IN THE COURT OF APPEALS OF IOWA

No. 0-926 / 10-1728
Filed December 22, 2010

IN THE INTEREST OF T.W.,
Minor Child,

K.C.F., Mother,
Appellant,

C.A.W., Father,
Appellant.

Appeal from the Iowa District Court for Linn County, Fae Hoover-Grinde, Judge.

A mother and father separately appeal the termination of their parental rights to their child. **AFFIRMED ON BOTH APPEALS.**

Deborah M. Skelton, Walford, for appellant mother.

John J. Bishop, Cedar Rapids, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Jerry Vander Sanden, County Attorney, and Robert A. Hruska, Assistant County Attorney, for appellee State.

Jessica Wiebrand, Cedar Rapids, attorney and guardian ad litem for minor child.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

VAITHESWARAN, J.

A mother and father separately appeal the termination of their parental rights to their child, T.W., born in 2008.[1] Both parents contend (1) the record lacks clear and convincing evidence to support the grounds for termination cited by the district court and (2) termination was not in the child's best interests.

I. The record consists of the transcript and exhibits from a termination hearing spanning two days as well as the transcript from a second hearing. The second hearing was scheduled after the district court issued a ruling granting the State's petition to terminate the parents' rights. This hearing was in response to the parents' request to have the termination ruling stayed and the record reopened to consider evidence of their progress.

Following the second hearing, the district court reaffirmed its earlier termination ruling. The court terminated the parents' rights pursuant to Iowa Code sections 232.116(1)(d) (2009) (requiring proof of multiple elements, including proof that the circumstances leading to the adjudication continued to exist despite the offer or receipt of services) and 232.116(1)(h) (requiring proof of several elements, including proof that the child cannot be returned to the parents' custody).

We may affirm if we find clear and convincing evidence to support either of these grounds for termination. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). On our de novo review, we find clear and convincing evidence to support termination under Iowa Code section 232.116(1)(h).

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[1] The mother has an older child and these parents have a younger child together; these other children are not subjects of this action.

T.W. was removed from her parents' care based on unclean conditions in the home and resulting safety issues. There were also concerns about the mother's "mental health stability" and her "financial situation." The overriding concern, however, was domestic violence.

Before the present child-in-need-of-assistance action, the mother was the subject of another action involving an older child. That child was removed based on a founded incident of domestic abuse in the presence of the child.

While domestic violence was not the triggering event for removal of T.W., the record is replete with evidence that the violence in the home continued. On one occasion, the mother appeared in court with a black eye. On another, the mother showed a service provider her bruised arm and told the provider her stomach hurt because the father had punched her there. One month before the first termination hearing, a department employee saw "what appeared to be finger marks around [the mother's] neck and bruises on her legs." The father had "a bite mark on his shoulder." Just a week before the first termination hearing, the mother was arrested for assault causing bodily injury. A service provider recommended individual and couples counseling to address domestic abuse issues, but neither parent immediately followed through.[2] When the case manager was asked whether T.W. would experience domestic violence if

[2] The mother testified that she was to attend two classes addressing domestic violence issues. She initially stated she attended only one but later testified she attended a total of three classes. She also stated she attended "eight or nine" classes that were part of a six-month Batterer's Education Program. Most of her participation in these classes took place after the termination petition was filed. As for the father, he testified at the second hearing that he had been attending counseling sessions for six weeks. This effort, while laudable, came more than a year after the child's removal. By this time, the statutory removal period as a precondition to termination had long since expired. *See* Iowa Code § 232.116(1)(h)(3).

returned to the parents, she answered, "Yes." She noted that the mother did not believe the domestic violence posed a threat to T.W., making treatment difficult.

At the second termination hearing, a department employee testified that the father was recently found in the basement of the mother's home despite the parents' agreement to stay away from each other. As a result of this incident, the State sought an emergency removal order for an infant born to the parents after the first termination hearing. On learning of the order, the mother left Iowa with her newborn, effectively ruling out all contact with T.W. The department employee later learned that the mother and newborn were in California. She recommended termination of the mother's rights to T.W. She also noted that, while the father did not leave the State, he had yet to graduate to unsupervised visitation with T.W.

Based on the evidence of domestic violence adduced at the first termination hearing together with this additional record, we conclude T.W. could not be returned to either parent. *See* Iowa Code § 232.116(1)(h)(4). The parents were afforded more than ample time to address their violent relationship and move towards having T.W. returned to them. Neither was in a position to have her returned.

II. The parents also maintain that termination was not in T.W.'s best interests. The standard for evaluating this factor is set forth in *In re P.L.*, 778 N.W.2d 33 (Iowa 2010). Based on the repeated episodes of domestic violence between the parents, we conclude the child's safety would have been jeopardized had she been returned to them. *See P.L.*, 778 N.W.2d at 40 (noting

that the court must give primary consideration to statutory factors, including the child's safety).

In reaching this conclusion, we recognize that both parents shared a bond with T.W. that was evident during visits with her. We also recognize that both parents were equipped to handle her immediate needs. However, neither parent understood the ramifications of exposing the child to domestic violence in the home, despite having been given numerous opportunities to address this issue. Accordingly, we agree with the district court that termination of the parents' rights to T.W. was in the child's best interests.

The mother also contends she was denied due process when the court refused to let her present evidence at the second hearing. The mother did not raise a due process argument in the district court. Therefore, this argument was not preserved for our review. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (stating that "issues must ordinarily be both raised and decided by the district court before we will decide them on appeal"). In the alternative, we conclude the district court did not abuse its discretion in denying the mother's motions. The court specifically noted the importance of making credibility findings which it would be unable to do if the mother testified by telephone.

We affirm the termination of the parents' rights to T.W.

AFFIRMED ON BOTH APPEALS.

Vogel, J., concurs; Sackett, C.J., specially concurs.

SACKETT, C.J. (concurs specially).

I concur specially without opinion.