

IN THE COURT OF APPEALS OF IOWA

No. 1-1012 / 11-1875
Filed January 19, 2012

**IN THE INTEREST OF D.H.,
Minor Child,**

**B.H., Father,
Appellant.**

Appeal from the Iowa District Court for Appanoose County, William S. Owens, Associate Juvenile Judge.

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

AFFIRMED.

Jonathan Willier, Centerville, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Richard F. Scott, County Attorney, for appellee State.

Mary B. Krafka of Krafka Law Office, Ottumwa, for appellee mother.

Alan M. Wilson of Miles Law Firm, Corydon, for intervenor.

Debra A. George of Griffing & George Law Firm, P.L.C., Centerville, attorney and guardian ad litem for minor child.

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

POTTERFIELD, J.

A father appeals the termination of his parental rights to a son. Upon our de novo review, we find the statutory considerations guiding the decision support termination, and no factors apply to make termination unnecessary. We therefore affirm.

I. Background Facts & Proceedings.

Brian is the father and Nicole¹ is the mother of a boy, D.H. Brian and Nicole never married and were not living together during the pendency of the child-in-need-of-assistance (CINA) and termination proceedings. D.H. was born prematurely in August 2009, weighing less than two pounds. He remained in the hospital for several months after his birth. He has been diagnosed with chronic lung disease.

D.H. and his two older siblings² were adjudicated CINA on October 22, 2009. The parties stipulated the children were in need of assistance as a result of their parents' failure to provide adequate supervision. See Iowa Code § 232.2(6)(c)(2) (2009). The Iowa Department of Human Services (DHS) had previously offered family-centered services to Brian and Nicole from June to December 2006 regarding the older children, but no formal court action had been filed.

The parents agreed they would not reside together. The children were placed in their mother's custody subject to supervision by DHS. Brian's visitation with the children was to be at the discretion of DHS. He was to participate in

¹ Nicole's parental rights were also terminated, but she has not appealed.

² D.H. has two older brothers, ages 3 and 1 at the time of adjudication. Parental rights with respect to D.H.'s two siblings are not at issue here.

Family Safety, Risk, and Permanency (FSRP) services; submit to random drug testing; complete substance abuse treatment and follow all recommendations; participate in mental health treatment if recommended; and complete DHS's batterer's education program (BEP).

Nicole has a history of mental health issues. Both parents have a history of substance abuse issues, as well as a history of domestic violence.

Following a December 3, 2009 dispositional hearing, the two older children remained in Nicole's care. D.H. was still in the hospital.

On February 5, 2010, D.H. was released from the hospital to his mother's care. On February 18, however, D.H. was transported by air ambulance from Centerville to Des Moines, where it was determined he was suffering from a respiratory virus (RSV). D.H. remained in the Des Moines hospital for several weeks.

On March 24, 2010, DHS filed an application for temporary removal of D.H. from Nicole's custody due to her inability to provide adequate care (Nicole was aware D.H. required a 100% smoke-free environment and had been unwilling or unable to quit smoking). DHS worker, Deb Harbour, noted in an affidavit attached to the application for removal that Brian did not have stable housing of his own; had not been following through with his substance abuse treatment; and DHS had been unable to "get a hold of Brian" to conduct substance abuse testing. D.H. was removed from his mother's custody on March 24, 2010.

On March 31, 2010, a temporary removal hearing was held. The evidence presented indicated that due to D.H.'s medical condition, those providing care to

him required special training. Nicole had canceled two appointments set up for her to provide that training. Brian was “reportedly living, or travelling to the State of Tennessee.” He had “not regularly participated in services, is believed to be continuing to use marijuana, has not participated in batterer’s education, and does not have stable housing.” Moreover, Brian “smokes frequently, and has made no effort to quit.” Consequently, he was not an appropriate placement for D.H. The court ordered D.H. continue in the temporary legal custody of DHS. D.H. was placed with a foster family and review orders dated April 29 and July 2, 2010, maintained that placement.

A September 1, 2010 report by the foster care review board noted Brian had returned to Iowa upon hearing he was at risk of losing his children; he was participating in BEP; and he reported participating in substance abuse treatment and attempting to quit smoking. Brian did not have employment or housing. Brian informed the board he had a brother who would be appropriate for the children’s placement.

