

IN THE COURT OF APPEALS OF IOWA

No. 0-861 / 10-1435
Filed December 8, 2010

**IN THE INTEREST OF T.G. and T.G.,
Minor Children,**

N.W., Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

A father appeals the district court's order terminating his parental rights.

AFFIRMED.

Daniel J. Rothman of McEnroe, Gotsdiner, Brewer, Steinbach & Henrichsen, P.C., West Des Moines, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Jon E. Anderson, Assistant County Attorney, for appellee State.

Nathan A. Mundy of Bartolomei & Lange, P.L.C., Des Moines, for mother.

Charles Fuson of Youth Law Center, attorney and guardian ad litem for minor children.

Considered by Eisenhauer, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

Nathan is the father, and Monica is the mother, of a son, born January 2008, and a daughter, born March 2009. Nathan's parental rights were terminated on August 20, 2010.¹ Nathan appeals, asserting the grounds for termination have not been met. Because there is clear and convincing evidence for termination pursuant to Iowa Code section 232.116(1)(h) (2009) (child under three years of age, has been adjudicated a child in need of assistance, child has been removed from parent's custody for at least six of last twelve months, and cannot be returned at present), we affirm the termination of his parental rights.

I. Background Facts and Proceedings.

Nathan began using alcohol, his drug of choice, and marijuana at age fourteen. At age sixteen, he had tried methamphetamine, and at age twenty, he used methamphetamine every day for a period of two months. He first received substance abuse treatment at age fourteen. At age sixteen, Nathan entered Clarinda Academy due to juvenile proceedings. He remained there for eleven months, and while there again participated in substance abuse treatment. In the past fifteen years, Nathan admits that his longest period of sobriety—when not incarcerated—is eight months.

In addition to his lengthy substance abuse history Nathan has a significant criminal history. In April 1999, Nathan pleaded guilty to third-degree burglary and was given probation. In September 1999, he pleaded guilty to possession of alcohol and was fined.

¹ The children's mother, Monica, also had her parental rights terminated. She does not appeal.

In January 2000, he pleaded guilty to obstruction of justice and was fined.

On January 8, 2001, Nathan's probation was revoked, and on January 12, 2001, he pleaded guilty to harassment and was sent to prison.

In January 2004, Nathan pleaded guilty to criminal mischief and, in August 2004, to intoxication.

In March 2005, he pleaded guilty to possession of a controlled substance; in June 2005, he pleaded guilty to theft; and in October 2005, he pleaded guilty to assault causing serious injury and was again sent to prison.

On August 3, 2007, Nathan pleaded guilty to a parole violation and returned to prison until April 2008.

On November 5, 2008, Nathan pleaded guilty to domestic assault and served time in jail.

The Department of Human Services (DHS) became involved with Nathan and Monica following an incident on June 26, 2009, when police were dispatched to investigate a report of a Blazer being driven recklessly with an unsecured child. Witnesses reported the driver had attempted to strike a female with the Blazer. Nathan was very intoxicated and was driving with his son on his lap when he jumped the curb and drove toward Monica. The incident resulted in a founded abuse report of denial of critical care, with Nathan as perpetrator. Nathan was arrested, taken into custody, and charged with OWI, reckless driving, domestic abuse assault with a weapon, and child endangerment. While in custody, Nathan received a substance abuse evaluation, which recommended treatment at Mount Pleasant. Nathan pleaded guilty to lesser charges and was

sent to Mount Pleasant. A no-contact order was entered, which prohibited Nathan from contacting Monica or the children.

The state filed a child in need of assistance (CINA) petition on July 30, 2009, asserting court intervention was needed due to concerns that Monica had ongoing substance abuse issues and was expressing a strong desire to reunite with Nathan. The children remained in Monica's care² and paternity testing established Nathan was the children's father.

Nathan participated in substance abuse treatment from August 3 through September 3, 2009, while incarcerated in Mount Pleasant. He also participated in relapse prevention, anger management, grief classes, responsibility classes, and AA meetings.

