IN THE COURT OF APPEALS OF IOWA

No. 0-227 / 10-0278
Filed April 21, 2010

IN THE INTEREST OF A.J.H.,
Minor Child,

S.C.F., Mother,
Appellant,

R.L.H., Father,
Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Gary K. Anderson, District Associate Judge.

A mother and father appeal separately from the order terminating their parental rights. **AFFIRMED ON BOTH APPEALS.**

Marti D. Nerenstone, Council Bluffs, for appellant mother.

Maura C. Goaley, Council Bluffs, for appellant father.

Thomas M. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Matthew Wilber, County Attorney, and Eric Strovers, Assistant County Attorney, for appellee State.

Roberta Megal, Council Bluffs, for minor child.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

DOYLE, J.

S.F. is the mother and R.H. is the father of three-year-old A.H. The parents appeal separately from a February 2010 order terminating their parental rights to this child. We affirm.

I. Background Facts and Proceedings.

A.H. was hospitalized on September 23, 2008, with severe abdominal pain and vomiting. Diagnostic testing revealed he had a perforated bowel and a fractured liver. He also had multiple bruises on his abdomen and neck and a cut on his upper lip. Emergency surgery was performed to repair the child's internal injuries. The hospital contacted law enforcement officials and the Iowa Department of Human Services (DHS). A.H.'s physician reported that the child's internal injuries were most likely caused by someone kicking or punching him in the stomach.

A.H. had been in the care of several different family members in the days preceding his hospitalization. His parents brought him to his paternal grandmother's house on September 22. She cared for him until the following afternoon when his paternal aunt and her boyfriend picked him up to attend a speech therapy session at their house. His grandmother stated he was fine when he left her house, although he was acting a bit listless. On the way to his aunt's house, A.H. vomited in the car. He continued to vomit throughout the afternoon and evening.

Around 8:30 p.m. that night, his aunt gave him a bath and noticed he had dark bruises on his stomach. She also noticed his lip was bleeding. She stated

that when she touched his stomach, he screamed in pain. She called his grandmother, and they decided to bring him to the emergency room.

The police interviewed the aunt's boyfriend after A.H. was hospitalized. He reported that he was home with the family most of the afternoon. He stated that when his sons, ages four and six, came home from school, A.H. was playing with them in the living room. The aunt's boyfriend was in a different room reading. He thought the boys were practicing wrestling moves. He saw his younger son, who weighed more than sixty pounds, "run across the room and head butt" A.H. He also stated that the boys had been jumping off the couch onto each other. He thought his son had probably jumped on A.H. three or four times. The aunt's boyfriend was eventually charged with child endangerment.

A.H. was taken into protective custody and placed in a foster home upon his release from the hospital. His parents did not visit him while he was in the hospital. Nor did they call to check on his health. He was adjudicated a child in need of assistance (CINA) in December 2008 pursuant to Iowa Code section 232.2(6)(c)(2) (2007). The juvenile court's subsequent dispositional order confirmed the child was a CINA and ordered his custody to be placed with DHS for continued placement outside the home. At the permanency hearing in May 2009, the court directed the State to file a petition to terminate parental rights due to continuing safety concerns with the parents, who are both lower functioning adults.

Neither parent is employed. They receive Social Security disability benefits, with the father's mother as their payee. Psychological assessments

indicate both parents are mildly mentally retarded. With respect to the mother, the psychologist opined:

> Despite the fact that [the mother] seems very sincere and very loving, the undersigned psychologist is very concerned that she appears to have significant difficulties taking care of her own needs—for example, she cannot take care of money (and has [R.H.'s] mother as a payee) and cannot drive a car. . . . The undersigned psychologist is quite concerned that [the mother] would not be able to take care of [A.H.] (and any other child) for an extended period of time unless [she] would have immediate backup (in the form of a well functioning individual—who is not also mentally handicapped/retarded).

The psychologist repeated the same concerns with the father and additionally noted he "seems discouraged/depressed/anxious."

The parents participated in weekly supervised visits with A.H. during which they learned parenting skills, such as age-appropriate interactions with the child, potty-training, and adequate supervision. The service provider supervising the visits between the parents and A.H. reported they had "significant difficulty with being able to recall and implement skills addressed with them." The parents often did not recognize situations that were hazardous to the child's safety. Nor did they understand A.H.'s developmental needs. They related to A.H. in a peer-like manner, rather than as parents.

