IN THE COURT OF APPEALS OF IOWA

No. 0-755 / 10-1316
Filed November 10, 2010

IN THE INTEREST OF H.B.,
Minor Child,

K.B., Mother,
Appellant,

W.B., Father,
Appellant.

Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

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

Sara Strain Linder of Tindal Law Office, P.L.C., Washington, for appellant-mother.

Rebecca G. Ruggero, Bettendorf, for appellant-father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Gary Allison, County Attorney, and Korie L. Shippee, Assistant County Attorney, for appellee.

Joan Black, Iowa City, attorney and guardian ad litem for minor child.

Considered by Sackett, C.J., and Potterfield and Tabor, JJ.

SACKETT, C.J.

Kelly and Weston each appeal from the juvenile court order terminating their parental rights to their youngest child. Both contend the State did not prove the statutory grounds for termination by clear and convincing evidence and termination is not in the child's best interest. On de novo review, we affirm on both appeals.

BACKGROUND AND PROCEEDINGS. Kelly is the mother of five children under age ten. Weston is the father of Kelly's four youngest children. In July and August of 2008, the four oldest children, then ages seven, four, three, and two, came to the attention of the Iowa Department of Human Services in a child abuse assessment for denial of critical care. The children were being left home alone. The oldest boy was locked for long periods in his room because he was getting into the refrigerator and other items in the home at night. He was kept confined in his room to the point he used his closet as a bathroom. This action was ongoing over a period, because two separate landlords reported it. The oldest girl would sneak food to her brother or unlock his room, telling him they had to be very quiet. The children also observed domestic disputes and violence between the parents.

All four children were found to be in need of assistance. The two oldest children were placed in the temporary guardianship of their maternal grandmother. Services were provided to the family starting in August, but by the time of H.B.'s birth in January of 2009, the adjudicatory circumstances continued to exist. H.B., the youngest child, who is the only subject of this appeal, was

born prematurely at twenty-six weeks of gestation. During much of the child's time in the hospital, the family lived in the local Ronald McDonald house. They were evicted.

In May of 2009, before H.B.'s release from the hospital, the State petitioned to have H.B. found to be in need of assistance. Following a contested hearing in June, the court issued its order in July, finding the child in need of assistance under Iowa Code section 232.2(6)(c)(2) (2009) (child has suffered or is imminently likely to suffer harmful effects because of the parents' failure to exercise a reasonable degree of care in supervising the child). The court did not order the child's removal from the parents' care, but ordered protective supervision by the department. On August 12, a disposition hearing was held. The parents did not participate. They were scheduled to participate by telephone, but no one answered the phone when the court called. That same day the court issued an emergency removal order because the child was not receiving adequate medical care and supervision. Between her release from the hospital in May and the time of the emergency removal, the child had gained only a few ounces in weight and the parents were not taking her to scheduled appointments. Following her removal from her parents' care and placement in foster care, the child experienced rapid "catch up growth." After a week out of her parents' care, the child had gained more weight than she had in more than two months in her parents' care.

Between the child's removal and the review hearing in October, at least six scheduled visits were cancelled by the parents. At one point Weston refused

to let a service provider enter the home, saying he could not be responsible for his actions if she got out of the car when bringing the children for visits. After the review hearing the court continued the child's placement in foster care. The court directed:

> The parents must demonstrate consistent visitation, maintain a stable residence and employment so that they can support the child, meet their mental health needs, Wes must demonstrate benefitting from anger management, and both must demonstrate parenting skills have improved.

Between the time of the October review hearing and the termination hearings in April and May of 2010 the parents were not consistent in visitation, they did not maintain any stable residence or employment, and they had changed mental health providers twice, but did not follow through. Because the parents were not aggressive enough in seeking employment, they lost family-investment-program cash benefits for a time.

Wes was not regularly attending anger management counseling and continued to display inappropriate responses to adverse situations. In February a dispute between Wes and a service worker who brought H.B. for a visit resulted in the visit being cut short and Wes and Kelly fighting. In March, Wes had a dispute concerning visitation, and police had to be called to get him to leave. The parents continued to have difficulty with housing, having moved from Wapello to Mt. Pleasant to Kelly's mother's home to some friends' home to a local motel. At the time of the termination hearings, the parents and the two children still in their custody were living in a standard motel room without paying rent, at the grace of the motel manager, who knew of their financial situation.