On September 8, 2009, the children were adjudicated CINA upon the parties' stipulations. The no-contact order was lifted with respect to the children and, on October 9, 2009, Nathan began receiving supervised visits.

On November 24, 2009, a disposition hearing was held and the children were removed from Monica's custody because she admitted using methamphetamine. The November 24, 2009 case plan addendum noted: "Nathan has improved his parenting capacity by maintaining a drug and alcohol free lifestyle. His interaction with the children has been reported as going very well and recommendations are to move to family supervised and semi supervised visits."

On December 7, 2009, Nathan relapsed and attempted to drive a stolen vehicle into the house of Monica's paramour, a purported methamphetamine

² Paternity was not established at the time and Monica was sole legal custodian.

manufacturer. Nathan testified he was attempting to “save” Monica.³ Monica’s fifteen-year-old sister was in the car with him at the time. Nathan pleaded guilty to operating without owner’s consent and criminal mischief, and was again incarcerated. Monica entered a treatment facility after acknowledging she continued to drink, smoke marijuana, and smoke methamphetamine.

The Family Safety, Risk and Permanency (FSRP) care coordinator, Jonah Parks, indicated in his December 18, 2009 report that Monica and Nathan had broken the no-contact order on more than one occasion, Nathan was then in jail, and the current case plan called for Nathan to receive a substance abuse evaluation and comply with recommendations. Nathan’s visits with the children were suspended.

At the end of December 2009, Katie Obert became the FSRP care coordinator. Obert’s January and February 2010 progress reports noted she had had no interactions with Nathan as he was in jail. At a February 17, 2010 family team meeting, the participants, including Nathan’s attorney, discussed a plan to transition the children to Monica’s care in the treatment facility.

Obert met with Nathan at his mother’s house on March 11, 2010. Obert stressed the importance of Nathan following the no-contact order in place between Monica and him, and “talked to [him] about participating in Fatherhood Initiative, parenting classes, and mental health therapy.” They also discussed Nathan’s treatment plan and his upcoming intake for a batterer’s education program. Supervised visits with the children resumed on March 12, 2010.

³ “Q. So you went riding in on a white horse, but the horse happened to be stolen, is that the idea? A. Yeah.”

On March 22, 2010, Obert learned from Monica's treatment worker that Monica had dropped a "dirty" urinalysis after a weekend outing. Nathan and Monica had spent time together while Monica was out of the facility on a two-hour pass, which was a violation of the no-contact order, and Nathan provided Monica with a prescription painkiller. He admitted providing Monica a Tylenol 3 tablet (containing an opiate) from an old prescription for her complaints of back pain. Monica left the treatment facility and the children were returned to foster care.

An April 23, 2010, family case plan noted Nathan had missed two UA screenings (March 26 and April 5, 2010), and a third (April 20) was "non-negative" because it was a "dilute specimen."

A petition to terminate parental rights was filed and trial was held on June 3 and 4, 2010.

Nathan was twenty-nine-years-old at the time of trial. He was living with his mother and had recently begun classes at DMACC. Nathan testified his drug of choice was alcohol and that he was attending relapse prevention weekly. He acknowledged he was required to provide UAs to DHS and his probation officer and that he had missed drops on March 26 and April 5, and provided a dilute UA on April 20. He further acknowledged missing UAs on May 21 and May 25, but testified it was because "I go to work, school, visits. I go to domestic violence classes, parenting classes. My days are pretty full."

Nathan testified he had attended seven parenting classes. He testified he had begun a thirty-six class batterer's education program, and had attended four of the six classes that had been held before the day of trial. He stated he

had completed a sixteen-week batterer's education course while in the Fort Dodge Correctional Facility in 2008. He acknowledged he had been charged three times with domestic abuse assault against Monica.

