

IN THE COURT OF APPEALS OF IOWA

No. 0-769 / 10-1182
Filed November 24, 2010

**IN THE INTEREST OF R.G., F.R.G.-H., and D.B.,
Minor Children,**

A.B., Mother,
Appellant,

W.B., Father,
Appellant.

Appeal from the Iowa District Court for Clay County, Donald J. Bormann,
District Associate Judge.

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

Michael H. Johnson of Johnson Law Firm, Spirit Lake, for appellant
mother.

Abby L. Walleck of Maahs & Owens, Spirit Lake, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Michael J. Houchins, County Attorney, and Kristi Busse,
Assistant County Attorney, for appellee State.

Shannon Sandy of Sandy Law Firm, P.C., Spirit Lake, for minor children.

Considered by Mansfield, P.J., and Danilson and Tabor, JJ.

MANSFIELD, P.J.

Amy and William separately appeal from a juvenile court order terminating their parental rights pursuant to Iowa Code sections 232.116(1)(f) and (h). Both parents argue: (1) the State failed to prove the statutory grounds for termination by clear and convincing evidence; (2) termination was not in the children's best interests; and (3) termination would be detrimental to the children due to the closeness of the parent-child relationship. Upon our review, we affirm the decision of the juvenile court.

I. Background Facts and Proceedings

Amy is the mother of R.G. (born 1999), F.R.G.-H. (born 2004), and D.B. (born 2007).¹ William is the father to D.B. R.G.'s father has never participated in his life, leading the juvenile court to find R.G. abandoned by him. F.R.G.-H.'s father voluntarily consented to the termination of his parental rights.

The Iowa Department of Human Services (DHS) first became involved with Amy and William in October 2002 when there was suspected drug use in the home and the condition of the home was described as "unhealthy." Since then, there have been thirteen additional child abuse assessments involving Amy and William. For the most part, these have related to alleged failure to provide adequate supervision and housing for the young children. Nine of these assessments were confirmed or founded. Additionally, the children have been in and out of foster care four times, with their stays ranging from ten days to three months.

¹ In 2007, Amy voluntarily consented to a termination of her parental rights to a fourth child, J.H.

All three children have been adjudicated children in need of assistance (CINA).² Starting in 2003, DHS provided numerous services to the family including: individualized therapy for the children, mental health services for Amy and William, daycare services, protective supervision, general substance abuse counseling and treatment for Amy and William, homemaker services, and services to improve the children's physical and behavioral health, education and general skill development.

Despite the services, problems continued. For example, on June 18, 2008, it was reported that William had been drinking and had grabbed R.G. by the ear and pulled him to the ground. According to the report, R.G. was fearful William was going to kill him. The house was still a mess, with garbage, cigarette butts, razors, and other safety hazards scattered about. Although R.G. had nighttime bedwetting issues, Amy and William would not see to it that he showered in the morning, so he went to school smelling of urine. On July 29, 2008, it was reported that D.B. had a black eye (according to William and Amy, he had fallen against a china cabinet) and had wandered into a neighbor's driveway and almost been hit by the neighbor's car.

Thus, on September 5, 2008, all three children were removed from Amy and William's home and have not returned since. DHS continued to provide services to the family in addition to unsupervised visitation. It was ordered that Amy attend AA meetings, cooperate with the twelve-step program for recovery

² R.G. was adjudicated CINA in 2003 under Iowa Code section 232.2(6)(b), (c)(2), and (e), while F.R.G.-H. and D.B. were adjudicated CINA under subsection (c)(2) in 2004 and 2007 respectively.

from alcoholism, and work with her sponsor to address her substance abuse problems.

In October 2008, a child abuse assessment confirmed an act of indecent exposure by Amy and William after F.R.G.-H. witnessed the couple engaged in a sex act in the living room. Following this assessment, visitation was changed to supervised on a weekly basis. Initially both parents were allowed visits with all three children; however, upon Amy's request, William's visits were limited to D.B. (his son) only.

During visits, it was noted by staff that Amy had difficulty in supervising and interacting with all three children at once. At times, children were left to play alone or Amy had to be assisted or prompted by staff. Also, she was notified of all medical and therapy appointments for the children, but failed to attend them consistently. Although Amy had been going to a parenting class, she failed to meet the required number of hours to pass the class and struggled in her application of the class's parenting and discipline techniques. William's attendance at visits with D.B. was inconsistent, including a three-week break due to his inability to travel following back surgery. For several months, William attended only half of the scheduled visits.

