

IN THE COURT OF APPEALS OF IOWA

No. 0-049 / 09-1831
Filed February 10, 2010

**IN THE INTEREST OF R.D.S. II,
Minor Child,**

**R.D.S. SR., Father,
Appellant.**

Appeal from the Iowa District Court for Pottawattamie County, Kathleen A. Kilnoski, Judge.

A father appeals from a juvenile court order terminating his parental rights to a child. **AFFIRMED.**

William F. McGinn, Council Bluffs, for appellant.

Thomas J. Miller, Attorney General, Diane M. Stahle, Special Assistant Attorney General, Matthew Wilber, County Attorney, and Eric Strovers, Assistant County Attorney, for appellee.

Phil Caniglia, Council Bluffs, for mother.

Marti D. Nerenstone, Council Bluffs, attorney and guardian ad litem for minor child.

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

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

MILLER, S.J.

The appellant is a father of a son (“the child”) who was almost sixteen years of age at the time of an October 2009 termination of parental rights hearing. The father appeals from a resulting juvenile court order terminating his parental rights to the child. (The order also terminated the parental rights of the child’s mother, who had little if any contact with the child in the preceding ten years, and she has not appealed.) We affirm.

The child was removed from the physical custody of his father in February 2006 and a child in need of assistance (CINA) petition was filed. The child had reported that his father and the father’s friends were using illegal drugs in his presence and his father was selling drugs. Following a temporary removal hearing, the juvenile court placed the child in the temporary legal custody of his paternal grandmother, subject to supervision by the Iowa Department of Human Services (DHS).

The juvenile court adjudicated the child to be a CINA in April 2006. It continued him in the custody of his paternal grandmother, subject to DHS supervision, until August 2007. By that time the grandmother was no longer able to provide his care and the court then placed him in the legal custody of the DHS for placement in family foster care. The child remained in the custody of the DHS, placed in the foster care of the same family, for the following twenty-six months leading up to the October 2009 termination hearing.

Following hearing, the juvenile court terminated the father’s parental rights. It found the State had proved the grounds for termination pursuant to

Iowa Code sections 232.116(1)(d) (2009) (child adjudicated a CINA for abuse or neglect by parent, circumstance that led to adjudication continues to exist despite offer or receipt of services), (f) (child four or older, adjudicated CINA, removed from physical custody of parents for at least twelve of last eighteen months, cannot be returned to parent without remaining a CINA), and (l) (child adjudicated CINA and custody transferred for placement; parent has severe, chronic substance abuse problem, and presents danger to self or others as shown by prior acts; parent's prognosis indicates child cannot be returned to parent within reasonable period of time). The father appeals.

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

In re C.B., 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

The father claims: "The Court erred in terminating [the father's] parental rights as he could have been given additional time to work at reunification." In his petition the father notes that termination was ordered pursuant to sections 232.116(1)(d) and (f), does not mention that it was also ordered pursuant to section 232.116(1)(l), and states: "[I]t is not conceded that the circumstances, which led to the adjudication, existed at the time of the termination hearing," and "it is not conceded that termination of [the father's] parental rights was in the best interest of this child." The State argues the father has waived any argument that it did not prove the grounds for termination pursuant to section 232.116(1)(l) and

that we therefore should affirm the finding that those grounds were proved. It appears that the father in fact expressly challenges only the second element of section 232.116(1)(d) and the finding that termination is in the child's best interest. We choose, however, to address whether the State proved the elements of one of the statutory provisions it relied on, section 232.116(1)(j).

The father has struggled with abuse of and addiction to illegal substances for years. When the child was removed from him the father tested positive for the use of marijuana and cocaine, but denied using cocaine. Between February 2006 and January 2009 inclusive, the father failed or refused to submit to drug screens on thirty-one scheduled occasions, and submitted to such screens on twenty-four occasions. Of the twenty-four dates on which he did submit, the father tested positive for marijuana use on four occasions, positive for cocaine use on sixteen occasions, and positive for both marijuana and cocaine use on four occasions.

