

IN THE COURT OF APPEALS OF IOWA

No. 0-771 / 10-1520
Filed November 10, 2010

**IN THE INTEREST OF A.A.K. and A.E.K.,
Minor Children,**

**J.P.K., Father,
Appellant.**

Appeal from the Iowa District Court for Plymouth County, Robert J. Dull,
District Associate Judge.

A father appeals the termination of his parental rights to his daughters.

AFFIRMED.

Dewey P. Sloan Jr. of Law Office of Dewey P. Sloan Jr., P.C., LeMars, for
appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Darin J. Raymond, County Attorney, and Amy K. Oetken,
Assistant County Attorney, for appellee.

Scott Bixenman of Murphy, Collins & Bixenman, LeMars, for mother.

John Polifka of Juvenile Law Center, Sioux City, attorney and guardian ad
litem for minor child.

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

TABOR, J.

A father appeals the termination of his parental rights to his daughters, Alexandria, age two, and Anna, age six months. The father contends the State failed to prove grounds for termination, that termination is not in the best interests of his daughters, and that termination is not necessary because the children are in the care of their mother. After careful consideration of his contentions, we find the father's severe and chronic substance abuse problems provide grounds for terminating his parental rights, and that doing so is necessary to ensure the safety and healthy development of these children in the long term.

I. Background Facts and Proceedings

In the summer of 2008, the father came to the attention of the Department of Human Services (DHS) when he left Alexandria, then two months old, alone in a car with the motor running in the parking lot of an auto parts store. The heat index was 93 degrees and the car was parked in the direct sunlight. The father, who had been a passenger in the car driven by an intoxicated friend, provided law enforcement with a breath test revealing a blood alcohol content of .179. The incident resulted in a founded report of child abuse against the father. The DHS requested that the father participate in services related to his substance abuse problems and his diagnosed bipolar disorder, but the father failed to cooperate with services. The juvenile court adjudicated Alexandria as a child in need of assistance (CINA) on August 29, 2008.

The court left Alexandria in the custody of her parents at a dispositional hearing held on October 10, 2008. Nine days later, the father was arrested for

public intoxication and interference with official acts. When the father ignored a DHS request to suspend his contact with Alexandria, the DHS removed Alexandria from the home. After the removal hearing, Alexandria was returned to the custody of her mother and the father was granted visitation.

The father served sixty days in jail—from February 10 to April 10, 2009—for driving while barred and a probation violation. Four days after his release, he received a ticket for possessing an open container of alcoholic beverage. At a review hearing in April, the DHS continued to recommend that the father not reside with his daughter due to his continued use of alcohol and lack of participation in substance abuse treatment. The DHS also recommended against visitation because the father had an outstanding jail term to serve in Dubuque County.

In June 2009, the DHS again removed Alexandria from her home because the father and mother were both arrested. The incident started with a traffic accident in which the father rear-ended another car. The other motorist noticed the father smelled of alcohol when he urged that they work something out without involving law enforcement. The father then left the scene with Alexandria, who had been a backseat passenger. Law enforcement went to the family home to locate the father. The mother was upset with the police presence at the residence; she was arrested when the officers found drug paraphernalia and residue. The police also found the father hiding in the basement. He admitted he had been drinking alcohol and was charged with child endangerment, along with nine other offenses. The father remained incarcerated until July 2, 2009.

After being released, the father entered an in-patient substance abuse treatment program, which he successfully completed on August 7, 2009. He then entered a half-way house and performed well enough to be accepted into the Plymouth County drug court. In early November, the father left the half-way house and resumed his alcohol consumption. The father served his Dubuque County jail sentence from November 16, 2009 to January 11, 2010. The father tested positive for marijuana both at his arrival at the jail and again eleven days after his release. The father completed a substance abuse evaluation in January and started cooperating with services.

Anna was born in February 2010. The DHS filed a CINA petition within days of her birth. The father, who was participating in drug court, had supervised visits with both daughters during the winter. In April 2010, the father admitted using alcohol and struggling with depression. He started intensive outpatient substance abuse treatment. The juvenile court adjudicated Anna as a CINA on April 16, 2010, noting that the father had not resolved all of his legal or substance abuse problems. On April 29, 2010, the father was sent to jail after violating drug court requirements.

On May 26, 2010, the county attorney filed a petition seeking to terminate the father's parental rights to both children. The petition alleged that termination was proper under Iowa Code sections 232.116(1)(d), (e), (h), (k) and (l) (2009).

After the filing of the petition and despite being in treatment, the father's substance abuse continued. On June 4, 2010, the father tested positive for amphetamine and methamphetamine. He also tested positive for marijuana on

July 28, 2010. That positive test came a day after a DHS worker aborted a visit with his daughters because the father was forty-five minutes late and when he did arrive he was “highly emotional,” his speech was slurred, and he was “very wobbly.”

The juvenile court heard evidence regarding termination on August 20, 2010. The DHS social worker testified that she recommended termination because the father “continues to exhibit behaviors and a lifestyle that is contrary to these two little girls.” She noted the father’s probation had been revoked for failure to comply with drug court requirements; he faced a two-year prison sentence. The father testified that he did not “want to give up” on parenting and was committed to continuing substance abuse treatment. He also told the court that he had been working construction for about four months, and would be paying child support if the employment were permanent. On cross examination, he admitted he was not current on his child support obligations for an older child not involved in the termination case.