Amy's participation in substance abuse services was not fully confirmed. She claimed to be attending AA meetings regularly but did not offer proof of her attendance. Service providers asked Amy to collect signatures from the meetings, but Amy did not turn in those signatures because she asserted it would break her promise of anonymity. Additional participation by William in substance abuse services was minimal at best. He completed several substance abuse

evaluations that recommended outpatient treatment, but he never pursued or attended treatment.

It was recommended by service providers that William participate in a 24/7 dads' group to help address his parenting and substance abuse issues. Although there was no cost to attend, William chose not to participate in the group because he had a pool league at the same time.

For her mental health services, Amy began individual therapy and attended sporadically. Eventually she chose not to follow through due to trust issues with the particular therapist. She did seek out additional mental health services but failed to commit fully to a different program or therapist.

Amy and William were evicted from their home in February 2009. They separated, and William filed for divorce. However, they maintained a relationship of sorts. Each moved from the family home into separate one-bedroom apartments. In May 2009, William called Amy while intoxicated and left a message threatening to kill Amy's new boyfriend. Neither DHS nor any other service provider has been provided access to William's new home to check for safety or health concerns. Several drop-ins have been conducted on Amy's apartment and providers have noted that the space looked cluttered.

Fourteen months after removal of the children, the State filed a petition to terminate the parental rights of Amy and William. The termination hearing was held over eight days from November 24, 2009 to January 28, 2010.

At the hearing, Amy and William both admitted to significant debts, including small claims judgments and William's back child support obligation. William testified that he was a full-time student and living off student loans,

sporadic part-time employment, and unemployment benefits. Amy stated she was holding part-time employment at a nearby McDonalds. Subsequent testimony revealed that Amy, in fact, was unemployed and had misrepresented her employment status. Amy also admitted receiving child support payments for R.G. and F.R.G.-H. after they had gone into foster care, and could not account satisfactorily for the use of those funds. Alcohol abuse problems remained for both parents. Amy admitted relapsing in July 2009 and William had yet to attend recommended treatment. Also, both acknowledged they had not followed through with the recommended mental health services. Each admitted not having complied with several of the court's recommendations following the removal hearing.

All of the service providers, the court-appointed special advocate, and the guardian ad litem recommended that the parents' rights to all the children be terminated, stating that termination was in the best interests of the children. Additionally, all providers indicated that the children were doing well in their current placements (for example, R.G. was no longer bedwetting) and that permanency was needed.

On May 6, 2010, the juvenile court entered an order terminating Amy's parental rights under Iowa Code section 232.116(1)(f) to R.G. and F.R.G.-H. and under section 232.116(1)(h) to D.B. The court entered an order terminating William's parental rights to D.B. under section 232.116(1)(h). Both parents submitted separate motions to enlarge and amend the ruling in light of *In re P.L.*, 778 N.W.2d 33 (Iowa 2010), but upon review, the juvenile court denied their motions.

Both parents now appeal the termination of their parental rights. Each of their petitions on appeal is very well-written and makes a forceful case why termination of parental rights should not occur.

II. Standard of Review

We review termination of parental rights de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We give weight to the factual determinations of the juvenile court, but are not bound by them. *Id.* The best interests of the children are the dominant concern. *Id.*

III. Analysis

A. Grounds for Termination—Amy

It is undisputed that the first three elements of section 232.116(1)(f) and (h) were met. The sole issue is whether the State proved by clear and convincing evidence that at the time of termination, R.G., F.R.G.-H., and D.B. could not be returned to Amy's custody. See Iowa Code §§ 232.116(1)(f)(4); 232.116(1)(h)(4).

Amy argues that the children could be returned to her and that reunification was never considered as a serious option. Upon our review, we find Amy cannot provide the stability and nurturing environment her children need at the present time. She has yet to attend AA and her own personal therapy sessions consistently, and she relapsed in July 2009. There are serious concerns about her housing. Amy lives in a one-bedroom apartment and has continuously lacked the housekeeping skills needed to maintain a home for

children.³ The record shows that Amy, even during relatively brief scheduled visits, was unable to focus consistently on her children and their needs. Although Amy testified that she had part-time employment, this was rebutted in later testimony, causing the juvenile court to question her credibility. Her testimony also revealed an excessive, almost pathological, tendency to blame DHS.