The State filed a petition to terminate parental rights in July 2009. Following a hearing, the juvenile court entered an order terminating the parents' rights to their child pursuant to Iowa Code sections 232.116(1)(d), (e), (h) and (i) (2009).

The mother and father each appeal, challenging the statutory grounds for termination. The mother additionally claims termination of her parental rights was not in the child's best interests.

II. Scope and Standards of Review.

> 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).

III. Discussion.

The parents first claim the juvenile court erred in finding there was clear and convincing evidence to support termination of their parental rights under section 232.116(1)(h).[1] As the first three elements of section 232.116(1)(h) are clearly met, their claim implicates only the fourth element of that section. This element is proved when the evidence shows the child cannot be returned to the parent without remaining a 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 child's removal from the home. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992).

[1] Because we conclude termination of both the mother's and father's parental rights was proper under section 232.116(1)(h), we need not and do not address their claims regarding the other sections relied on by the juvenile court. *See In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) ("When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm.").

The mother argues "the parents have not been provided with sufficient reasonable efforts by the State/Department of Human Services." In particular, she asserts (1) DHS did not provide her and the father "additional contact time with A.J.H."; (2) "they were not allowed to have other family members provide supervision for additional contact with A.J.H."; and (3) "they were not provided requested parenting classes and skills."

The reasonable efforts requirement is not viewed as a strict substantive requirement of termination. *C.B.*, 611 N.W.2d at 493. "Instead, the scope of the efforts by the DHS to reunify parent and child after removal impacts the burden of proving those elements of termination which require reunification efforts." *Id.* The State must show reasonable efforts as a part of its ultimate proof that the child cannot be safely returned to the care of a parent. *Id.* We believe the State has met its burden here.

The focus of the reasonable efforts requirement "is on services to improve parenting." *Id.* These parents received over sixteen months of such family-centered services, which were tailored to meet their limited cognitive abilities. *See* Iowa Code § 232.102(10)(b) ("Family-centered services are adapted to the individual needs of a family in regard to the specific services and other support provided to the child's family and the intensity and duration of service delivery."). During their weekly visits with A.H., they were taught how to potty-train the child, engage him in age-appropriate activities, recognize safety hazards, and implement disciplinary techniques. Although the parents made improvements in some areas, they struggled to remember and apply the skills taught to them,

causing the professionals involved with their case to be concerned about A.H.'s safety in his parents' care.

For example, the family's caseworker testified that in a visit that took place shortly before the termination hearing, the parents were using the stove and did not keep A.H. away from the hot stove without prompting from the service provider. On another occasion, the father left a kitchen knife "right in front of [A.H.] and walked away. Mom was standing right behind the child and didn't intervene or make an attempt to remove that knife until she was prompted to do so from the provider." During a different visit, the parents allowed A.H. to play with a plastic bag and did not intervene when he placed the bag over his head.

Based on those incidents, as well as similar occurrences throughout the case, the caseworker testified the parents never progressed beyond supervised visits as there

> continues to be concern with regard to their ability to identify safety risks. . . . They don't recognize that in reaching for light sockets, to pull on cords, and things of that nature are a safety risk or concern to [A.H.]. . . . And that's been an ongoing concern. They have been working on the very basic needs for [A.H.], including things as basic as learning appropriate play for a child . . . his age. They have made some strides in that area, but the safety concerns continue to exist.

Given the amount of time it took the parents to make the "minimal progress that they have," the caseworker did not believe A.H. could be safely returned to his parents' care at the time of the termination hearing. The paternal grandmother similarly testified the parents were not yet ready to have A.H. in their care unsupervised, stating they "need all the reinforcement they could get."

At the request of the parents, the caseworker explored having family members, such as the paternal grandmother, assist DHS in supervising visits so that the frequency of the bi-weekly visits could be increased. Those efforts were not successful because DHS also observed safety concerns with the grandmother, who did not prevent A.H. from playing with a bottle of medication during one visit she attended. In addition, the caseworker testified that increasing the frequency of the visits would not, in her opinion, address the parents' inability to safely parent A.H.:

> What it would potentially do is give an opportunity to see—or an opportunity to observe more incidents of possible safety issues that might arise, but I don't believe that it would change the parent's circumstances with regard to their ability to identify those issues.

