

IN THE COURT OF APPEALS OF IOWA

No. 9-035 / 08-1606
Filed February 19, 2009

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

S.E.B., Mother,
Appellant,

A.W.B., Father,
Appellant.

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

A father appeals the termination of his parental rights to his children,
contending that the State has not proved the elements necessary to terminate his
rights. **AFFIRMED.**

John Moeller of O'Brien, Galvin & Moeller, Sioux City, for appellant
mother.

Chad Thompson of Metcalf, Thompson & Phipps, Kingsley, for appellant
father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Patrick Jennings, County Attorney, and David Dawson,
Assistant County Attorney, for appellee State.

Lesley Rynell of Juvenile Law Center, Sioux City, for minor children.

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

VAITHESWARAN, J.

Aaron appeals the termination of his parental rights to four children, born between 1996 and 2002.¹ He appears to argue that (A) the State failed to prove the grounds for termination set forth in Iowa Code sections 232.116(1)(d), (f), and (j) (2007) and (B) termination was not in the children's best interests. Our review of these issues is de novo. Iowa R. App. P. 6.4.

We may affirm a termination ruling if the evidence supports any of the grounds cited by the juvenile court. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The juvenile court terminated the father's parental rights under the grounds cited above as well as Iowa Code section 232.116(1)(i), a ground that is not challenged on appeal. Therefore, we could affirm the termination on this unchallenged ground. However, we will afford the father the benefit of the doubt and address one of the challenged grounds, Iowa Code section 232.116(1)(f) (requiring proof of several elements including proof that children could not be returned to parent's custody).

In mid-2006, one of the children called 911 and disclosed that his father was drunk and was chasing the kids with a knife. The Department of Human Services, which had been involved with the family prior to this incident, sought to have the children removed from the home. At the emergency removal/adjudicatory hearing, the district court found as follows:

Aaron has a criminal history dating back to the 1990s, which includes possession of a controlled substance, numerous driving while license suspended/revoked/banned charges and several charges of domestic assault. Aaron acknowledged smoking marijuana "occasionally," but did relapse and was arrested and

¹ The Iowa Supreme Court dismissed the mother's appeal as untimely.

charged in May 2006 with OWI, Open Container, Child Endangerment without Injury, and Driving Without Insurance. He was convicted of OWI 4th and is awaiting sentencing. Aaron did complete a substance abuse assessment on June 27, 2006, which indicates his relapse potential is high.

Aaron was in and out of correctional facilities throughout the proceedings. He did not appear at the termination hearing because he was in jail. Under these circumstances, we agree with the juvenile court that the children could not be returned to his custody.

Termination of a parent's rights must also be in the children's best interests. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). As the children were out of their father's custody for approximately two years and Aaron was in jail at the time of the termination hearing, he was in no position to assume their care. Therefore, termination was in the children's best interests.

We affirm the termination of the Aaron's rights to the four children named in the termination petition.

AFFIRMED.