

IN THE COURT OF APPEALS OF IOWA

No. 9-358 / 09-0454

Filed May 29, 2009

**IN THE INTEREST OF B.W.,
Minor Child,**

**G.W., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

A father appeals the termination of his parental rights to his minor child.

AFFIRMED.

Angela Y. Gruber-Gardner, Johnston, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Jon E. Anderson, Assistant County Attorney, for appellee, State.

Robb Goedicke of Burdette Law Firm, Clive, for mother.

Michelle Saveraid of Youth Law Center, Des Moines, for minor child.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

A father appeals the termination of his parental rights to his minor child. He asserts the juvenile court erred in failing to grant him an additional six months to work toward reunification. He also contends there is not sufficient evidence to support the termination of his parental rights. We affirm.

The scope of review in termination cases is de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). The grounds for termination must be proved by clear and convincing evidence. *In re T.P.*, 757 N.W.2d 267, 269 (Iowa Ct. App. 2008). Evidence is clear and convincing when it leaves 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). Our primary concern in termination cases is the best interests of the child. *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007).

Gerald is the father of B.W., born in April 2007. B.W. resided with his mother, his father, and an older half-brother, J.L., born May 2004, until the family came to the attention of the Iowa Department of Human Services (DHS) in early September 2007. At that time, the mother¹ left B.W. and J.L. unattended in an unlocked hot car while she went into the mall. This incident resulted in a founded abuse report and child endangerment charges against the mother, but did not result in a petition being filed with the juvenile court. Gerald and the children's mother separated. The mother and her two children moved in with her maternal great aunt and her husband later in September 2007. Voluntary services were offered to the family, and Gerald received supervised visits in November and December 2007 and January 2008. Gerald's paternity was placed in doubt in

¹ The mother, A.B. a/k/a A.L., has not appealed the termination of her parental rights.

January 2008 and Gerald was not allowed to visit B.W. until paternity was established.

In May 2008, the mother took B.W. to daycare and then left the state without making plans for his care. She remained out of state until she returned in October 2008. The children were placed with the mother's great aunt and her husband, with whom they had been living. A petition alleging B.W. was a child in need of assistance (CINA) was filed May 14, 2008. Paternity testing for Gerald was ordered May 21, 2008. B.W. was adjudicated CINA June 3, 2008.

Gerald began receiving weekly one-hour supervised visits with B.W. June 10, 2008. Those visits were extended in length and, at the time of the termination hearing in January 2009, the DHS child protective worker assigned to this family, Michelle DeLong, reported Gerald is able to parent B.W. for short times on his own. Gerald engaged actively in services from June 2008 until the termination trial in January 2009.

In October 2008, Gerald's time with B.W. was expanded to include Saturday overnights with Gerald's sister, her husband, and the four children in their home. Gerald relied on his sister and brother-in-law for transportation, since he does not have a driver's license. Gerald's family became actively involved in supporting his efforts to gain custody of B.W. On Christmas Eve day 2008, Gerald worked with his brother-in-law, and Gerald's sister was left to care for B.W. As a result, Gerald and his sister argued, and Gerald no longer permitted his sister to be involved with his life or that of B.W. Gerald's sister then reported that she, and not Gerald, had been parenting B.W. during the weekends.

Gerald's weekends with B.W. ended, although he continued to have professionally supervised time with B.W. during the week.

Gerald was ordered to complete a psychosocial evaluation and to participate in anger management courses and individual therapy. On July 25, 2008, Gerald began seeing an individual counselor to deal with issues of anger management, low frustration tolerance, and impulse control. He has made some progress in these areas. However, Gerald continues to have difficulty accepting feedback and when he is frustrated or angry, he is unable to focus on B.W.'s needs. Gerald has difficulty regaining his composure after an angry outburst, and reportedly creates at these times a "scary environment for kids." The older child expressed such fear of Gerald that the professionals involved with the family avoided contact between that child and Gerald. Even when supervised, and after many months of services, Gerald's anger is not adequately controlled, and he fails to recognize its effect on B.W. Additional services are required before Gerald could adequately and safely parent B.W.

B.W. and his older half-brother have a very close bond with each other and with their caretakers, with whom they had lived for the sixteen months before the termination trial. B.W. was twenty-one months old at the time of trial and developmentally delayed. He is described as an "emotionally fragile" child and requires monitoring for growth and development.

In an extensive opinion detailing the history of this family's involvement with DHS, the juvenile court concluded B.W. could not be returned to Gerald's care at this time. The court referenced the opinion of all of the professionals involved that Gerald could not assume the care of B.W. at the time of trial. The

court concluded that “[t]here is no indication that within a reasonable period of time he will be able to change his behavior patterns formed over a lifetime.” The court also concluded granting additional time would not be in B.W.’s best interests. The court carefully weighed the request of the guardian ad litem and Gerald for an additional six months and found no reasonable likelihood that Gerald would be able to provide a safe home for B.W. after an additional six months of therapy. Gerald’s parental rights to B.W. were terminated pursuant to Iowa Code section 232.116(1)(h) (2009) (child under three, adjudicated CINA, removed from custody for six months, clear and convincing evidence that child cannot be returned at this time). We concur.

As noted above, our primary concern in a termination proceeding is the best interests of the child. *In re A.S.*, 743 N.W.2d at 867. Those best interests are to be determined by looking at the child’s long-range as well as immediate interests. We are to consider what the future likely holds for the child if that child is returned to his or her parents. Insight for that determination is to be gained from evidence of the parent’s past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493-94 (Iowa 1990); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). Case history records are entitled to much probative force when a parent’s record is being examined. *Harter v. State*, 260 Iowa 605, 608-09, 149 N.W.2d 827, 829 (1967). From our de novo review of the record, we conclude that the juvenile court correctly determined additional time would not be effective

and that termination was in B.W.'s best interests.

AFFIRMED.