

IN THE COURT OF APPEALS OF IOWA

No. 1-135 / 11-0074
Filed March 21, 2011

**IN THE INTEREST OF A.M.E.,
Minor Child,**

**C.M.C., Mother,
Appellant,**

**D.K.E., Father,
Appellant.**

Appeal from the Iowa District Court for Linn County, Barbara H. Liesveld,
District Associate Judge.

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

Cynthia S. Finley, Cedar Rapids, for appellant father.

Ellen R. Ramsey-Kacena, Cedar Rapids, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Jerry Vander Sanden, County Attorney, and William C.
Croghan, Assistant County Attorney, for appellee.

Dawn R. Wilson, Cedar Rapids, attorney and guardian ad litem for minor
child.

Considered by Vogel, P.J., and Doyle and Tabor, JJ. Mansfield, J., takes
no part.

TABOR, J.

The mother and father of three-year-old A.E. separately appeal from the order terminating their parental rights. The father contends he has not abandoned A.E. despite his imprisonment. The mother challenges the State's proof that the child cannot be returned to her care or, alternatively, asks that the child's previous foster parents be named as her guardians. Both parents seek more time to reunify with their daughter. Given the mother's inability to stay drug free and the father's poor choices that led to his incarceration, we agree with the district court's decision to terminate parental rights.

I. Background Facts and Proceedings

A.E. was born prematurely in September 2007. Her birth weight was just three pounds, eight ounces, and she tested positive for tetrahydrocannabinol (THC), the active ingredient in marijuana. A.E. also suffered from several potentially life-threatening medical conditions that required close attention when she left the hospital. Because hospital staff and the Department of Human Services (DHS) did not believe that her parents were capable of administering the proper care¹ to their daughter, A.E. was placed with foster parents Donna and Casey. A.E. was adjudicated as a child in need of assistance (CINA) in November 2007.

The parents made progress in visitations with their daughter during early 2008, prompting the DHS to initiate a trial home placement in late March and early April. But in July 2008, A.E. was exposed to a violent outburst by the

¹ Among the health concerns was A.E.'s vulnerability to second-hand smoke coupled with the parent's refusal to quit smoking cigarettes.

father, who was intoxicated and began “screaming and breaking stuff” in the car when the mother picked him up from a friend’s house. The trial home placement ended in September 2008 when the mother was arrested on charges of domestic abuse assault involving an incident with the father and his new girlfriend.

A second trial home placement lasted from December 2008 until May 2009. During that time, the mother began using marijuana again. The DHS took steps to remove A.E. upon learning that the mother’s new paramour was a registered sex offender and she allowed him to care for her young daughter. The DHS attempted a third trial home placement from August 2009 until January 2010. The third placement ended when the mother relapsed by using methamphetamine. The mother also used crack cocaine during this time.

In addition to the three unsuccessful trial home placements, A.E. has stayed with four different foster families over her three years of life. While most of her health problems have been resolved, A.E. lags behind somewhat in her intellectual development and also has one leg that is shorter than the other, resulting in balance difficulties.

The father went to prison in October 2008 for a stalking conviction; he was released back into the community about one month later. His parole was revoked when he made threatening phone calls to his ex-wife. The father’s latest incarceration started in March 2010 and he testified at the termination hearing that he expected to be released in January or February of 2011.

During a supervised visit with A.E. in May 2010, the mother attempted to slit her own wrists with a razor when her daughter was present in the bathroom.

The mother explained at the hearing that she was distraught over her boyfriend leaving. She acknowledged that A.E. was upset by the incident. The mother also admitted using drugs as recently as July 2010.

On June 14, 2010, the Linn County Attorney's office filed a petition to terminate parental rights for both the father and mother. The juvenile court held the termination hearing on September 9, 2010, and issued its ruling terminating parental rights on December 29, 2010. As grounds for terminating the father's parental rights, the court found the State offered clear and convincing evidence in support of Iowa Code sections 232.116(1)(b)² and (h)³ (2009). As grounds for terminating the mother's parental rights, the court found that the State proved the elements of Iowa Code section 232.116(1)(d)⁴ and (h) by clear and convincing evidence. The parents challenge the termination order.

