

IN THE COURT OF APPEALS OF IOWA

No. 0-076 / 09-1879
Filed February 24, 2010

**IN THE INTEREST OF K.L.C. and K.P.C.,
Minor Children,**

**C.J.B., Father,
Appellant.**

Appeal from the Iowa District Court for Johnson County, Stephen C. Gerald II, District Associate Judge.

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

Raymond M. Tinnian, Kalona, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Janet Lyness, County Attorney, and Kristin L. Parks, Assistant County Attorney, for appellee.

Ryan Tang, Cedar Rapids, for mother.

Sally Weyer of Weyer Law Firm, P.L.C., Iowa City, attorney and guardian ad litem for minor children.

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

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

MILLER, S.J.

The appellant, C.B., is the father of twin sons who were nine months of age at the time of a late September 2009 termination of parental rights hearing. The father appeals from a December 2009 juvenile court order terminating his parental rights to the twins. (The order also terminated the parental rights of the twins' mother, to whom the father has never been married, and she has not appealed.) We affirm.

In November 2004 the members of the family now involved in this case consisted of the twins' mother and father, the mother's twenty-one-month-old son by another father, and the mother's three-month-old daughter by yet another father. The family came to the attention of the Iowa Department of Human Services (DHS) in November 2004 as the result of concerns about the family's dirty home, head lice, drug use, and housing instability. Services were offered and accepted and the voluntary-services case was closed in 2005.

A daughter was born to the mother and C.B. in early 2006. In later 2006 the State filed petitions alleging the then three children of the family unit to be children in need of assistance (CINA). As a result of those CINA proceedings the mother's son was placed with his father and the State filed a petition to terminate parental rights as to the other two children. The mother's rights to those two children, and C.B.'s rights to his daughter, were terminated in March 2009.

The twins were born prematurely in late 2008, while the juvenile court proceedings concerning the other three children were pending. Both twins originally had slow lung development and resulting breathing problems, also had

acid reflux problems, and remained hospitalized for slightly differing periods of time. The twins were removed from the physical custody of their parents at about two weeks of age, at about the time they left the hospital. They were placed in the legal custody of the DHS, for placement in family foster care, where they have thereafter remained with the same foster family.

The twins were adjudicated to be CINA in April 2009. In July 2009 the State filed petitions to terminate parental rights. Following a hearing the juvenile court filed detailed findings of fact, conclusions of law, and an order terminating parental rights. The court terminated the father's parental rights pursuant to Iowa Code sections 232.116(1)(g) (2009) (child adjudicated CINA, court has terminated parental rights as to another child of the family, parent continues to lack ability or willingness to respond to corrective services, additional rehabilitation would not correct the situation), and (h) (child three or younger, adjudicated CINA, removed from parents six of last twelve months, cannot be returned without remaining a CINA). C.B. 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).

C.B. first claims that the State did not prove by the required clear and convincing evidence that the twins could not be returned to his custody. This claim implicates the fourth and final element of Iowa Code section

232.116(1)(h).¹ That element is proved when the evidence shows the children cannot be returned to the parent without remaining CINA. *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa Ct. App. 1995). The threat of probable harm will justify termination of parental rights, and the perceived harm need not be the one that supported the children's removal from the home. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992).

C.B. required special education from the fourth grade onward, and states he completed the eleventh grade. A psychological evaluation indicates he has a full-scale I.Q. in the fourth percentile, placing him in the borderline range of intellectual functioning. His scholastic achievements are at the fourth and fifth grade levels. As noted by the juvenile court, "[t]he evaluators concluded that [C.B.'s] borderline cognitive abilities, history of substance abuse, poor judgment and lack of insight are likely to have a substantial impact on his parenting ability."

C.B. has a history of abuse of and dependence on alcohol and illegal controlled substances. He testified he last consumed alcohol eighteen months earlier. Although he apparently had not used illegal controlled substances during that time and indicated a willingness to be tested for drug use, he did not submit to a test when requested to do so.

C.B. has been offered services for the past five years, and has cooperated with those services to the extent his limitations have allowed him to do so. He has not, however, been able to demonstrate an ability to parent for any extended

¹ C.B. makes no claim that the State did not prove the required elements of section 232.116(1)(g). The State does not, however, argue that he has waived such a claim, but instead suggests that he is implicitly arguing the State did not prove the third and fourth elements of that provision.

period of time, or to parent without the assistance and involvement of the twins' mother. In the nine months following the twins' removal he was unable to progress beyond supervised visitation.

A service provider felt that she could not recommend termination of the parental rights of the twins' parents, believing they should be given more time to progress to semi-supervised visitation and eventually to unsupervised visitation. Her views were, however, based on the twins' mother remaining involved in services and efforts to reunify the twins with both their mother and father. The service provider's September 2009 Case Progress Report indicated she had provided C.B. with reading material on parenting infants and on safety issues, but he had not read the material, claiming his recent, almost full-time employment left him without time to do so. The report stated that C.B. did not fully concentrate on the twins when attending to them during visits, C.B. needed direction from the service provider or the twins' mother when attempting to parent the twins, and C.B. had not been able to demonstrate the capability to recognize and attend to the twins' intermittent medical needs. The service provider recommended that the mother have semi-supervised visits, but did not recommend that C.B. progress to semi-supervised visits, and stated that the mother understood that C.B. was not capable of caring for the twins by himself.

The DHS case worker opined that the twins could not be returned to their parents, and that more time would not lead to reunification. The DHS case worker and the twins' guardian ad litem both recommended termination of parental rights.

The juvenile court found that the twins' parents would not be able to adequately parent them at the present or within the foreseeable future.² Upon our de novo review, we find the State proved by clear and convincing evidence the only challenged element of section 232.116(1)(h), its fourth element, that at the time of the termination hearing the twins could not be returned to C.B. without being subject to a failure to exercise a reasonable degree of care and supervision, imminent likelihood of neglect, lack of adequate care because of C.B.'s limited mental capacity, or some combination of such circumstances, as would cause the twins to remain CINA.³

C.B. also claims that the juvenile court abused its discretion in terminating his parental rights, arguing termination of his rights is not in the best interests of the twins. We note as a preliminary matter that an abuse of discretion is a form of error of law, see *State v. Valin*, 724 N.W.2d 440, 444 (Iowa 2006) ("any abuse of discretion necessarily results in a legal error"), and that our review in this termination of parental rights case is de novo, not for correction of errors of law. See *C.B.*, 611 N.W.2d at 492.

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 best interest of the child. Iowa R. App. P. 6.904(3)(o); *In re Dameron*, 306

² We need not decide whether the evidence proved that the mother would not be able to do so, as her parental rights have been terminated and she has not appealed.

³ Having found the State proved the grounds for termination of C.B.'s parental rights pursuant to section 232.116(1)(h), we need not and do not address whether it also proved the grounds for termination under section 232.116(1)(g). See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

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). C.B.'s ability to provide the needs of the twins is compromised and severely limited by his limited mental capacity. The twins have spent their entire lives in the care of their foster family. That family is meeting all of their physical, emotional, and medical needs. It appears highly likely that no substantial parent-child relationship of a nurturing nature exists between C.B. and the twins.

We conclude that termination of C.B.'s parental rights 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, believe it unnecessary to set them forth in this decision, and find that none apply.

We agree with the juvenile court that termination of C.B.'s parental rights is in the twins' best interest.

AFFIRMED.