Nathan testified he had maintained his sobriety from June 26, 2009, through December 7, 2009, when he relapsed. Then he was jailed and not released until mid-February or March 2010. He testified he had been sober since his release. With respect to his substance abuse, Nathan testified:

Q. Based on your embracing of the treatment that you've had and your ability to maintain complete sobriety, do you feel that you currently have a severe chronic substance abuse problem? A. I feel like I'm always going to be an addict, you know, because of my past using every day. But I think through going to treatments and the rest of the classes and staying focused on school that I'll be able to maintain it.

Nathan testified further he had "no idea" why his visits with his children continued to be supervised and he did not believe he posed a danger to his children.

Social worker Robert Pepper testified Nathan had been close to achieving semi-supervised visits in December 2009 when he relapsed. Pepper was recommending termination of parental rights as the case had been ongoing for eleven months and he had not seen a sufficient length of time "between the incidents of drinking and violence."

The district court terminated Nathan's parental rights pursuant to Iowa Code section 232.116(1)(d), (h), and (j), and Nathan now appeals.

II. Scope and Standard of Review.

We review termination of parental rights cases de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). While we give weight to the factual determinations

of the juvenile court, we are not bound by them. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

III. Discussion.

We need only find termination proper under one ground to affirm. *In re R.R.K.*, 554 N.W.2d 274, 276 (Iowa Ct. App. 1995). We do so because termination was proper under section 232.116(1)(h). Under subparagraph “h,” the court may terminate parental rights where it finds (1) the child is three years of age or younger; (2) has been adjudicated a child in need of assistance; (3) has been removed from the physical custody of the child’s parents for at least six months of the last twelve months; and (4) there is clear and convincing evidence that the child cannot be returned to the custody of the child’s parent at the present time. Iowa Code § 232.116(1)(h). Nathan does not challenge the court’s findings with respect to the first three elements. He argues the state failed to show the children could not be returned to him at the present time.

We acknowledge that when sober and in a supervised setting, Nathan appears capable of parenting his children. However, we have nothing upon which to conclude he can do so for the long-term, in an unsupervised setting. His visits with his children never progressed beyond supervised visitation due to his substance abuse and tendencies toward violence, albeit not aimed at his children.

Issues of domestic violence remain unresolved. Nathan lacks insight as to the effects of his substance abuse and minimizes the effects of domestic violence. He was not receiving mental health therapy at the time of the termination trial, though it had been recommended. At trial, the following

exchange occurred: “Q. What issues do you think you could work on [in mental health therapy]? A. Like, anger. Maybe to find out why I like to drink and that sets off the anger, I guess. I don’t know.”

Moreover, Nathan has not demonstrated any substantial length of sobriety outside a supervised setting. He testified eight months was his longest period of sobriety in the last fifteen years, and that was as a teenager. Even if we ignore the missed UAs in April and May 2010 and assume Nathan had not consumed alcohol since his most recent release from jail, it constituted only a three-month period. We agree with the district court’s assessment that Nathan “may have started on the path to recovery, [but] he is not yet living a stable recovery lifestyle.”

Our legislature has established time periods for parents to demonstrate they can safely parent. Iowa Code § 232.116(1)(h); see *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997) (quoting *In re A.C.*, 415 N.W.2d 609, 614 (Iowa 1987) (“It is unnecessary to take from the child’s future any more than is demanded by statute.”)).

A parent does not have an unlimited amount of time to correct deficiencies. *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997). Patience with parents can soon translate into intolerable hardship for a child. *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). “Once the limitation period lapses, termination proceedings must be viewed with a sense of urgency.” *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000).

At the time of trial Nathan was unemployed, living with his mother, and just recently back in school. Under these circumstances and considering Nathan’s

short-lived sobriety, his admitted anger and unresolved domestic violence issues, and his lack of any history of being a full-time, independent caregiver, we conclude there is clear and convincing evidence the children cannot be returned to Nathan at the present time or within a reasonable time in the future.

The State proved the grounds for termination in section 232.116(1)(h), termination is in the children's best interests as set out in section 232.116(2), and no countervailing factors under section 232.116(3) require deferral of the termination. We affirm.

AFFIRMED.