

IN THE COURT OF APPEALS OF IOWA

No. 6-394 / 06-0516

Filed May 24, 2006

**IN THE INTEREST OF H.B., Jr., B.R., A.R., and F.B.,
Minor Children,**

H.B., Sr., Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Constance Cohen,
Associate Juvenile Judge.

A father appeals from the termination of his parental rights. **AFFIRMED.**

John Swartz, Des Moines, for appellant father.

Brad Schroeder of Hartung & Schroeder, Des Moines, for mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, John Sarcone, County Attorney, and Stephanie Brown,
Assistant County Attorney, for appellee State.

Kayla Stratton, Des Moines, for minor children.

Considered by Mahan, P.J., and Hecht and Eisenhauer, JJ.

MAHAN, P.J.**I. Background Facts and Proceedings**

Henry Sr. is the father of H.B., born January 18, 2000; B.R., born October 24, 2001; and F.B., born September 23, 2004.¹ The children were in their mother's custody when they were temporarily removed from the home on September 16, 2003. At the time, Henry's whereabouts were unknown. Before a removal hearing could take place, however, the children's mother absconded with them to Minnesota. On December 10, 2003, before the children or their mother were found, the court determined the children to be children in need of assistance. The hearing was uncontested. The children were located on January 7, 2004 in St. Paul, Minnesota, and they were placed in a foster home. Two days later, the court ordered no contact between the children and their mother, several of their relatives, and Henry. On January 21, 2004, the court confirmed the children were still in need of assistance and continued their out-of-home placements.

In May 2004, the court determined the parents were not reasonably reliable to sign necessary releases and consents to meet their children's needs. It found Henry had an alcohol dependency that interfered with his judgment. In July 2004, at a hearing where Henry and the mother were present, the court adopted a case plan. It determined the parents' credibility was very low. They were ordered to complete random drug screens and admonished that missed screens would be considered "dirty."

¹ Testimony at the termination hearing indicated Henry is not the father of A.R.

The children's mother entered the House of Mercy in September 2004; F.B. was born less than two weeks later at Broadlawns Medical Center. At birth, the child tested positive for cocaine. The court allowed the mother to maintain custody of the child as long as she remained at House of Mercy. The Iowa Department of Human Services (DHS) reported in November 2004 that Henry had made little effort toward reunification with his children.

F.B. was determined to be a child in need of assistance on December 2, 2004. At that time, the court also determined Henry had not complied with services. It found there were no compelling reasons to maintain the parent/child relationship. A termination hearing was set for February 2005.

Prior to the termination hearing, however, the children's mother showed commitment to sobriety and made progress in her services. The court returned B.R. to her custody. On February 15, 2005, the State dismissed its termination of parental rights petition. The mother regained custody of H.B. on March 28, 2005.

On May 10, 2005, evidence showed problems with Henry's behavior and sobriety during visits with the children. His visitation was limited to professionally supervised contact only. DHS also reported a domestic abuse incident involving Henry that occurred when the children were visiting relatives during Easter.

In July 2005 the mother relapsed and was discharged from House of Mercy. The children were again removed and placed with DHS. In August 2005 Henry completed an outpatient substance abuse treatment program, but did not follow up on discharge recommendations including aftercare and Alcoholics Anonymous meetings.

When the case was reviewed again in October 2005, Henry was not participating in reunification services. The court directed the State to file petitions to terminate parental rights. That fall, Henry failed to appear for mandated drug and alcohol testing on seven separate occasions. In December 2005 Henry was reportedly incarcerated in the Polk County jail. On March 15, 2006, the court determined there was clear and convincing evidence to terminate parental rights (1) pursuant to sections 232.116(1)(d), 232.116(1)(e), 232.116(1)(f) with respect to all the children; (2) pursuant to section 232.116(1)(g) with respect to B.R. and H.B.; and (3) pursuant to section 232.116(1)(h) with respect to F.B. Henry remained incarcerated at the time of the hearing. He now appeals.

II. Standard of Review

We review the termination of parental rights de novo. *In re D.G.*, 704 N.W.2d 454, 457 (Iowa Ct. App. 2005). The grounds for termination must be proven by clear and convincing evidence. *In re L.E.H.*, 696 N.W.2d 617, 618 (Iowa Ct. App. 2005). “Clear and convincing evidence means there are no serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.” *In re C.B.*, 611 N.W.2d 689, 692 (Iowa 2000). We give weight to the district court’s fact findings, especially its credibility determinations, but are not bound by them. Iowa R. App. P. 6.14(6)(g); *In re N.N.*, 692 N.W.2d 51, 54 (Iowa Ct. App. 2004). Our first and primary concern is the best interests of the children. Iowa R. App. P. 6.14(6)(o); *D.G.*, 704 N.W.2d at 457. We look to the children’s short- and long-term interests. *In re J.J.S., Jr.*, 628 N.W.2d 25, 28 (2001).

III. Merits

In order to affirm a termination of parental rights, we need only find grounds sufficient to terminate under one of the statutory grounds the district court listed. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa 1999). We, however, find sufficient grounds under each of the grounds the district court identified.

Under section 232.116(1)(d), we may terminate Henry's rights if we find both that (1) the child or another child in the household has been previously adjudicated a child in need of assistance after a finding of physical or sexual abuse or neglect and (2) after the adjudication of a child in need of assistance, the parents received services to remedy the circumstance that led to the adjudication, but the circumstance continues to exist. Under section 232.116(1)(e), we may terminate parental rights if we find (1) the child has been adjudicated in need of assistance; (2) the child has been removed for at least six consecutive months; and (3) the parents have failed to maintain significant and meaningful contact with the child. Under section 232.116(1)(l), we may terminate parental rights if (1) the child has been adjudicated in need of assistance; (2) the parent has a severe and chronic substance abuse problem and is a danger to self or others; and (3) clear and convincing evidence indicates the parent's prognosis will not allow the child to be returned within a reasonable period of time considering the child's age and need for a permanent home. Under section 232.116(1)(f), we may terminate parental rights if (1) the child is four years or older; (2) the child has been adjudicated in need of assistance; (3) the child has been removed for either twelve of the last eighteen months, or the last twelve months consecutively without a home trial of thirty days or more; and (4) clear

and convincing evidence indicates the child cannot be returned to the parents at the present time. Under section 232.116(1)(h), we may terminate parental rights if (1) the child is three years or younger; (2) the child has been adjudicated in need of assistance; (3) the child has been removed for either six of the last twelve months, or the last six months consecutively without a home trial period of thirty days or more; and (4) clear and convincing evidence indicates the child cannot be returned to the parents at the present time.

In this case, all the children have previously been adjudicated in need of assistance. Two other children in the household adjudicated in need of assistance were found to have been abused. Henry has been offered services, but clear and convincing evidence shows he has been unable to maintain sobriety, even when visiting his children. H.B. and B.R. have been out of his care since their first removal in September 2003. F.B. has never been in his care. The district court noted Henry has apparently abandoned any reunification efforts. The evidence indicates he has not attempted to maintain significant and meaningful contact with his children. It is clear the children cannot be returned to his care either presently or in any foreseeable future. The district court's termination of Henry's parental rights is therefore affirmed.

AFFIRMED.