

IN THE COURT OF APPEALS OF IOWA

No. 0-999 / 10-1793
Filed February 9, 2011

**IN THE INTEREST OF T.T.P.,
Minor Child,**

W.P., Father,
Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Charles D. Fagen, District Associate Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Roberta J. Megel, Public Defender Office, Council Bluffs, for appellant father.

Brian Rhoten, Council Bluffs, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Matthew Wilber, County Attorney, and Dawn M. Landon, Assistant County Attorney, for appellee State.

Marti D. Nerenstone, Council Bluffs, for minor child.

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

DANILSON, J.

A father appeals the termination of his parental rights to his son, T.P. The juvenile court terminated the father's parental rights pursuant to Iowa Code section 232.116(1), (d), (e), (h), and (l) (2009). Because the State made reasonable efforts at reunification and termination is proper under section 232.116(1)(h) because the child (1) is under three years of age, (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 of the last twelve months, and (4) cannot be returned to the father's custody at the present time, we find clear and convincing evidence to support termination.

I. Background Facts and Proceedings.

T.P. was born June 14, 2009, testing positive for amphetamines. His mother, Courtney,¹ also tested positive for amphetamines, and T.P. was taken into protective custody and later placed with his paternal aunt and her husband.

A child in need of assistance (CINA) petition was filed June 16, 2009. W.P. is the father of T.P. and is not married to Courtney. W.P. has spent time in prison for delivery of methamphetamine. In 2009 he was on probation on a charge of possession with intent to deliver. When the family came to the attention of the Iowa Department of Human Services (DHS), W.P. reported to DHS that he was a recovering addict and had not used in nine or ten months.

On June 29, 2009, DHS received notice that W.P.'s drug patch tested positive for methamphetamine.

¹ Courtney also had her parental rights terminated. She has not appealed.

On July 28, 2009, W.P. was arrested for domestic assault against Courtney. Neither W.P., Courtney, nor the paternal aunt reported the arrest to persons at a family team meeting held just prior to the adjudication hearing on July 29, 2009, or informed the court at the adjudication hearing.

On August 3, 2009, an adjudication order was filed, finding T.P. a CINA pursuant to Iowa Code section 232.2(6)(c)(2), (n), and (o) (2009).² The juvenile court ordered T.P. remain in the relative placement, further ordered both parents to submit to random drug screens and undergo a substance abuse evaluation, and ordered Courtney to undergo a mental health evaluation. In a separate order filed the same date, W.P. was ordered to complete a domestic violence batterer's education course and Courtney was ordered to complete a domestic violence education course.

In its October 2, 2009 dispositional order, the court noted that W.P. reported the domestic violence charges against him were dismissed. The court also noted W.P. was arrested on August 19, 2009, for disorderly conduct

² Section 232.2(6) provides in relevant part:

"Child in need of assistance" means an unmarried child:

....

c. Who has suffered or is imminently likely to suffer harmful effects as a result of either of the following:

....

(2) The failure of the child's parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.

....

n. Whose parent's or guardian's mental capacity or condition, imprisonment, or drug or alcohol abuse results in the child not receiving adequate care.

o. In whose body there is an illegal drug present as a direct and foreseeable consequence of the acts or omissions of the child's parent, guardian, or custodian. The presence of the drug shall be determined in accordance with a medically relevant test as defined in section 232.73.

concerning a dispute with his landlord. Courtney had been jailed for public intoxication after W.P. called police to report she threatened him and damaged his apartment. She was jailed again for violating the protective order W.P. obtained following her arrest. The court stated, "The arrests continue to highlight some very serious issues regarding the parents' ability to parent an infant." The court observed both parents had obtained substance abuse evaluations, but were not following through with recommendations. W.P. was ordered to undergo a mental health/psychological evaluation as recommended by his substance abuse therapist, comply with the recommendations of his substance abuse evaluation, and complete a domestic violence batterer's education course. The court also wrote that "since [W.P.] does not believe his income is anyone's business, his mental health evaluation can be paid by him at his expense."

In the middle of October, Courtney tested positive for methamphetamine and was no longer living with W.P. As described in DHS social worker Kristi O'Donnell's March 2010 report to the court, during that period W.P. made good progress with respect to the case plan goals.