"Visitation between a parent and child is an important ingredient to the goal of reunification." *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996). However, the nature and extent of visitation is always controlled by the best interests of the child, which may warrant, as they did in this case, limited parental visitation. *Id.*; *see also* Iowa Code § 232.102(10)(a) ("A child's health and safety shall be the paramount concern in making reasonable efforts."); *C.B.*, 611 N.W.2d at 493 (stating the reasonable efforts requirement "includes visitation designed to facilitate reunification while providing adequate protection for the child"). In light of the foregoing, we believe that DHS made reasonable efforts to reunify the family.

We deny the father's related argument that he and the mother had "a suitable, safe, and stable living environment to which the child could be returned." In addition to the foregoing concerns regarding the parents' ability to

safely supervise the child, they struggled to maintain appropriate housing throughout the case. Early on in the proceedings, they moved to an apartment that was infested by cockroaches. They did not secure alternate housing until several months later when they moved to an apartment with R.H.'s mother. At the time of the termination hearing, neither the father nor the mother were in a position to have A.H. returned to their care as provided in section 232.102, despite DHS's best efforts. Clear and convincing evidence supports termination of their parental rights under section 232.116(1)(h).

We must next consider whether termination is in the child's best interests by applying the factors set forth in section 232.116(2). *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). That section requires the court to 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).

We have already discussed the safety concerns present with these parents. The evidence shows the mother and father were also unable to further the long-term nurturing and growth of their child or meet his physical, mental, and emotional needs due, in part, to their mental disabilities. *See In re J.P.*, 499 N.W.2d 334, 337 (Iowa Ct. App. 1993) ("Mental disability, standing alone, is not a sufficient reason for the termination of the parent-child relationship, but it is a contributing factor to the inability to perform the duties of a parent."). When A.H. came to the attention of DHS, he was significantly behind in his verbal skills. After only a few months in foster care, he had made marked improvement. His foster father informed the juvenile court:

> Now, when I got that young baby out of the hospital, he could do nothing but point and grunt. Since that time, I've taught him to plant grass, play with the neighborhood kids, work on the motorcycle, learn to take air in and out of tires. . . . This little baby needs . . . human contact. I got down on the floor with him. I just rolled the ball to him one time and he squealed with delight because nobody ever played with him. . . . This little boy needs to have a house and a parent . . . who can do these things with him. . . . And absolutely no discouragement between [the father] and [mother], but the professionals have said they're incapable of being parents. . . .

As the family's caseworker testified,

> It's taken 14 months for [the parents] to progress to the point where they're able to recognize that [A.H.] needs to go to the bathroom without prompting and the basic skills that need to occur with regard to caring for the child, such as brushing his teeth, washing his hands, those kinds of things, and the concern with regard to being able to generalize and identify when a safety concern exists . . . continues to be an issue.

Our supreme court has recognized that termination is appropriate when a disabled parent lacks the capacity to meet a child's present needs as well as the capacity to adapt to a child's future needs. *See In re A.M.S.*, 419 N.W.2d 723, 734 (Iowa 1988). Such a situation is present here, as evidenced by the foregoing. We accordingly find termination was proper and in A.H.'s best interests under section 232.116(2).

Finally, we deny the mother's argument that termination of her parental rights would be detrimental to the child because there "is clear and convincing evidence that [she] and A.J.H. are very bonded to each other." Under section 232.116(3)(c), which the mother cites in support of her argument, the juvenile court need not terminate the parental relationship if, based on the closeness of the parent-child bond, termination would be harmful to the child. *See P.L.*, 778 N.W.2d at 40. However, this child, who is at an adoptable age, has been out of

his parents' legal custody and care for more than one year. He is doing very well. He needs and deserves permanency, which his pre-adoptive foster family is able to provide him. *See In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially) ("A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests.").

We accordingly agree with the juvenile court, based on our de novo review of the record, that although "the parents do love the child and there is a bond," they are unable to "safely parent the child. There is more to parenting a child than being the biological parent. Here it is apparent that the parents wish to be parents, however, they do not have" that capacity. There is no evidence in the record that the closeness of the parent-child bond is strong enough to forestall termination, especially considering that neither parent is able to meet the child's needs. *See In re N.F.*, 579 N.W.2d 338, 342 (Iowa Ct. App. 1998). Consequently, the exception in section 232.116(3)(c) will not prevent the termination in this case.

IV. Conclusion.

After applying the requirements of Iowa Code section 232.116, we find the juvenile court did not err when it terminated the mother's and father's parental rights. We therefore affirm the judgment of the juvenile court.

AFFIRMED ON BOTH APPEALS.