

IN THE COURT OF APPEALS OF IOWA

No. 7-628 / 07-0997
Filed September 6, 2007

**IN THE INTEREST OF M.K.W. and P.B.W.,
Minor Children,**

**H.W., Father,
Appellant.**

Appeal from the Iowa District Court for Tama County, Michael J. Newmeister, District Associate Judge.

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

John L. Thompson, Tama, for appellant.

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

Jennifer Steffens of Bennett, Steffens & Grife, P.C., Marshalltown, for mother.

Nancy Burk, Toledo, guardian ad litem for minor children.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

SACKETT, C.J.

Horace, the father of Payton, born in March of 2006, and Madison, born in March of 2005, has filed a petition on appeal requesting that we reverse a juvenile court order terminating his parental rights to the two children. Finding clear and convincing evidence supporting the termination we affirm. The mother of the children, whose rights were also terminated, has not sought appellate relief.

SCOPE OF REVIEW. Our review of termination of parental rights proceedings is de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We give weight to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but are not bound by those findings. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990). The State has the burden of proving the allegations by clear and convincing evidence. Iowa Code § 232.96(2) (2007). “Clear and convincing evidence” is evidence leaving “no serious or substantial doubt about the correctness of the conclusion drawn from it.” *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002).

OPINION EVIDENCE. Horace contends that the juvenile court erred in admitting opinion evidence from Amanda Bricker, a social worker for the Department of Human Services, without a proper foundation. Bricker has a four-year degree in criminal justice, worked six months for a sex offender program, worked for Polk County for four years, and for a year and a half with the Department of Human Services. Bricker has been the social worker for Madison and Payton and their parents for the entire time the case was open. Bricker testified without objections to her work with the family and specific observations

she had made. Horace's attorney made two objections to questions of Bricker. The objections were overruled,¹ and Bricker testified she had seen Madison, but not Payton, bond to the in-home provider who saw them weekly, and that both children are bonded to their foster parents and day care provider. The testimony was more a report of Bricker's observations than an opinion. If it were an opinion we do not find it to be outside the witness's area of expertise. There was no error here.

Horace further contends the court erred in admitting into evidence criminal court files attributable to him. He argues there was a "failure to identify the files and to whom specifically they related." He also argues he was not available to be identified in court because his request to be transported to the hearing was denied.

The State correctly points out that the files themselves show they are related to Horace, as they make reference to his name, his birth date shown in other exhibits, the mother of the children, and show him as the father of Madison. The State further points out that the files and reports were merely cumulative of other evidence that came in without objection and that Horace was not prejudiced by their omission. We agree. There was no error here.

EVIDENCE SUPPORTING TERMINATION. Horace contends that on our de novo review of the facts and our consideration of the law we should find that his parental rights should not be terminated. The State argues there is clear and convincing evidence to support termination under Iowa Code sections

¹ Termination of parental rights case are tried in equity and are reviewable de novo. Consequently, objections should be noted but not ruled on.

232.116(1)(h) and 232.116(1)(i).² Horace does not argue that these sections relied on by the juvenile court in terminating his parental rights are not supported by clear and convincing evidence. Rather his argument is more akin to a claim that termination is not in the best interest of the children.

The children have been in foster care since May of 2006 when social workers went to the home of Horace and his wife, the children's mother, and found both parents at home. The worker smelled marijuana smoke coming from the parents' apartment. With the consent of Horace's wife the apartment was searched and marijuana was found. The children were placed with a relative of Horace's wife's stepfather, and Horace and his wife subsequently gathered the children and left for Tennessee.

² Iowa Code sections 232.116(1)(h) and (i) provide:

1. Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds:

. . . .

h. The court finds that all of the following have occurred:

(1) The child is three years of age or younger.

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

i. The court finds that all of the following have occurred:

(1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.

(2) There is clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child.

(3) There is clear and convincing evidence that the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.

The children subsequently were returned to Iowa. The parents agreed that the children were children in need of assistance and the juvenile court made a finding that they were in early August of 2006. The Department of Human Services was given guardianship of the children and they were placed in a family foster care home where they remained at the time of the termination hearing. The parents have had some supervised visits with the children since that time. Despite having been given the telephone number of the foster parents the last phone call to the home by the parents was in December of 2006.

At the time of the termination hearing Horace was incarcerated in the Men's Reformatory in Rockwell City, Iowa, following a revocation of his probation as a result of a forgery conviction in December of 2005. He had a severe substance abuse problem that was only alleviated when he was placed in the Oakdale classification center. He has twice been convicted of possession of marijuana. He was a polysubstance abuser as well as an abuser of prescription drugs including Hydrocodone. He tested positive for illegal substances. He did not complete several requested drug tests. The juvenile court found without intense supervision and incarceration he cannot live drug free.

We find clear and convincing evidence the children cannot be returned to Horace at this time and that termination is in their best interest. We affirm the termination.

AFFIRMED.