On October 19, 2010, D.H.’s paternal uncle petitioned to intervene in the CINA proceedings and stated he and his wife were approved foster care providers. Nicole resisted, asserting reunification with the mother was still the permanency goal and D.H. was one of a sibling group who should be kept on the same permanency calendar. The guardian ad litem on November 3, 2010, filed a request for an interstate compact on the placement of children (ICPC) study of the paternal uncle’s home.

On November 4, 2010, a review hearing was held and D.H. remained in foster care. The court ordered DHS to pursue a home study of the paternal

uncle's home in the event the permanency goal of reunification was not possible. The court determined it would be premature to rule on the petition to intervene.

A permanency hearing was held on February 3, 2011. The court granted the uncle's petition to intervene. The two older children, who had been in the care of another relative, were returned to Nicole's custody; D.H. remained in foster care.

A permanency review hearing was held on May 5, 2011. The court noted DHS planned to file a petition for the termination of parental rights as to D.H.; ordered the older children again removed from Nicole's custody and placed in the care of a relative; and reset the permanency review hearing for June 9, 2011.

On May 25, 2011, DHS social worker, Sonya Hayworth-Cooksey, submitted a termination report to the court in which she noted D.H. was delayed in his gross motor skills and his speech; he received services from AEA twice monthly for physical therapy and occupational therapy; and was making progress in these areas. She also noted D.H. has regular checkups due to his chronic lung disease; and has an in-home nurse four hours a day, seven days a week, to assist with his medical needs, which provides the foster parents a break. Ms. Hayworth-Cooksey also noted Brian had not had unsupervised visits with his children during the CINA proceedings. She recommended termination of parental rights so D.H. could be available for adoption. She wrote: "[D.H.] is very adoptable and there are interested parties who wish to adopt the child."

A contested termination hearing was held on June 9, 2011. On November 17, 2011, the juvenile court ordered termination of Brian's parental rights to D.H. pursuant to Iowa Code section 232.116(1)(h) (2011).

Brian appeals, arguing termination of parental rights is not in the child's best interests. He contends the juvenile court should have entered a permanency order placing guardianship and custody of the child with Brian's brother.

II. Scope and Standard of Review.

We review all termination decisions de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We are not bound by the juvenile court's findings of fact, but we accord them weight, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010).

III. Analysis.

To terminate parental rights under chapter 232, the court must first determine if one of the grounds enumerated in section 232.116(1) exists. Because Brian does not dispute the existence of the grounds for termination under section 232.116(1)(h), we do not discuss this step. *Id.* at 40.

"Having found statutory grounds for termination exist, we turn to further consider the circumstances described in section 232.116(2) that drive the actual decision-making process." *D.W.*, 791 N.W.2d at 708. Brian contends termination is not in the child's best interests. See Iowa Code § 232.116(2). We are required to use the best-interests framework established in section 232.116(2), with the primary considerations of "the child's safety," "the best placement for furthering the long-term nurturing and growth of the child," and "the physical, mental, and emotional condition and needs of the child." *Id.*; *D.W.*, 791 N.W.2d at 708. Here, pursuant to section 232.116(2)(b), we consider that the child has been placed into a foster family, has been integrated into that foster

family, that the child is “very adoptable,” and that adoption would provide D.H. with the permanency he deserves.

A guardianship, on the other hand, brings ongoing uncertainty to a child. So long as a parent retains his parental rights, the parent can challenge the guardianship and seek return of the child to the parent’s custody. See Iowa Code § 232.104 (providing the parent may seek to modify a permanency order). Termination of parental rights, followed by adoption is the preferred solution when a parent is unable to regain custody within the time frames of chapter 232. *Cf. In re C.K.*, 558 N.W.2d 170, 174 (Iowa 1997) (“An appropriate determination to terminate a parent-child relationship is not to be countermanded by the ability and willingness of a family relative to take the child.”). Upon our de novo review, we find the considerations guiding the decision support termination and no factors in section 232.116(3) apply to make termination unnecessary. We therefore affirm.

AFFIRMED.