The father attempted substance abuse treatment at least twice during the underlying CINA proceeding. After he initially began treatment, the DHS case manager had concerns that the father was not receiving treatment suited to his needs. A new substance abuse evaluation was recommended and obtained, and the father began participating in recommended treatment. However, shortly after a May 2007 permanency review hearing he stopped attending treatment.

In August 2008 the father completed yet another substance abuse evaluation, and again began treatment. However, beginning in November 2008 he did not regularly attend treatment. He tested positive for cocaine use several

times in December 2008 and January 2009. At the termination hearing the father testified he had not used cocaine since January 2009, but provided no evidence he had ended his use of marijuana. He provided no evidence that since February 2009 he had participated in recommended substance abuse treatment.

Since February 2009 the father has not had interaction with the child other than a few telephone conversations. According to DHS staff, this is partly because the father has not requested many interactions and partly because the child does not any longer wish to see or speak with his father. The child has apparently finally concluded that his father is unable or unwilling to overcome his addiction, and the child wishes to be adopted by the foster family with which he has lived for the past twenty-six months.

Section 232.116(1)(I) requires us to consider the father's prior history to determine if he has a severe, chronic substance abuse problem and whether he presents a danger to himself or others. *In re A.J.*, 553 N.W.2d 909, 915 (Iowa Ct. App. 1996). The facts outlined above clearly and convincingly demonstrate he has a severe, chronic substance abuse problem. A parent who has such a problem clearly presents a danger to the parent's child. *See State v. Petithory*, 702 N.W.2d 854, 858 (Iowa 2005) (citing *In re J.K.*, 495 N.W.2d 108, 113 (Iowa 1993)).

Having determined that the father has a severe, chronic substance abuse problem, we must then determine whether the child can be returned to his custody within a reasonable period of time. *In re A.J.*, 553 N.W.2d at 914. To do so we must consider the father's treatment history. *In re N.F.*, 579 N.W.2d 338,

341 (Iowa 1998). “Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting. *Id.*

The father has struggled with substance abuse for years. He participated in substance abuse treatment at least twice during the underlying CINA proceeding, but apparently did not successfully complete a treatment program. He was using cocaine in December 2008 and January 2009, and provided no evidence that he was thereafter participating in substance abuse treatment. We conclude clear and convincing evidence demonstrates that at the time of the termination hearing the child could not be returned to his father within a reasonable period of time.

We conclude the State proved by clear and convincing evidence the section 232.116(1)(I) grounds for termination of the father’s parental rights. Having so concluded, we need not and do not address the other provisions relied on by the juvenile court for termination.¹ See *in re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (holding that in order to affirm termination when the trial court terminates on more than one statutory ground we need only find grounds to terminate under one of the provisions relied on by that court).

Even if a statutory ground for termination is met, a decision to terminate must still be in the best interest of a child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). The primary concern in a termination of parental rights proceeding is the

¹ We do not suggest the State did not also prove those other two statutory grounds for termination.

best interest of the child. Iowa R. App. P. 6.904(3)(o); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981); *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa Ct. App. 1995). A child's safety and need for a permanent home are the primary concerns in determining the child's best interests. *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially).

In considering whether to terminate a parent's rights pursuant to one or more of the provisions of Iowa Code section 232.116(1), our courts "shall give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child." Iowa Code § 232.116(2). The father's ability to provide for the child's needs in this case is affected by the father's substance abuse. Because the child is almost sixteen years of age and fully understands concepts of "family," the child's familial identity no doubt remains partly with his father or parents. However, he has resided with his foster family for more than two years and appears to now identify more closely with that family than with his own parents. He has become integrated into his foster family and is doing well in its care. At almost sixteen years of age he has sufficient capacity to express a reasonable preference as to what his future circumstances should be. He wishes to achieve stability and permanency by being adopted by the foster family that has provided his care for twenty-six months, and that family has made clear its desire and intent to adopt him if allowed to do so.

We conclude that termination is appropriate under the factors set forth in section 232.116(2). Iowa Code section 232.116(3) nevertheless provides that

termination need not occur if any of the factors listed in that provision apply. We have carefully reviewed those factors, find that none apply, and believe it unnecessary to set them forth in this decision.

We agree with the juvenile court that termination of the father's parental rights is in the child's best interest.

AFFIRMED.