Due to Courtney being out of the home, things started to progress with [W.P.] He was allowed a few hours of unsupervised time, with few rules. They included that Courtney could not be around, and [W.P.] could not drive due to not having a valid license. These visits were increased upon [W.P.] completing the mental health evaluation, as ordered by the court.

In December 2009, Courtney disappeared for several weeks. O'Donnell observed W.P. "pretty much had it made for a few months." He had completed the mental health evaluation, attended all but one class of an anger management

course,³ was receiving unsupervised visits with T.P., and was on the verge of being granted overnight visits with T.P. W.P.'s drug screens had consistently come back negative. But then Courtney reentered his life.

At the end of January 2010, W.P.'s probation officer made an unannounced visit and found a woman's purse on the counter and two opened beers on the table.⁴ The probation officer then found Courtney hiding in a closet. On February 16, 2010, W.P. contacted O'Donnell to report he "did not agree with not allowing Courtney into the home and that if he wants a 'piece of ass,' we cannot tell him who he can and can't have to his home." On February 20, W.P. awoke to find Courtney had taken his car and some of his money and later totaled the car and was arrested for OWI. On March 2, 2010, Courtney and W.P. were involved in a physical altercation.

O'Donnell wrote in her March 2010 report:

This worker is very frustrated that both parents continue to put their own barriers to reunification in place, but yet they typically blame others, when it's their own decisions. In general, the safety concerns have changed. This case started as a drug involved case due to T.P. testing positive, however so many other issues have come into play. Currently for Courtney, she needs treatment, and her ongoing use is definitely a concern. . . . For [W.P.], this worker does feel like he self sabotages. When things get close, the other shoe seems to drop, over and over.

[W.P.] is very difficult to figure out. He will report that he will do anything to keep moving forward, but then takes two steps back in his dishonesty, or taking back Courtney.

A March 19, 2010 review modification order required W.P. to pay Heartland Family Services so his records could be released and his completion

³ O'Donnell had agreed W.P. could attend anger management classes in lieu of batterer's education course.

⁴ At the termination hearing, the probation officer testified having alcohol in his house violated the terms of W.P.'s probation.

of substance abuse treatment could be verified. He was also again ordered to complete a domestic violence education course at his own expense.

On June 4, 2010, a “Review/Modification/Permanency Order” was filed. The court wrote, “[T]here are several changes, but no progress.” W.P. had paid his bill for Heartland Family Services, and its records reflected he had completed outpatient substance abuse treatment. The court observed both parents were arrested in April 2010—W.P. for disorderly conduct and assault and Courtney for serious assault upon reportedly hitting a minor. That same evening in April, W.P.’s probation officer performed a drop-in visit, and W.P. admitted he had been drinking and agreed to a breathalyzer test. Prior to his arrest, his blood alcohol content was 0.139. The court noted W.P. was arrested for a probation violation on April 21, 2010, with no bail, and it was suspected W.P. would stay in jail until at least September 2010. The court ordered W.P. to obtain an updated substance abuse evaluation and follow all recommendations. The court also again ordered W.P. to attend a batterer’s education program. At this time, DHS had changed the goal in the CINA case from reunification with a parent to termination of parental rights.

A petition to terminate parental rights was filed on July 6, 2010.

W.P. was released from jail on September 12, 2010. W.P. immediately began receiving supervised visits with T.P. five days a week; two of the visits were supervised by Carrie Ausdemore, the Family Safety, Risk and Permanency Services (FSRP) worker; the other three were supervised by W.P.’s sister, who is T.P.’s foster mother. W.P. informed Ausdemore he was no longer involved with Courtney, who had not followed through with services offered by DHS and who

continued to use. He obtained housing within a few days and signed up for a batterer's education course, which was to begin on September 29, 2010.

On September 14, 2010, W.P. obtained an updated substance abuse evaluation. Based on W.P.'s report that he was attending a Batterer's Education Program (BEP) and was attending AA or NA meetings, evaluator Andrew Frohardt made no recommendation for additional treatment.

The termination of parental rights hearing was held October 6, 2010. O'Donnell testified she had not received any verification that W.P. was attending AA or NA meetings. She testified W.P. failed to show for a drug screen on September 29, which was thus considered positive. She also stated W.P. failed to attend the September 29, 2010 BEP orientation class.

