

IN THE COURT OF APPEALS OF IOWA

No. 7-123 / 06-1969
Filed March 14, 2007

**IN THE INTEREST OF G.R., H.R., E.B., JR., and R.B.,
Minor Children,**

**G.R., Father of G.R. and H.R.,
Appellant.**

Appeal from the Iowa District Court for Polk County, Karla J. Fultz,
Associate Juvenile Judge.

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

Tiffany Koenig of Kragnes, Tingle & Koenig, P.C., Des Moines, for
appellant-father of G.R. and H.R.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Annette Taylor,
Assistant County Attorney, for appellee.

Rodney Ryan, Des Moines, for mother.

Stephie Tran, Des Moines, for father of E.B., Jr., and R.B.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

MILLER, J.

Gu.R. is the father, and Ge.R. the mother, of seven-year-old H.R. and five-year-old G.R. (“the children”). Gu.R. appeals from a November 2006 juvenile court order terminating his parental rights to the children. The order also terminated Ge.R.’s parental rights to the children, as well as her parental rights to two older children, and terminated the parental rights of the father of the two older children, and they have not appealed. We affirm.

The children were under the jurisdiction of the juvenile court beginning in early November 2001 due to concerns about substance abuse and domestic violence in their home. Gu.R. and Ge.R. did cooperate with services and the case was closed in mid-December 2002.

In April 2005 the children again came to the attention of the juvenile court as a result of new concerns of domestic abuse in the home. The children reported a recent altercation between Gu.R. and Ge.R., as well as past assaults. Gu.R. was arrested, charged with domestic abuse, incarcerated, and ordered to have no contact with Ge.R. and the children.

The children were adjudicated children in need of assistance (CINA) in May 2005. They remained with Ge.R., as they did following a July 2005 dispositional hearing. Gu.R. remained incarcerated. In early September 2005 the children were placed in family foster care, where they have thereafter remained with the same foster parents.

In early August 2006 the State filed a petition for termination of parental rights. Following a late September 2006 combined CINA permanency hearing and termination of parental rights hearing the juvenile court entered an order in

November 2006 terminating Gu.R.'s parental rights to the children. The court found the State had proved the grounds for termination pursuant to Iowa Code sections 232.116(1)(b) (2005) (abandonment), (d) (child adjudicated CINA, circumstances continue despite services), (e) (child adjudicated CINA, child removed from parents six months or more, parent has not maintained contact), (f) (child four or older, adjudicated CINA, removed from parents twelve months or more, cannot be returned at present time), and (l) (child adjudicated CINA, parent has severe and chronic substance abuse problem and presents a danger, parent's prognosis prevents return to parent within reasonable time). Gu.R. appeals.

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). Our review of an order arising out of a CINA proceeding is also de novo. *In re S.V.G.*, 497 N.W.2d 262, 263 (Iowa Ct. App. 1992).

Gu.R. does not claim the State did not prove any one or more of the five statutory grounds for termination that the juvenile court found had been proved by clear and convincing evidence. He "requests that the Court reverse the juvenile court's order terminating his parental rights and enter permanency under Iowa Code section 232.104(2)(b), giving him another six months to have the children returned to his care." He points out that the hearing that resulted in termination was a combined CINA permanency hearing and a termination

hearing, and argues that “an extension should be granted under 232.104(2)(b) or . . . long term placement should occur under 232.104(2)(d).” The State asserts Gu.R. has not preserved error on the issue(s) he now attempts to present on appeal. It argues:

There is no indication in the record that the father ever made either of the two aforementioned arguments. The termination order does not address these issues and the record does not contain a motion filed pursuant to Iowa Rule of Civil Procedure 1.904(2).

The State may well be correct concerning error preservation. We nevertheless choose to address the merits of Gu.R.’s claims.

Section 232.104(2)(b) allows the juvenile court, following a permanency hearing, to “continue placement of the child for an additional six months.” However, in order to do so the court must find and enumerate

the specific factors, conditions, or expected behavioral changes which comprise the basis for the determination that the need for removal of the child from the child’s home will no longer exist at the end of the additional six-month period.

Upon our de novo review we conclude the juvenile court was correct in not determining that the need for removal would no longer exist at the end of six months. Gu.R. has a history of substance abuse and domestic violence, resulting in incarcerations and probations, and violation of probation. When released on probation from a residential correctional facility in the latter part of 1995, he initially had visits with the children and completed a substance abuse evaluation. However, Gu.R. subsequently stopped cooperating with the Department of Correctional Services, failed to follow through with substance abuse treatment, stopped attending a Batterer’s Education Program, and began missing visits with the children. He tested positive for methamphetamine use in

late June 2006 and subsequently refused to provide drug screens. Gu.R. has failed or refused to enroll in parenting classes to which he has been referred. As of mid-September 2006 a warrant for his arrest was apparently outstanding. Gu.R. had no contact with the Iowa Department of Human Services and service providers after June 2006, and had no visits with the children after about late June 2006. In summary, the record does not contain evidence of “specific factors, conditions, or expected behavioral changes” that would support a finding the need for removal would no longer exist if the court were to continue placement of the children for an additional six months pursuant to section 232.104(2)(b).

To order what Gu.R. characterizes as “long-term placement” pursuant to section 232.104(2)(d) the court must find, among other things, that “termination of the parent-child relationship would not be in the best interest of the child.” See Iowa Code §§ 232.104(2)(d), (3)(a). To the contrary, the juvenile court expressly found that termination is in the children’s best interest.

The record shows that the children have suffered and been developmentally delayed as a result of the domestic abuse, substance abuse, inconsistency, instability, and insecurity that has existed in their home and lives. H.R. has had behavioral problems. G.R. was underweight and lacking in age-appropriate language and social skills. Both have required and have been receiving therapy. H.R.’s home and school behavior has improved. G.R. has had significant weight gain, and has developed language and social skills.

H.R. and G.R. have been in a foster family home for over a year. By all accounts they are at last safe, secure, and thriving. Their foster parents wish to

and intend to adopt them. We fully agree with the juvenile court that termination of Gu.R.'s parental rights is in the best interest of the children. We therefore also conclude the record does not support a finding, pursuant to section 232.104(3)(a), that termination of Gu.R.'s parental rights is not in their best interest.

AFFIRMED.