To her credit, Amy has made some progress, and this was acknowledged by service providers. But the same providers uniformly recommended termination of parental rights. Issues that have been ongoing since 2002 when DHS first became involved continue to exist today.⁴ “[T]he crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.” *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987).

Amy also argues that reasonable efforts were not made to reunify the children with her. Amy acknowledges, however, that she received a long list of services. Her specific complaint is that she did not receive unsupervised visitation. But DHS offered legitimate reasons for not permitting this level of visitation. As the caseworker explained,

And as this case has progressed, we have remained with supervised visitation. Not because I believe Amy is physically going to harm her children, nor are the service providers stating that, however, her contact verbally with the children is very inappropriate if not supervised.

There was substantial evidence that Amy had given the children confused and misleading expectations at the visits. Visits were described at times as “chaotic.”

³ Numerous photos of Amy and William’s home as of July 2008 were introduced into evidence. The house was extremely cluttered, garbage-strewn, and in disarray.

⁴ As Amy put it,

Q. Generally there are the same issues today there were in 2002? A. Some, yes.

On one occasion shortly before the termination hearing, Amy threatened the caseworker.

B. Grounds for Termination—William

For William, as with Amy, the issue is whether the State proved by clear and convincing evidence that D.B. could not be returned to his custody. See Iowa Code § 232.116(1)(h)(4).

William argues the juvenile court failed to address his suitability to parent D.B. in his current home, which is separate from Amy's home. We disagree. William was offered services to improve his parenting skills and to resolve his alcohol abuse issues, but had not taken advantage of those services. In fact, William was employed at a bar where he was allowed to drink alcohol while working. His attendance at visitation was sporadic. He even missed one visit while the termination hearing was taking place because "I was sick and the weather was bad."⁵ William was currently living in a one-bedroom apartment. Although several attempts were made, no service provider or DHS caseworker had been able to visit and actually see his apartment. William told DHS they did not need to come because he "would be moving." We find clear and convincing evidence that D.B. could not be returned to William at the time of the termination hearing.

C. Best Interests of the Children

Both parents additionally challenge whether termination was in the children's best interests. In considering the best interests of a child, the court shall "give primary consideration to the child's safety, to the best placement for

⁵ William sent a text message at 3:40 a.m.

furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child.” *P.L.*, 778 N.W.2d at 40 (quoting Iowa Code § 232.116(2)).

When the termination hearing began, the supreme court had not yet decided *In re P.L.* The juvenile court’s subsequent May 6, 2010 termination order did not mention *In re P.L.* Both parents assert that, despite their motions to enlarge or amend, the juvenile court failed to follow the directives of Iowa Code section 232.116(2)–(3) and *In re P.L.* Upon our review, we conclude the juvenile court’s fact-finding and analysis complied with both the statute and the supreme court’s decision.

Amy and William lack consistency in their lives. Yet, consistency is exactly what these children need. Each of them has special needs that require above average parenting skills. Service providers testified that returning the children to the care of Amy or William would severely damage the progress that has been made. R.G. has expressed strongly the desire for permanency, a “forever” home. D.B. has been out of his parents’ care the majority of his life and badly needs permanency. R.G. and D.B. are currently placed with the same foster family that has expressed an interest in adoption. See Iowa Code § 232.116(2)(b). Although F.R.G.-H. is in a separate home from her two brothers, she is thriving in her current placement as well. While behavior problems still exist, the children continue to attend therapy and service providers have noted positive changes, especially for R.G. and F.R.G.-H. Additionally, R.G. had a serious bedwetting problem for most of his life and only after being removed from his parents’ care did it cease. The record demonstrates that foster

care has benefited these children's lives not only emotionally, but physically as well. Based on the record, we conclude termination of Amy's and William's parental rights is in the children's best interests.

D. Parent-Child Bond

Both parents also argue that termination should occur because of the closeness of the parent-child bonds. See Iowa Code § 232.116(3)(c); *P.L.*, 778 N.W.2d at 41. We disagree. The children have a bond with Amy, and D.B. possibly has a bond with William but it is unlikely that severing these bonds would be detrimental to any of the children. During visits, providers have observed little emotion between family members. By some accounts, it seemed as if the family was just going through the routine of the visits. These children have spent anywhere from a fourth to half of their young lives in a foster care setting away from their parents. We find that any parent-child bond is insufficient to overcome the other considerations that, in our view, warrant termination of parental rights.

For the foregoing reasons, we affirm the order of the juvenile court terminating Amy's and William's parental rights.

AFFIRMED.