo, for minor children.

Considered by Vogel, P.J., and Mullins and McDonald, JJ.

McDONALD, J.

Branden appeals an order terminating his parental rights pursuant to Iowa Code sections 232.116(1)(d), (e), and (*l*) (2013). Branden argues that the State did not prove by clear and convincing evidence that his parental rights should be terminated and that the court erred in finding that termination of his parental rights was in the best interests of the children.

I.

Rebecca and Branden are the biological parents of B.D. and W.D., who were born in 2008 and 2009, respectively. Both children were born drug affected as a result of Rebecca's use of marijuana while pregnant. Founded child protective assessments were filed at that time. These children most recently came to the attention of Iowa Department of Human Services in April 2012 when both children were found unattended chasing the family dog into a busy street. In June 2012 both parents consented to the removal of the children from Rebecca's home and to placement of the children with relatives. The children were never returned to either parent.

The children were adjudicated as children in need of assistance pursuant to Iowa Code sections 232.2(6)(b), (c)(2), and (n) in November 2012. Branden stipulated to the adjudication. Rebecca did not attend the adjudication hearing and was found in default. The court issued a permanency order in April 2013. At that time, Rebecca was entering inpatient substance abuse treatment. Branden was incarcerated at the time of the permanency order and had not maintained regular contact with the children.

The court held a termination hearing in July 2013. Rebecca consented to the termination of her parental rights, but Branden contested the termination. At the time of the hearing, Branden was residing in an Iowa Department of Corrections residential facility following a probation violation. During the majority of the time this juvenile case was pending, Branden was not available to the children because he was in residential treatment facilities or county jail due to his inability to comply with the terms and conditions of community-based corrections. Further, Branden failed to successfully complete the services offered to him, including therapy and skill development services, substance abuse programming, batterer's education programming, and other services. The court entered an order terminating Branden's parental rights pursuant to Iowa Code sections 232.116(1)(d), (e), and (*l*).

II.

We review de novo proceedings terminating parental rights. *See In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We examine both the facts and law, and we adjudicate anew those issues properly preserved and presented. *See In re L.G.*, 532 N.W.2d 478, 480 (Iowa Ct. App. 1995). We give weight to the findings of the juvenile court, especially concerning the credibility of witnesses, but we are not bound by them. *See id.* at 480-81. While giving weight to the findings of the juvenile court, our statutory obligation to review termination proceedings de novo means our review is not a rubber stamp of what has come before. We will thus uphold an order terminating parental rights only if there is clear and convincing evidence of grounds for termination. *See In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). Evidence is "clear and convincing" when there

are no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.*

Termination of parental rights under chapter 232 follows a three-step analysis. *See In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). First, the court must determine if a ground for termination under section 232.116(1) has been established. *See id*. Second, if a ground for termination is established, the court must apply the framework set out in section 232.116(2) to decide if proceeding with termination is in the best interests of the child. *See id.* Third, if the statutory best-interests framework supports termination of parental rights, the court must consider if any statutory exceptions set forth in section 232.116(3) should serve to preclude the termination of parental rights. *See id.*

Branden's only challenge to the sufficiency of the State's evidence is that the State did not establish by sufficient evidence that the children "will not be able to be returned to the custody of the parent within a reasonable period of time . . . ." Iowa Code § 232.116(1)(*l*)(3). Left unchallenged on appeal is the sufficiency of the evidence supporting termination of his parental rights pursuant to subsection (d) (providing for termination of parental rights following an adjudication where circumstances giving rise to the adjudication continue to exist despite the offer or receipt of services) and subsection (e) (providing for termination of parental rights following removal for at least six consecutive months combined with evidence that the parents have not maintained significant and meaningful contact with the children and have made no reasonable efforts to resume caring for them). Branden has thus waived any challenge to the sufficiency of the evidence supporting these grounds for termination. *See Hyler*

v. Garner, 548 N.W.2d 864, 870 (Iowa 1996) (stating "our review is confined to those propositions relied upon by the appellant for reversal on appeal" and that de novo review "does not entitle an appellant to a *trial* de novo, only *review* of identified error de novo" (emphasis in original)). We thus need not address Branden's challenge to the sufficiency of the evidence with respect to subsection (*l*) because "we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm." *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

The conclusion that Branden has waived any challenge to the sufficiency of the evidence with respect to termination of his rights pursuant to subsections (d) and (e) does not end our inquiry, however. Even assuming the State proved grounds for termination pursuant to these subsections, Branden contends that termination is not in the best interests of the children pursuant to section 232.116(2). In making the determination of whether termination of parental rights is in the best interests of the children, the court must consider the relevant statutory factors. Further:

> In seeking out those best interests, we look to the child's long-range as well as immediate interests. This requires considering what the future holds for the child if returned to the parents. When making this decision, we look to the parents' past performance because it may indicate the quality of care the parent is capable of providing in the future.

In re J.E., 723 N.W.2d 793, 798 (Iowa 2006) (quoting *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997)).

There is little evidence in this record that deferring the termination of Branden's parental rights would be in the children's best interests. As previously

stated, Branden has a lengthy criminal history and has largely been unavailable to the children due to his own incarceration for failing to comply with the terms and conditions of community-based supervision and substance abuse treatment. Even while he was residing in treatment facilities, Branden received numerous violations and was placed on room restriction. Branden's past convictions and repeated failures while being supervised in the community are strong evidence of his inability to provide future care and stability for these children.

On the other hand, B.D. and W.D. are thriving in their current placement. The children have a safe and secure environment in which to live. The children have made significant strides in overcoming educational disadvantages at their new school. In short, these children can no longer wait for Branden to overcome his substance abuse problems and criminal behavior. *See In re. A.B.*, 815 N.W.2d 764, 778 (Iowa 2012) ("It is simply not in the best interests of the children to continue to keep them in temporary foster homes while the natural parents get their lives together." (quoting *C.K.*, 558 N.W.2d at 175)); *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010) ("We do not gamble with the children's future by asking them to continuously wait for a stable biological parent, particularly at such tender ages." (citation omitted)); *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990) ("Children simply cannot wait for responsible parenting. Parenting . . . must be constant, responsible, and reliable.").

AFFIRMED.