On August 31, 2010, the court terminated the father’s parental rights on all grounds alleged in the State’s petition. The court believed that the father had been making sincere efforts to reform, but was “utterly unable to do so.” The court concluded:

Given his psychological diagnosis (bipolar) and continued intermittent use/abuse of alcohol and/or controlled substances, [the father] constitutes a threat to his children. The potential for him to exercise control of his children, given his history and current situation, cannot be allowed to continue. The best interest of the children requires that their mother be given control without the interference or potential interference in their lives by their father.

The father appeals.

II. Standard of Review

We review termination orders de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We are not bound by the district court's factual findings, but we give weight to them, especially those that involve witness credibility. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

III. Analysis

The father contests all five of the State's grounds for termination, as well as arguing that termination is not in the best interests of the children and that the juvenile court should have refrained from terminating his parental rights because the children remain in the care of their mother. We reject each of his arguments.

A. *The State Established Statutory Grounds for Termination.*

As an initial step, we find that the State proved the elements for termination under section 232.116(1)(I). See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (holding when the juvenile court terminates on more than one statutory ground, we only need to find grounds to terminate under one of the sections cited). The elements under this subsection are (1) the children have been adjudicated CINA and custody has been transferred from the parent; (2) the parent has a severe, chronic substance abuse problem and presents a danger to himself or others as evidenced by prior acts; and (3) there is clear and convincing evidence that the parent's prognosis indicates the children will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home. Iowa Code

§ 232.116(1)(f). The first two elements are not in dispute. The father twice put his daughter Alexandria in harm's way when he was intoxicated. Even after seeking treatment, the father repeatedly tested positive for multiple controlled substances and did so close in time to the termination hearing. The father concedes he has not been successful in combating his substance abuse problems.

The point of contention lies in the third element: whether his prognosis indicates a return of the children will not be possible in a reasonable time given their age and need for a permanent home. The father argues his daughters have a permanent home with their mother and, thus, depriving them of a father is not necessary even if he cannot quickly conquer his substance abuse problems. We believe the question of permanency for these children involves more than a stable placement with their mother. The question of permanency also must address whether the father will continue to be a negative, and even dangerous, influence in the lives of his daughters. See *In re C.W.*, 554 N.W.2d 279, 282 (Iowa Ct. App. 1996) (noting the DHS may interfere to prevent possible harm to children by their parents rather than wait to intervene as a remedial measure). The father's alcohol abuse and lack of judgment seriously endangered Alexandria's safety on at least two occasions. His last attempt to attend visitation with his daughters was marred by his relapse into substance abuse. We agree with the juvenile court's assessment that the father's history and current situation pose a threat to his young daughters and that the mother should be allowed to raise the girls without his interference.

B. Termination Was in the Best Interests of the Children.

The father argues that it is not in his daughters' best interests to deprive them of a parent. Given the circumstances of this case, we disagree. The best-interests-of-the-child analysis places priority on three factors: (1) a child's safety, (2) the best placement for furthering the long-term nurturing and growth of the child, and (3) the physical, mental, and emotional condition and needs of the child. Iowa Code § 232.116(2); *In re P.L.*, 778 N.W.2d at 41 (noting it is "well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child").

Alexandria and Anna will be safer without exposure to their father, whose abuse of alcohol and controlled substances poses an ongoing risk to their well-being. Their long-term nurturing and growth will be better served by the mother's efforts undisturbed by the undermining influence of the father's chronic substance abuse. The father cannot effectively assist in meeting his daughters' physical, mental, and emotions needs when he cannot overcome his own addiction to alcohol and drugs. The DHS worker said, in her twelve years of professional experience, children who are exposed to a parent who abuses alcohol and drugs and continues to engage in criminal conduct are more likely to confront self-esteem issues; "it's just not a healthy environment for kids to grow up in." The juvenile court concluded that the best interests of the children require

“their mother be given control without the interference or potential interference in their lives by their father.” We agree.

Although the father testified at the termination hearing that he would be able to contribute financially to his daughters’ welfare if his rights were not terminated, he does not advance child support as part of his best-interests argument on appeal. The likelihood that the father could provide financial security for the girls seems remote. His criminal convictions and incarcerations have hindered his ability to secure full-time, long-term employment. He acknowledged being in arrears on his child support for an older child. Even if the argument were urged, we do not find the possibility that the father could pay child support in the future to be a sufficient counterbalance to the negative influence he would be in their lives.

C. Family Placement Did Not Weigh Against Termination.

The father contends the juvenile court should have exercised its discretion not to terminate his parental rights because the mother has custody of their daughters. See Iowa Code § 232.116(3). He also asserts that “there is no guarantee that the mother will keep the father from the children which is presumed in the Court’s Order.” The social worker testified at the termination hearing that the DHS would apprise the mother of the potential negative consequences if she chose to allow the children to be around the father after his parental rights were terminated. For the reasons detailed previously in this opinion, we don’t believe that the girls’ placement with their mother weighs against termination in this case.

The State proved the grounds for termination in section 232.116(1)(l); termination is in the girls' best interests as set out in section 232.116(2); and placement with their mother under section 232.116(3) does not compel denial of the termination petition. We affirm.

AFFIRMED.