

IN THE COURT OF APPEALS OF IOWA

No. 0-414 / 10-0655
Filed June 16, 2010

**IN THE INTEREST OF R.B.,
Minor Child,**

**R.B. and W.B., Parents,
Appellants.**

Appeal from the Iowa District Court for Webster County, James A. McGlynn, Associate Juvenile Judge.

Parents appeal a juvenile court order terminating their parental rights.

AFFIRMED.

Kurt T. Pittner, Fort Dodge, for appellant parents.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Timothy Schott, County Attorney, and Cori Coleman, Assistant County Attorney, for appellee State.

Marcy Lundberg, Fort Dodge, for minor child.

Considered by Sackett, C.J., and Eisenhauer and Mansfield, JJ.

MANSFIELD, J.

The parents appeal from the juvenile court's order terminating their parental rights to their daughter R.B. pursuant to Iowa Code sections 232.116(1)(e) and (h) (2009). We affirm.

The mother and the father have eight children, consisting of two adults and six minors. Their youngest child, R.B., was born fifteen weeks premature in June 2007 and was immediately transferred to the intensive care unit at Blank Children's Hospital in Des Moines. She stayed in the hospital four months. R.B. had, and continues to have, special needs resulting from her premature birth. These include lung and eye issues. R.B.'s parents visited R.B. approximately every ten days during R.B.'s four-month stay in the hospital.

When R.B. was ready for discharge in October 2007, the hospital recommended against releasing R.B. to her parents because it did not believe they were prepared to care for her or had a suitable living environment for her. The hospital contacted DHS. Just prior to R.B.'s release, DHS obtained an emergency court order to remove R.B. from the custody of her parents because they had recently been evicted from their home, did not participate in the necessary training to care for R.B.'s medical needs, and had seven other children occupying their attention. The parents and DHS agreed to place R.B. with the father's nephew Matthew and his now wife Betty. At the time, the parents had been relying on Betty, then the girlfriend of the father's nephew Matthew, to care for some of their other children.

R.B. has resided with Matthew and Betty since her release from the hospital. In December 2007, the registered nurse assigned to R.B. reported that

R.B. had “improved remarkably” in Matthew and Betty’s care, where she received proper medical treatment and a stable environment. On December 5, 2007, R.B. was adjudicated to be a child in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(e).

During 2008, the parents struggled to stabilize their lives. After being evicted from another residence, the father moved to Colorado for a short time to find employment, and the mother moved to the YWCA and later to the House of Mercy with their five other minor children. She was evicted in turn from the House of Mercy. Eventually, all five of R.B.’s minor siblings were placed in foster care or with relatives. Throughout this time, weeks would pass without either parent seeing or asking about R.B..

On October 22, 2008, the State petitioned to terminate the parents’ parental rights with respect to R.B. In December 2008, the parents moved to Minnesota where they have improved their lives. They have located housing, have been visiting with all their children with transportation usually paid for by DHS,¹ have obtained medical and dental insurance, and are employed full-time. The father, who had past alcohol abuse issues, is reported to have avoided abusing alcohol, although he has not attended AA counseling to the extent he agreed to. The mother has also recently completed the necessary training to care for R.B. However, there is evidence that the mother continues to smoke in the house, that this is a risk for R.B. because of her pulmonary issues, and that the parents do not seem particularly concerned about it. During a visit just before

¹ The parents do not have a vehicle of their own. Visits have generally taken place in Fort Dodge. R.B. has never been to the parents’ home in Minnesota.

the last hearing in the termination proceedings, the mother apparently threw away one of the other children's prescription medications; the mother and the father argued; and the mother sent a text message to one of R.B.'s sisters who failed to attend the visit stating she was a mistake and worthless. The parents argue that DHS and Betty thwarted their efforts to regain custody of R.B., asserting they took all necessary steps in the six months prior to the termination hearing to regain custody of R.B. and that Betty interfered with their efforts to bond with her. Matthew and Betty now wish to adopt R.B.

The court appointed special advocate (CASA) recommended termination of R.B.'s parental rights. She explained, "[S]o much time has passed, and she's so bonded with [Matthew and Betty], and that's not [R.B.'s] fault." The CASA emphasized that R.B. has special needs, and is developmentally behind, and that disrupting her current arrangements would be harmful to her. The CASA also reported that R.B. has stranger anxiety.

Additionally, the children's attorney recommended that the parental rights to R.B. be terminated. (This attorney actually recommended that the parental rights to all six of the minor children be terminated.) She argued that the mother's "mistrust, resentment, and propensity for defending herself unrealistically" meant that it would be unlikely she would be able to care for R.B.'s needs. She said that returning R.B. (or even her siblings) to the care of the parents "would be a significant set back at this time."

On April 12, 2010, the juvenile court terminated the parents' parental rights to R.B. pursuant to Iowa Code sections 232.116(1)(e) and (h). The court

also found that termination was in R.B.'s best interests in light of the factors outlined in section 232.116(2).

The termination hearing was held in conjunction with permanency hearings for R.B.'s five minor siblings. The juvenile court ordered that custody of the five minor siblings be returned to the mother and father because they were now able to provide a safe, stable, and secure home for the children in Minnesota. The court terminated the mother's and father's parental rights to R.B., however, because "there [were] significant differences between [R.B.'s] case and the cases for the other children," such as R.B.'s serious treatment needs and the bond she formed with Matthew and Betty. The parents now appeal.

