

IN THE COURT OF APPEALS OF IOWA

No. 9-572 / 09-0782

Filed July 22, 2009

**IN THE INTEREST OF C.B., Jr., J.B., P.B., A.B., and M.B.,
Minor Children,**

C.D.B., Sr., Father,
Appellant.

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A father appeals the permanency order of long-term foster care for his children. **AFFIRMED.**

Leslie M. Blair, III, of Blair & Fitzsimmons, P.C., Dubuque, for appellant father.

Mary Beth Fleming, Dubuque, for appellee mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Ralph Potter, County Attorney, and Jean Becker, Assistant County Attorney, for appellee State.

Mary Kelley, Assistant Public Defender, Dubuque, for minor children.

Considered by Sackett, C.J., and Vogel and Potterfield, JJ.

VOGEL, J.

Curt appeals the permanency order of long-term foster care for his five children pursuant to Iowa Code section 232.104(2)(d)(4) (2007).¹

Appellate review of permanency orders is de novo. *In re N.M.*, 528 N.W.2d 94, 96 (Iowa 1995). Although we give weight to the juvenile court's fact findings, we are not bound by them. *Id.* Iowa Code section 232.104 provides in part:

2. After a permanency hearing the court shall do one of the following:

.....

(d) Enter an order pursuant to findings required by subsection 3, to do one of the following: . . . (4) If the department has documented to the court's satisfaction a compelling reason for determining that an order under the other subparagraphs of this paragraph would not be in the child's best interest, order another planned permanent living arrangement for the child.

3. Prior to entering a permanency order pursuant to subsection 2, paragraph "d", convincing evidence must exist showing that all of the following apply:

(a) A termination of the parent-child relationship would not be in the best interest of the child.

(b) Services were offered to the child's family to correct the situation which led to the child's removal from the home.

(c) The child cannot be returned to the child's home.

Curt first asserts the district court erred in finding clear and convincing evidence that the children could not be returned to his care. In large part, he faults his volatile relationship with the children's mother as the source of much past conflict and anger. Curt claims that because the couple separated in May 2008 and later divorced, their altercations are no longer a problem, and the children are safe in his care. However, in April 2008, he was ordered to complete a psychological evaluation, sign releases for mental health information,

¹ The mother of the children does not appeal the order.

and follow recommended treatment. This included taking prescribed medications. In addition, the case plan detailed what was expected of him in order to regain care of his children.

Curt's visits with the children were suspended in May 2008 because his anger manifested itself not only towards the children's mother but also towards caseworkers. It was not until December 2008 that Curt complied with DHS requests, such that he was considered sufficiently stable to resume supervised visits with the children. Although he has made some progress in addressing his anger management and mental health issues, the district court found and we agree that Curt's progress is limited. Clear and convincing evidence supports the district court's decision that the children could not be returned to Curt's care at the time of the permanency hearing.²

Curt next asserts the district court should have granted him an additional six months of continued reunification services before entering the permanency order. We review the court's decision whether to grant or deny additional time for an abuse of discretion. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996) (stating a motion for continuance is reviewed for an abuse of discretion). The State replies that Curt has had ample opportunity to comply with services and only recently began investing himself in working towards reunification goals. As the caseworker reported, over the past year, "it has been apparent how much abuse occurred and how this has truly affected these children." The district court found that Curt continued to minimize his past abusive behaviors and after

² We note the permanency hearing was strung out over three separate days, covering a period of one month; February 26, April 15, and April 27, 2009.

considering that the “children have already been deprived of a majority of their childhood,” concluded additional time was not appropriate. We agree. Curt has subjected these children to years of abuse in the chaotic environment he and the children’s mother maintained. He needs to continue working on managing his own difficulties, while the children need to be in a safe and stable home. *In re J.E.*, 723 N.W.2d 793, 802 (Iowa 2006) (Cady, J., concurring specially) (stating children’s safety and their need for a permanent home are the defining elements in a child’s best interests.) Because of the bond the children have with Curt, and their reluctance to see their relationships with Curt totally severed, the permanency order under Iowa Code section 232.104(2)(d)(4) was most appropriate and supported by clear and convincing evidence. We affirm the district court.

AFFIRMED.