

IN THE COURT OF APPEALS OF IOWA

No. 9-873 / 09-1351
Filed November 12, 2009

**IN THE INTEREST OF A.H. and A.H.,
Minor Children,**

**H.H. III, Father,
Appellant.**

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

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

Jesse A. Macro, Jr. of Gaudineer, Comito & George, West Des Moines, for appellant father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, John P. Sarcone, County Attorney, and Kevin Brownell, Assistant County Attorney, for appellee State.

Kimberly Ayotte of the Youth Law Center, Des Moines, for minor children.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

MANSFIELD, J.

Henry, the father, appeals from a juvenile court permanency order of long-term foster care for his two children pursuant to Iowa Code section 232.104(2)(d)(4) (2009). Before entering an order for another planned permanent living arrangement, such as long-term foster care, the court is required to find convincing evidence that termination is not in the child's best interests, services were offered to correct the problems that led to the child's removal, and the child cannot be returned home. Iowa Code § 232.104(3). On appeal, Henry has only challenged the juvenile court's finding that his children could not be returned to his home. After considering the entire record, we affirm.

I. Background Facts and Proceedings

Henry is the father of a daughter (born October 1996) and a son (born June 1998). The Iowa Department of Human Services (DHS) first became involved with Henry in April 2007, after a founded report of physical abuse on the son perpetrated by the children's stepmother. The case was successfully closed in August 2007. In March 2008, the case was reopened following a second founded report of physical abuse by the stepmother. During both of these incidents, Henry was spending significant amounts of time away from the home due to his employment as an over-the-road truck driver. Following the reports, the children struggled with mental health issues stemming from the physical abuse as well as anxiety from their perception that Henry either did not care or did not recognize that the abuse had occurred.

In early September 2008, the son had significant mental health concerns. He had run away from the home twice and was found to be harming himself by

rubbing the skin over his eyes until they bled. As a result, the State obtained a removal order and filed a petition to find the children in need of assistance (CINA). On September 28, 2008, the children were adjudicated to be CINA pursuant to Iowa Code sections 232.2(6)(a), (c)(2), (f), and (g) (2007). On October 24, 2008, the children were placed into the care of DHS for foster care placement.

At this time, DHS began providing services to Henry and the children including mental health evaluations, family team meetings, individual therapy sessions, unsupervised visitations, and nightly phone calls.

In November 2008, Henry took steps so that he could be reunited with his children. He quit his job as an over-the-road truck driver and began driving buses locally in Des Moines. Henry also found suitable housing and initiated proceedings for a divorce from the abusive stepmother. Despite this progress, concerns remained as to Henry's ability to attend to his children's mental and emotional needs.

Henry's inappropriate behavior toward the children's initial foster care family led the family to request the children's removal in mid-December 2008. As a result, DHS moved the children to a new foster home, and Henry was limited to supervised visitations and supervised phone calls. Henry's disagreement with this decision led him to believe that DHS was working "against him" and giving him nothing but "opposition." Henry's frustrations resulted in him not contacting his DHS worker or his children for the next month.

In January 2009, DHS initiated individual therapy sessions for the children to address their mental health concerns. At these sessions, the children

expressed that Henry did not listen to them or allow them to express their feelings. The children further stated that when they tried, Henry would get upset, which caused them to “shut down” and become quiet. The children also complained that Henry made them feel uncomfortable because he would whisper to them to tell DHS that they wanted to return home with him.

Henry and the children were also provided family therapy sessions. At these sessions, the children attempted to express their feelings to Henry, but he often failed to appreciate what the children were trying to express. Rather, Henry often blamed others, mainly DHS, for not listening to or understanding him.

In April, both children were prescribed medications for their mental health issues. The son was prescribed medication for attention deficit hyperactivity disorder, while the daughter was prescribed medication for anxiety.