We review termination of parental rights *de novo*. See *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We give weight to the juvenile court's fact findings but are not bound by them. *Id.* The paramount concern in termination proceedings is the best interests of the child. *Id.*

The juvenile court terminated the parents' parental rights on two different grounds, but we only need to find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). We conclude that termination is appropriate under section 232.116(1)(h), which requires:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

- (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

It is not disputed that the first three elements are satisfied. The issue, therefore, is whether R.B. can be returned to her parents' custody.

Upon our review, we agree with the juvenile court that R.B. cannot be returned to the custody of her parents at the present time. R.B.'s parents are still unable to care for R.B.'s medical, developmental, and emotional needs. Our independent review of the record indicates the parents still do not appreciate the seriousness of R.B.'s pulmonary issues and the harm that could be caused to her from secondhand smoke. The parents also continue to have a combative attitude that, in our view, poses a threat to R.B.'s future care. For example, the father testified:

Q. In your view . . . do you believe your parental rights to [R.B.] should be terminated? A. I don't feel they should.

Q. Why not? A. For one, we never got to see her that much to have any time to really bond with her.

Overlooked in this testimony is the connection between the parents' *own actions* and their inability to spend time with R.B. We also do not find credible the parents' denials of the difficulties that arose at the recent visit. Those denials cause us concern. Additionally, the parents' lack of means of transportation (especially given R.B.'s frequent and sometimes unpredictable medical needs), and R.B.'s anxiety when detached from her primary caregivers (Betty and Matthew) are additional reasons why she cannot be returned to the parents at this time. In summary, we agree with the juvenile court's assessment:

The child has special needs and the parents failed to make the necessary efforts to learn how to address those needs

Although the parents may have made great efforts at addressing their own issues, they have really done nothing to address [R.B.'s] special issues.

We also disagree with the parents' assertion that DHS failed to provide reasonable services. DHS offered numerous services, such as family team meetings, substance abuse treatment, parenting assessments, transportation, and rent payment, but the parents were frequently uncooperative. See *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (explaining that DHS must provide services, but it is the parents' responsibility to respond to those services). Only in the six months prior to the termination hearing did the parents begin to take necessary steps to regain custody of R.B. by completing required evaluations and participating in necessary training to care for her needs. However, their efforts are two years too late for R.B. See *id.* (discussing that parents cannot wait until the eve of termination hearings to begin to take interest in their children because "[t]ime is the critical element" in parenting situations). Although the parents complain about Betty interfering with their contacts with R.B., the record also shows that changes were made in the summer of 2009 so the parents could see R.B. without Betty being present.

We also conclude termination of the parents' parental rights is in R.B.'s best interests under 232.116(2). As the supreme court ruled in *In re P.L.*, once the court establishes a ground for termination under section 232.116(1), the court must then consider termination in light of section 232.116(2). 778 N.W.2d 33, 37 (Iowa 2010). Section 232.116(2) states that "the court 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.” Section 232.116(2)(b) further states that the court shall consider whether the child has been integrated into and identifies with a foster family.

Termination of parental rights is best for the safety, growth, and special needs of R.B., who has bonded with Matthew and Betty. R.B. was nearly three years old at the time of the termination hearing and had spent essentially her entire life with Matthew and Betty. Furthermore, as previously mentioned, R.B. requires continuous medical care to be safe and healthy, which her parents have been unable to provide. In addition to having developmental problems and chronic lung disease, R.B. suffers from stranger anxiety. A witness testified that due to R.B.’s stranger anxiety, “You can’t just go and wrap your arms around her because that’s what scares her. She needs to get to know [the parents], and in order to do that, [they] have to spend time with [her]” However, the parents have not spent time with R.B. and have not gotten to know her to ease her anxiety. The father explained at the termination hearing that “when Betty was at the visits every time [R.B.] would see Betty, she’d cry, and it’d make it difficult for us to spend time with her.” As noted, the CASA testified that, in her opinion, termination of the parents’ parental rights was in the best interests of R.B. because “so much time has passed, and [R.B. is] so bonded with [Matthew and Betty], and that’s not [R.B.’s] fault. I mean she’s—she’s bonded with the parents she knows.” Furthermore, Matthew and Betty wish to adopt R.B., who is in need of a permanent and safe home. We agree with the juvenile court that “Matthew and Betty have done a fine job meeting the needs of [R.B.] The child is thriving in their care.” Therefore, termination is in R.B.’s best interests when her

safety, long-term nurturing and growth, and special needs are considered, as required by section 232.116(2).

Finally, we consider the possibility that termination need not occur because a “relative has custody of the child.” Iowa Code § 232.116(3)(a). However, we agree with the juvenile court that termination is nonetheless warranted. The relationship between the parents and Matthew and Betty is “strained.” Denying termination and eliminating the present possibility of adoption would deprive R.B. of the permanency that she badly needs at this point in her life.

For the above reasons, we affirm the juvenile court’s order terminating the parental rights of the mother and the father to R.B.

AFFIRMED.