O'Donnell expressed concern about W.P. and Courtney's "toxic" relationship. When asked to "flush that out," she testified:

[W]e have believed that [W.P.] has been controlling and manipulative with Courtney, and Courtney has also reported that she was the problem when there were times that we maybe didn't see that Courtney was necessarily the problem. And their ongoing contact also results in something either chaotic or escalated by physical altercations or lying, and it has not been healthy for either one of them.

O'Donnell was concerned about unresolved domestic violence issues. W.P. and Courtney had been involved in physical altercations and been ordered to attend domestic violence education as of August 2009, but neither had complied. Jail records indicated W.P. visited Courtney on September 27, 2010. O'Donnell testified that FSRP worker Ausdemore reported to her that Courtney had been in W.P.'s apartment within the past week. O'Donnell felt T.P. would be at risk if placed in the parents' care due to their ongoing relationship and

unresolved domestic violence concerns, as well as Courtney's continued substance abuse and unresolved mental health issues.

O'Donnell testified W.P.'s interactions with T.P. "are always very positive" and the child is "very connected" to W.P. She stated W.P. had unsupervised visits with T.P. in February 2010, but currently visits were supervised and he had never had an overnight visit in the fifteen months of T.P.'s life. She testified T.P. needed permanency in his life, was doing well in the relative placement, and "[t]hey don't want him to go anywhere else."

Ausdemore had provided FSRP services to the family since June 2009, primarily supervising visits and providing resources and information for the parents to obtain substance abuse evaluations and various services. She opined T.P. needed permanency and was bonded to the family with whom he was living. She too expressed concerns about W.P.'s failure to attend BEP orientation, the missed drug screening, and his and Courtney's relationship and its effects on T.P. She testified W.P. had not shown consistency or the ability to follow through. She stated she didn't "have any trust in [W.P.'s] decision making at this time" as there is "a lot of dishonesty," and "I have no idea what's going on in [W.P.'s] home."

W.P. testified he felt he had complied with the case plan: he had completed a substance abuse evaluation and attended two AA meetings in the three and one-half weeks since leaving jail. He stated he missed the BEP orientation and drug screen because he was up very late the night before working on a car so he could pay his sister back for his first month's rent. W.P. testified it was not his intention to have a relationship with Courtney. When

asked why he went to visit Courtney in jail, he testified: "Well, common mutual respect. She visited me, I mean, on a daily basis. I was doing the same thing back." W.P. admitted his relationship with Courtney "wasn't a good situation for the boy to be in."

On cross-examination, W.P. was asked if he thought he needed to take BEP class and he responded, "I've never put my hands on not one girlfriend."

Q. So your answer is, no, you don't think you need to take it? A. No. But I will because it's recommended.

W.P. was asked what else could be done "to help you reunify with [T.P.]." W.P. stated, "I really don't know what I would ask." (He did express a wish for new caseworkers.)

On October 28, 2010, the juvenile court terminated W.P.'s parental rights pursuant to section 232.116(1)(d), (e), (h), (i) and (j). The court found:

[W.P.] completed the 16 week course for substance abuse treatment but it took him over 8 months to do so. His use of alcohol put him in jail for the last 4 months and now an updated evaluation indicates no further need for treatment because he reported to them that he is attending AA/NA and the Batterer's Education Course. He has not completed his Domestic Violence Batterer's Education Course and [W.P.] indicates to the court that he has attended AA/NA but feels that he should not have to provide proof of this to the [DHS] or the court because he is doing this for himself. [W.P.] claims to be a self employed mechanic off the books but admits that he is borrowing money from his sister. [W.P.] also indicated he is working on a place to live. [W.P.] missed some drug screens and blames that on being too busy and not being told to go by his family. W.P. admits that he does not want to provide proof to the [DHS] or the court. He wants to avoid services, believes he can make it on his own and resents the intrusion. He does not profess that he will comply with whatever is required to regain care and custody of [T.P.]