In early July 2009, a family team meeting was held in which it was agreed to increase Henry’s responsibilities in regard to his children. First, it was agreed that Henry would have semi-supervised visitations on Mondays. Mondays were chosen because Henry informed DHS that it was his day-off, and he would not work unless he chose to pick up extra shifts. However, Henry missed the first two appointments and later claimed it was because he “had to be at work.” Henry was given the responsibility of contacting providers to schedule individual therapy sessions for the children as well as family team meetings. But, over the next month, Henry failed to schedule any appointments. Finally, Henry was also asked to enroll his children in school. Although Henry made an attempt, he was unable to get his children enrolled, and failed to contact anyone to inform them of the difficulties he was having.

On August 26, 2009, a permanency hearing was held. At this time, the evidence showed that Henry had a suitable housing arrangement for the children. However, significant concerns were expressed by the DHS witnesses as to whether Henry has gained any insight into his children's mental health needs and, more broadly, their trust. Specifically, concerns remained as to whether Henry gained any insight into how the stepmother's physical abuse affected his children, whether he has the ability to listen to his children and respond appropriately, and whether the children could safely address their mental health and emotional needs while in his care.

In light of their age, i.e., twelve and eleven years old respectively, testimony was taken in camera from both children. Both wanted to continue or even expand their visitation with their father; however, neither wanted to be returned to Henry's care. The son also testified he had been coached by Henry "to tell the judge that I want to go home, which is not what I want to do."

The juvenile court determined that termination was not in the children's best interests due to the children's ages and their desire to continue to have a relationship with their father. Nonetheless, the juvenile court found the children could not be safely returned to Henry's care. Therefore, the juvenile court ordered another planned permanent living arrangement in a family foster home. Henry appeals.

II. Standard of Review

We review a permanency order de novo. *In re N.M.*, 528 N.W.2d 94, 96 (Iowa 1995). Although we give weight to the juvenile court's factual findings, we are not bound by them. *Id.* Our paramount consideration is the best interests of

the children. *In re K.C.*, 660 N.W.2d 29, 32 (Iowa 2003). There is a rebuttable presumption that the children's best interests are served by parental custody. *Id.*

III. Analysis

Henry argues that the State failed to prove by convincing evidence that the children could not be returned to his care. See Iowa Code § 232.104(3).

Our review of the record shows that although Henry is generally able to provide for his children's physical needs, significant concerns remain as to his ability to care for the children's mental health and emotional needs.

The children have already suffered multiple instances of physical abuse while in Henry's care. See *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981) (stating insight for what the future likely holds for children "can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that parent is capable of providing"). While it is true that Henry did not abuse the children himself, his failure to recognize and help his children has led to a sense of distrust and anxiety in his children about being returned to his care. Furthermore, Henry has failed to calm this anxiety by listening to and acknowledging his children's concerns while in therapy.

Henry still lacks insight into how the prior physical abuse has affected his children. Both children are currently taking mental health medications and attending weekly therapy sessions. However, Henry does not believe the medications or therapy would be necessary if the children were returned to his care. Furthermore, when given the opportunity to schedule therapy sessions, Henry failed to do so.

Henry testified, “I feel really awkward . . . to say the word parent, yet I don’t even feel like a parent because for so long I’ve been kept on the sidelines.” He also complained about having “gotten nothing but opposition.” However, based on our review of the record, we believe it is inappropriate for Henry to blame others entirely for his predicament—i.e., for not “feeling like a parent.” And regardless of where any fault may lie, our overriding duty is to act in the best interests of the children. In that regard, we find particularly significant the testimony of the DHS supervisor who seemed to have a good rapport with Henry, who agreed that some of Henry’s frustration was appropriate, but who testified that placement of the children with him would not be a good idea because of their “tremendous anxiety about being in [Henry’s] care,” the children’s perception that Henry shuts them down and doesn’t listen to them, and the concern that Henry does not recognize the children’s mental health needs.

This is *not* a termination decision. Because of the bond the children have with Henry and their reluctance to see their relationships with Henry permanently severed, the permanency order under Iowa Code section 232.104(2)(d)(4) was most appropriate and supported by convincing evidence. We affirm.

AFFIRMED.