

IN THE COURT OF APPEALS OF IOWA

No. 8-1073 / 08-1906
Filed February 4, 2009

**IN THE INTEREST OF C.W. and G.W.,
Minor Children,**

**D.L.W., Father,
Appellant.**

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

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

Nancy A.S. Trotter, Des Moines, attorney and guardian ad litem for
appellant.

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

Stephanie Tran, Des Moines, for mother.

John Jellineck, Des Moines, guardian ad litem for minor children.

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

SACKETT, C.J.

The father of the children at issue has filed a petition on appeal challenging the November 8, 2008 order terminating his parental rights to the two children, sons born in September of 2006 and August of 2007. His rights were terminated under Iowa Code sections 232.116(1)(d), (e), (h), and (i) (2007). He contends there is not clear and convincing evidence supporting termination under any of these sections and that termination of his parental rights is not in the children's best interest given that they are in the custody of their biological mother and the children have a long-term relationship and bond with him. We affirm.

Scope of Review. We review termination proceedings de novo. Iowa R. App. P. 6.4; *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. Iowa R. App. P. 6.14(6)(g); *In re M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993). The primary interest in termination proceedings is the best interests of the child. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997); see Iowa R. App. P. 6.14(6)(o). 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 T.B.*, 604 N.W.2d 660, 661 (Iowa 2000); see Iowa Code § 232.116. "Clear and convincing evidence" means there are no serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence. *C.B.*, 611 N.W.2d at 492 (citation omitted).

Background. The father and his wife, the mother of these children, first came to the attention of the Iowa Department of Human Services in December of 2006 because they were using cocaine. The older child was removed from his parent's care in December of that year and returned to their custody in May of 2007. In about October of that year the older child and his then infant brother were both removed from their parents' care. The parents admitted they had smoked crack cocaine in the children's presence and there was a complaint that the father was exposing himself to the neighbors. The father was arrested and incarcerated. He has been incarcerated since that time and consequently has not seen the children since then. At the time of the termination hearing he was serving a sentence at the Mount Pleasant Correctional Facility after having pled guilty to indecent exposure and second-degree burglary. He testified his release date is January of 2010, but he has a pending a motion for reconsideration, which may result in an earlier release. He said he expects to be on parole following his release.

During the time the father was in the family home, he helped care for the older child and developed a relationship with him. His incarceration has prevented him from establishing any relationship with the younger child.

The father is currently beginning a sex offenders' treatment program at Mount Pleasant that lasts about ten months. While incarcerated, he has completed what is referred to as SOPT treatment, a four-month Reach One Teach One program that deals with sexual offenses, a Walk the Walk program, which is Christian-based and addresses spirituality and making the right choices.

He also attends Narcotics Anonymous meeting weekly. He testified he has a support system available to him in Des Moines and that a former employer has offered housing and a job in Des Moines on his release.

The children were ultimately returned to their mother's custody and are currently in her care. She is seeking a divorce from the father.

The father contends the grounds under section 232.116(1)(h) were not proved because there was not clear and convincing evidence the children cannot be returned to his custody. He does not contend there is not clear and convincing evidence to support the other requirements of the section. The father currently is incarcerated. He admitted he is unable to assume custody. There is clear and convincing evidence supporting termination under 232.116(1)(h). Having affirmed one ground for termination we need not address the challenges to the other sections. See *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

The father also contends that termination of his rights is not in the children's best interest and also that the court should not terminate because the children are in the custody of their other parent. See Iowa Code § 232.116(3).

The juvenile court rejected these arguments finding the father believed he should have complete access to the children, he has not participated in alternative ways to be involved in their lives, and despite the father's sobriety during his incarceration the court could not be assured that his substance abuse problems had abated.

The father argues he has asked for reconsideration of his sentence and will be eligible for parole in 2009, at which time he could resume custody of his sons and preserve his parental role and relationship with the children. He further argues that the children's mother has relapsed after having drug treatment and there is no assurance she will remain substance free. He contends if that should happen he would be available for the children. He also argues he was involved in the care of his older child while living with the child in their home and he and this child are bonded.

The State argues the father had a criminal record and he could compromise the children's safety and the mother's ability to meet the children's needs. The guardian ad litem commended the father for completing the programs he did while he was incarcerated, as do we. The guardian ad litem then opined that considering the age of the children, the father's relationship with them prior to his incarceration, and the father's incarceration, the guardian ad litem felt it was in the children's best interest to terminate the father's parental rights. The court-appointed special advocate (CASA) testified it was a hard decision, but noted that the father had exposed himself a second time after completing a sex offenders program, which concerned her as did the fact the boys had experienced a long separation from their father. She agreed with termination. The mother contended the father's parental rights should be terminated even though he would not have to pay child support, give her money, or provide her and the children benefits if there was a termination. She testified she had a good support system but did not elaborate on it.

Other than the question to the mother about the absence of financial support if the father's parental rights were terminated, neither the State, the guardian ad litem, nor the CASA considered it in making their recommendations that the court should terminate the father's parental rights. Nor has the juvenile court addressed it.

A review of the sparse record on the financial issue makes it clear the mother alone is unable to provide adequately for the financial needs of the children and there is no suggestion that another is to adopt the children and assist her with meeting the children's financial needs. An October 30, 2008 CASA report stated that the mother continued to live with the children in her parent's home¹ mostly in the upstairs area. The report noted the mother had a permanent, part-time job with a temporary service but was looking for full-time work and had a number of interviews. It was further noted she may have to look for a second part-time job since she has not been able to find full-time employment. What supplemental financial support the mother is receiving from her parents and or government sources is not clear. Her negative criminal history and prior substance abuse problems obviously stand in the way of her obtaining a good job.

The father contends he has a job waiting when he is released and that he has contributed to the support of this family and a child by another mother in the past. We also recognize that his negative criminal history, coupled with his substance abuse and incarceration, may stand in the way of getting a well-paying

¹ The mother's parents have exhibited past animosities toward the father.

job. However, people make major turns, win lotteries, inherit or are gifted money, or because of a certain talent or exposure are able to obtain well-paying jobs. We are not persuaded that the legislature intended section 232 to alter support obligations of parents who have the resources or possible resources to pay. See *In re D.W.K.*, 365 N.W.2d 34, 35 (Iowa 1985) (affirming juvenile referee's refusal to terminate on father's voluntary petition under chapter 600A despite the fact that one ground for termination was shown, noting that the best interests of the child was always a factor). There also is a public interest involved where, as here, it appears the child may be receiving public assistance. See *Anthony v. Anthony*, 204 N.W.2d 829, 833 (Iowa 1973). Parents are legally obligated to support their children, and the court should consider whether a termination order will make a child a public charge and/or sole financial responsibility of a single parent with limited resources. See *id.*

We affirm. In weighing the father's deficiencies against the possibility of his providing support for the children we find the trial court should be affirmed. See *In re Marriage of Walton*, 577 N.W.2d 869, 871 (Iowa Ct. App. 1998) ("We are not bound by the district court's findings but give them deference because the district court had an opportunity to view, firsthand, the demeanor of the parties and evaluate them as custodians.").

AFFIRMED.