

IN THE COURT OF APPEALS OF IOWA

No. 6-800 / 06-1282
Filed October 25, 2006

**IN THE INTEREST OF A.B. and D.A.,
Minor Children,**

**E.B., Mother,
Appellant,**

**S.R.B., Father,
Appellant.**

Appeal from the Iowa District Court for Buena Vista County, Mary L. Timko, Associate Juvenile Judge.

A father appeals from a juvenile court order terminating his parental rights to two children. **AFFIRMED.**

Andrew J. Smith, Storm Lake, for appellant-father.

John Loughlin of Loughlin Law Firm, Cherokee, for appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Phil Havens, County Attorney, for appellee.

Karla J. Henderson of Forristal & Henderson Law Firm, Holstein, guardian ad litem for minor children.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

MILLER, J.

Erin is the mother, and Sven the father, of Derrek, born in December 1998, and Andreas, born in September 2000. Sven appeals from an August 2006 juvenile court order terminating his parental rights to the children. The order also terminated Erin's parental rights, but her appeal was dismissed in September 2006. We affirm.

The juvenile court terminated Sven's parental rights pursuant to Iowa Code section 232.116(1)(d) (2005) (child adjudicated a child in need of assistance (CINA) as a result of physical or sexual abuse or neglect by parents, circumstances continue to exist despite offer or receipt of services) and (e) (child adjudicated CINA, child removed from physical custody of parents at least six consecutive months, parents have not maintained significant and meaningful contact with child in previous six consecutive months and have made no reasonable efforts to resume care of child despite opportunity to do so). On appeal Sven challenges the sufficiency of the evidence to prove the final element of each of those two provisions. He also challenges the sufficiency of the evidence to prove that the best interests of the children are served by termination of his parental rights.

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

In re C.B., 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

When the trial court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the statutory grounds in order to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996). We choose to focus on section 232.116(1)(d).

Fifteen-month-old Derrek was removed from his parents' physical custody in March 2000 when Sven smeared feces on his face because he believed Derrek should have been potty-trained by nine months of age and he bruised Derrek's buttocks, left hip, right leg, and right hand in disciplining him. Derrek was adjudicated a CINA in May 2000 based on physical abuse. A child abuse investigation found that Sven had physically abused Derrek and that Erin was also responsible for Derrek's abuse by failing to protect him. Erin and Sven were offered numerous services over the following two years. Derrek remained out of the home for about fifteen months. The CINA proceeding was dismissed in May 2002 despite significant remaining concerns regarding the parents' ability and desire to properly parent the children, including but not limited to their use of inappropriate means of discipline.

As a result of an incident that occurred in June 2003 Sven was arrested and charged with child endangerment, for physical abuse of Andreas. Another CINA petition was filed, and the children were placed with Erin, subject to an order that Sven had no contact with them. Services, including family centered services, anger management counseling, and family unity services were provided or offered to Sven. Sven pled guilty to child endangerment. In October 2003 the children were adjudicated CINA for physical abuse and lack of appropriate supervision. By April 2004 Sven had moved back into the parties' home.

In February 2005 the children were removed from their parents based on allegations of physical abuse by both parents. Following hearing the juvenile court found the removal appropriate and continued custody of the children with the Iowa Department of Human Services. The court found that despite numerous services over several years, “nothing has really changed. The allegation that fueled the previous abuse reports and Child in Need of Assistance adjudication in this family remain active today.”

In its termination ruling the juvenile court noted that following a November 2004 review hearing it had found, in part:

The Department of Human Services and Juvenile Court have been involved with this family for a significant amount of time. This is the second time that these children have been adjudicated Children in Need of Assistance. It is clear that the family continues to need services to help them; however, it is difficult for them to make the changes they need in their family dynamics to raise well-adjusted children.

In its termination ruling the court further found, in part:

Within four months, it became more than abundantly clear that there had been no significant changes of a long-lasting nature in this family’s dynamics since the family first came to the court’s attention in 2000. It was repeatedly stated throughout reports that neither [Sven nor] Erin felt they had any changes to make.

We fully agree with and adopt these findings of the juvenile court, as well as its resulting conclusion the State proved by clear and convincing evidence that the circumstances which led to the October 2003 CINA adjudication continue to exist despite the offer or receipt of services. We reject Sven’s challenge to the sufficiency of the evidence concerning the second element of section 232.116(1)(d), and find that the statutory grounds for termination pursuant to that provision were proved.

Sven claims, "Insufficient evidence was presented to establish that the best interests of the children are served by the termination of parental rights." Derrek has rather severe behavioral problems, and Andreas has somewhat less severe behavioral problems. Both had improved in the period shortly preceding the termination hearing. The juvenile court concluded, in part:

The record is more than clear that these children have suffered emotionally, physically, and mentally at the hands of their parents. They have suffered emotionally and mentally as a result of their parents' complacent attitude while not in their care.

.....
The Court's patience with Erin and [Sven] has been exhaustive to this point. Now, however, the Court's patience has run out. The Court finds that the best chance for these children to secure permanency and stability in life is for the parental rights of Erin and [Sven] to be terminated.

We agree with the juvenile court. Derrek and Andreas have for many years led abused and disrupted lives. We conclude termination of Sven's parental rights is necessary and in their best interest in order to allow them the opportunity to acquire the permanency, stability, and security they need and deserve.

AFFIRMED.