Individually each parent has failed to follow through with the court ordered services. Domestic Violence Victim's and Batterer's classes have been ordered for over a year. Sporadic instances of compliance appear between wholesale and abject failures. As a

couple the description of their relationship as “toxic” is appropriate. When together each parent causes the other chaos and utter failure usually ending in arrest for domestic and/or substance abuse related issues. Neither parent is addressing their mental health or substance abuse issues to the court’s satisfaction. Once again each professes to be finished with the other in the hopes that it will garner them additional time to do what has needed to be done for the last year.

The court noted the following services have been offered to assist the family with reunification: judicial oversight of probation terms, chemical dependency evaluations, outpatient chemical dependency treatment, random drug screens, psychiatric evaluations, mental health services, paternity testing, transportation, relative care, FSRP services, supervised visits, and social work/case management. The court found reasonable efforts had been made.

The court found W.P.’s untreated chemical dependency, untreated mental health problems, domestic violence issues, criminal activity, minimal compliance, and lack of verification or commitment continued to exist after fifteen months of services, prohibiting return of T.P. to his custody. The court found also that “[t]here is no evidence that giving him additional time to address his problems would be fruitful in the near future.” Finally, the court found termination of parental rights to be in the child’s best interests.

W.P. appeals, contending there is not clear and convincing evidence to support termination and reasonable reunification efforts had not been made.

II. Scope and Standard of Review.

We review all termination determinations de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

Termination is proper where there is clear and convincing evidence of at least one ground cited by the juvenile court. *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2000) (noting the court need only find evidence supporting termination on one of the statutory grounds cited by the juvenile court to affirm). If a statutory ground for termination exists, termination is in the child's best interests, and no factor weighing against termination exists, we will affirm. *P.L.*, 778 N.W.2d at 39.

III. Discussion.

The juvenile court may order termination of parental rights under Iowa Code section 232.116(1)(h) where it finds clear and convincing evidence:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

W.P. does not contest the first three findings. He argues, however, his son can be returned to his care at the present time because he has a residence and employment, has not been using illegal substances, has discharged his criminal responsibilities, and has severed his relationship with the child's mother. The juvenile court found otherwise, and on our de novo review, we agree. *See In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006) (noting we give weight to the trial court's factual determinations, though we are not bound by them).

Contrary to his testimony, W.P. is not employed. He asserts he works on cars on his own time, for which he is neither bonded nor insured. While W.P.

testified he could financially provide for T.P., he could not provide the court information on how much he earned from his work on cars. And while acknowledging his sister had lent him money since his release from jail, he testified his financial situation with his sister was “immaterial.” Despite physical altercations with Courtney and being ordered to attend BEP for more than a year, W.P. had yet to complete a domestic violence education program and denies the need for such a program. There is no indication W.P. has any insight as to the effects domestic violence can have on T.P. Moreover, even though his most recent substance abuse evaluation resulted in no recommendation of additional treatment, the evaluator’s opinion was based upon W.P.’s report that he was attending AA and BEP. W.P. would not provide information from which the court could verify his attendance at AA, and he had yet to attend BEP. Under these circumstances, we find no reasonable likelihood T.P. could be placed in W.P.’s custody at any time soon. See *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (noting evidence of a parent’s past performance may be indicative of the quality of the future care that parent is capable of providing).

W.P. argues he did not receive reasonable reunification services from the State. The State and the guardian ad litem contend this issue was not preserved. We find they have the better argument. See *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005) (noting a parent has an obligation to demand other, different, or additional services prior to a permanency or termination hearing). In any case, W.P. fails to identify what services he would have the State offer that it has not. We agree with the juvenile court “[r]easonable, but unsuccessful, efforts were made to reunify [T.P.] with his parents.”

T.P. has been in relative placement since his release from the hospital following his birth more than fifteen months ago. He has waited for W.P. to provide a stable and safe environment. W.P. has, on occasion, made strides toward reunification. But after more than fifteen months, he has not shown he can provide a safe and stable home for T.P. We reiterate, “[o]nce the [statutory] 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). In this case, W.P.’s efforts are simply too little, too late.

T.P. needs and deserves permanency. He is in a pre-adoptive home and is doing well in that placement. Termination of parental rights is in the child’s best interests, see Iowa Code § 232.116(2), and no factor weighing against termination in section 232.116(3) requires a different conclusion. Having found clear and convincing evidence supporting termination under section 232.116(1)(h), we affirm.

AFFIRMED.