

IN THE COURT OF APPEALS OF IOWA

No. 0-051 / 09-1829
Filed February 10, 2010

IN THE INTEREST OF D.S., Minor Child,

M.B., Father,
Appellant,

J.V., Mother,
Appellant.

Appeal from the Iowa District Court for Clinton County, Phillip J. Tabor,
Associate Juvenile Judge.

A father and mother each appeal a juvenile court order terminating their
parental rights. **AFFIRMED.**

Colista K. Schmitt of Reynolds & Kenline, L.L.P., Dubuque, for appellant-
father.

Jennifer Olsen of Olsen Law Office, Davenport, for appellant-mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Mike Wolf, County Attorney, and Cheryl Newport, Assistant County
Attorney, for appellee State.

Thomas D. Lonergan of Mayer, Lonergan & Rolfes, Clinton, attorney and
guardian ad litem for minor child.

Considered by Vogel, P.J., and Eisenhauer, J., and Zimmer, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

ZIMMER, S.J.

A mother and father appeal separately from the juvenile court's order terminating their parental rights. Upon our de novo review, we affirm the juvenile court's decision.

I. Background Facts & Proceedings

Jolynn and Michael are the parents of Damien, who was born in April 2009.¹ Jolynn voluntarily agreed to the placement of Damien with the Iowa Department of Human Services. As a result, Damien was placed in foster care shortly after his birth. Damien was adjudicated to be a child in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(b) and (n) (2009) on May 26. The child has never been returned to either of his parents' care.

On July 21, 2009, the results of paternity testing confirmed that Michael was the biological father of Damien. The record reveals that Michael did not want to proceed with services until after his paternity was confirmed. The paternal grandparents intervened in the case, and on October 6, 2009, the juvenile court placed Damien in their care.

Michael has a history of substance abuse and domestic violence. There was a no contact order between Jolynn and Michael at the time of the child's birth. Michael has attended an out-patient substance abuse treatment program. He also attended a batterer's education class. In July 2009, thirteen malnourished and thirsty dogs were removed from Michael's home for neglect. For most of the time while this case was pending in juvenile court, Michael's

¹ At the time of the child's birth, Jolynn was married to Jason and he is the legal father of the child. Jason consented to termination of his parental rights.

home was unfit for visitation because it was under construction and because of dog feces on the floor. Michael told social workers that if he had care of Damien he would take Damien to work with him in different towns, and find day care for Damien in whatever town he happened to be working in.

Jolynn has a long-standing history of serious mental health problems, including bipolar disorder and borderline personality disorder. Her poor mental health led to the termination of her parental rights to another child in August 2004. Jolynn completely fabricated many medical symptoms during her pregnancy. She admitted she reported symptoms in order to gain attention. Jolynn attended individual counseling, and group therapy for her mental health issues. She has made some progress, but she still needs further treatment. Jolynn continues to struggle with understanding the scope of her illness and its impact on her ability to parent Damien.

The juvenile court entered an order on December 2, 2009, terminating the parental rights of Michael under section 232.116(1)(h) and Jolynn under sections 232.116(1)(g) and (h). The court found neither parent could care for the child at that time. The court concluded termination of the parents' rights was in the best interests of the child. Michael and Jolynn each appeal the termination of their parental rights.

II. Standard of Review

The scope of review in termination cases is de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). Clear and convincing evidence is needed to

establish the grounds for termination. *In re T.P.*, 757 N.W.2d 267, 269 (Iowa Ct. App. 2008).

III. Michael

Michael contends there is insufficient evidence in the record to support termination of his parental rights under section 232.116(1)(h).² He states he did not find out that Damien was his son until he received the paternity test results on July 21, 2009. Michael asserts he should be given more time to demonstrate his ability to care for Damien. We disagree.

The termination petition was filed on September 29, 2009. Patience with parents can soon translate into intolerable hardship for their children. *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). It was Michael's decision to wait until he received the results of the paternity test before he started participating in services. We conclude it would not be in Damien's interests to delay permanency in this case.

Michael also claims the State failed to adequately show that Damien could not be safely placed in his care. The juvenile court found:

With regard to the father's ability to have the child placed with him today, both the condition of his home as described by the evidence and the testimony of the witnesses and the father's mother's testimony make it clear that he is not ready to be a full-time father at this time. The father lacks parenting skills, and the condition of his house, his employment, and his inability to internalize the treatment that has been offered to prepare him to be a full-time father prevent him from being able to have the child placed with him today. The Court FINDS that he is not in a position to have the child returned to him today.

² A parent's rights may be terminated under section 232.116(1)(h) if the child is three or younger, has been adjudicated CINA, has been removed for six of the last twelve months, and cannot be returned home at the present time.

We concur in all of the juvenile court's findings. We find clear and convincing evidence that Michael was not in a position to provide a safe and nurturing home for his child at the time the termination hearing was held.

We affirm the decision of the juvenile court terminating Michael's parental rights.

IV. Jolynn

Jolynn contends the State did not present clear and convincing evidence to show that her parental rights should be terminated. One of the grounds for termination of Jolynn's parental rights was section 232.116(1)(h). See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (noting that where the juvenile court terminated parental rights on multiple grounds, we may affirm on only one ground).

Jolynn admits Damien could not be returned to her care at the present time. She asks for more time to show she can parent her child effectively. We determine it would not be in Damien's interests to delay permanency. As the juvenile court noted, there was no indication in the record as to when Jolynn will have sufficiently addressed her mental health problems so that the child may be returned to her care. It is not in a child's best interests to indefinitely wait for responsible parenting. *C.K.*, 558 N.W.2d at 175. We conclude Jolynn's parental rights were properly terminated under section 232.116(1)(h).

Jolynn also claims termination of her parental rights is not in the child's best interests. We determine a child's best interests by looking at section 232.116(2). *In re P.L.*, ___ N.W.2d ___, ___ (Iowa 2010). We consider "the

child's safety," "the best placement for furthering the long-term nurturing and growth of the child," and "the physical, mental, and emotional condition and needs of the child." *Id.* The record demonstrates that Joynn is not able to provide a safe and nurturing home for her child. We conclude termination of Jolynn's parental rights was proper under the factors set forth in section 232.116(2).

We affirm the juvenile court decision terminating Jolynn's parental rights.

AFFIRMED.