Some visitation took place in the motel room. The supervising worker noted the parents did not provide adequate supervision of the three children. They did not see H.B. putting objects from the floor in her mouth. They did nothing to prevent one of the older children from kicking H.B.; instead, the supervising worker had to intervene to prevent H.B. from being kicked. Of more than seventy scheduled visits, the parents missed about one-third. More than a quarter of the parenting sessions were cancelled.

In March of 2010, the State filed petitions to terminate both parents' parental rights to H.B., alleging the parents had not maintained significant and meaningful contact with the child and the child could not be returned to the parents' care. *See* Iowa Code § 232.116(1)(e), (h). Following hearings in April and May, the court issued an order in July terminating both parents' parental rights. The court found there was not clear and convincing evidence to terminate under section 232.116(1)(e), but found the child could not be returned to the parents' care at that time and ordered termination under section 232.116(1)(h). Noting the parents' failure to feed the child properly and consistently, the court further found the child's "safety, long-term growth, development, and needs are best met by termination and adoption." Both parents appeal.

SCOPE AND STANDARDS OF REVIEW. Our review of juvenile court orders in termination-of-parental-rights proceedings is de novo. Iowa R. App. P. 6.907 (2009). The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978); *Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35

(1972). The State must prove the statutory grounds for termination by clear and convincing evidence. *See* Iowa Code § 232.117(3).

MERITS. Because the father "joins in" the issues raised in the mother's petition on appeal and asserts they have been "consistently residing together and have been unified in their parenting, providing, and caring for H.B. and her siblings," we address the appeals together, with appropriate reference to any separate arguments raised. The parents contend the court's determination H.B. could not be returned to her care is not supported by clear and convincing evidence. The first three elements of section 232.116(1)(h) are not at issue. The fourth element is satisfied if returning the child to the parents' care would place the child at risk of adjudicatory harm. *See* Iowa Code §§ 232.102(5)(a)(2); 232.102(9); 232.2(6).

H.B. was born prematurely, and consequently, her health is more fragile. Her initial removal from the parents' care was based on their failure to feed her properly or adequately. During one visit in the motel room, the father noticed H.B. needed a drink, but did nothing about it. In the last four visits before the May termination hearing, the parents did not feed H.B. during two of the visits, did not give her anything to drink during two of the visits, and did not ever check her diaper or change it.

The parents participated in counseling. The counselor, who started working with the parents in September or October of 2009, testified Weston had a standing appointment weekly with him. Between January and the hearing in May, the counselor had met with Weston or Weston and Kelly only six times.

The counselor opined they were making improvements in communication and trust and saw "improvement enough that I think they could be parents." He acknowledged he had never seen the children or observed the parents with the children. The counselor also testified Weston was improving his ability to deal with his anger by learning to put himself in "time-outs" such as leaving the motel room. Yet, as noted above, Wes continued to exhibit a lack of control of his anger as recently as March.

From our review of the record before us, we conclude the risk of neglect is great and H.B. is "imminently likely to suffer harmful effects" from the failure of either or both parents' failure "to exercise a reasonable degree of care in supervising the child." *See* Iowa Code § 232.2(6)(c)(2). The parents have not demonstrated the ability to provide stable, adequate housing for the child, consistent care for her physical needs such as food or medical care, or protection from her siblings' actions. Clear and convincing evidence exists that the child could not safely be returned to her parents' care at the time of the termination. *See id.* § 232.115(1)(h).

Having found clear and convincing evidence supports the statutory ground for termination, we then consider whether to terminate. *See In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). In considering the child's best interests, we "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); *see P.L.*, 778 N.W.2d at 39. As noted above, because of her prematurity, the child's

health is more fragile. The parents have not demonstrated the ability to provide for the child's safety, nurturing and growth, or physical needs in the short term. Applying the factors in section 232.116(2), we conclude termination of their parental rights is required. *See P.L.*, 778 N.W.2d at 40 (applying the factors in section 232.116(2) to determine "if the factors require termination").

Neither parent raises any of the factors weighing against termination in section 232.116(3) and we do not find any would allow the court not to terminate. *See id.* at 39. We affirm the termination of both parents' parental rights.

AFFIRMED ON BOTH APPEALS.