² Section (1)(b) provides: "The court finds that there is clear and convincing evidence that the child has been abandoned or deserted."

³ Section (1)(h) provides:

The court finds that all of the following have occurred:

- (1) The child is three years of age or younger.
- (2) . . . has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) . . . 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.

⁴ Section (1)(d) provides:

The court finds that both of the following have occurred:

- (1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents,
- (2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance

II. Scope and Standard of Review

We review orders terminating parental rights de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We are not bound by the juvenile court's findings of fact, but we give them weight, especially in assessing the truthfulness of witnesses. *Id.*

We will reverse an order terminating parental rights only if the juvenile court record lacks clear and convincing evidence of the elements necessary for termination under the alternative grounds listed in Iowa Code section 232.116. *Id.* We will find the State's evidence to be "clear and convincing" when there are no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.* When the juvenile court bases termination on multiple grounds, we may affirm on any ground supported by clear and convincing evidence. *Id.* at 707.

III. Merits

A. The State offered clear and convincing evidence that the child could not be returned to either parent at the present time.

Both parents argue that the State fell short of proving the fourth element of Iowa Code section 232.116(h), that A.E. could not be returned to their custody at the present time. We reject this argument, finding ample evidence in the record to show that a safe reunion was not possible now nor in the foreseeable future.

At the time of the termination hearing, the father was incarcerated and last interacted with A.E. two and one-half years earlier. While the father had steady

which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

employment as a welder before going to prison, he did not have family support in Iowa to help with raising a child. He was confronting his mental health and alcohol abuse problems in prison, but admitted that doing so outside of an institutional setting would be more challenging.

We agree with the juvenile court's observation that the father chose a lifestyle that resulted in his criminal difficulties and that was inconsistent with being an effective and available parent. The evidence was overwhelming that A.E. could not be returned to her father's care in the present or near future.

At the time of the termination hearing, the mother was essentially homeless. She testified to either camping in a tent with her boyfriend or staying with relatives. She had used methamphetamine and marijuana within the past two months, even after the county attorney filed the termination petition. The DHS social worker testified that the mother's lack of stable housing and her relapses into substance abuse prevented her from being a reliable parent for A.E. The mother's inability to remain drug free over the three-year history of this case weighs heavily against finding that A.E. can be returned to her care. *See In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (noting that child could not wait another year before parent responds to drug-treatment services).

We endorse the following conclusion of the juvenile court:

[The mother] is still not able to resume parenting of her child. She lacks insight into her child's problems and into her own problems as a parent. She lacks the ability to internalize and apply the skills she had been taught in order to maintain her sobriety and provide a safe and stable home for [A.E.] that is free from drugs and violence. While she has periods of success, as seen by three trial home placements, she is unable to maintain it.

B. Six-month extension was not warranted.

The circumstances that exist in this family do not support the parents' call for additional time to prepare for reunification. The mother did not use the time since the most recent trial home placement to correct those deficiencies standing in the way of regaining custody of A.E. She did not follow up with the DHS worker's recommendation that she undergo intensive outpatient substance abuse treatment at the Mid-Eastern Counsel on Chemical Abuse (MECCA). She continued using illicit drugs even after the termination petition was filed. She has not secured steady employment or a stable place to live with her daughter.

The father could not even begin to show he is capable of being a full-time parent until five months after the termination hearing when he was slated for release from prison. His history of untreated mental illness, alcohol dependency, domestic violence and the lack of family support in the community do not bode well for a quick transition to responsible fatherhood. "The future can be gleaned from evidence of the parents' past performance and motivations." *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

While the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," this patience has been built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d at 494. The DHS opened A.E.'s case thirty-three months before the termination hearing and for about sixteen months of that time A.E. has been in and out of various foster care homes. The juvenile court wisely opted not to make A.E. wait six more months before she can take the first step toward a permanent placement.

C. A.E.'s best interests are served by terminating parental rights so that she can move toward a more permanent care arrangement.

When determining what is in the best interests of A.E., we look to the framework established in section 232.116(2). The legislature highlighted as primary considerations: 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. *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010).

The juvenile court noted that a return to the custody of the mother or the father would not ensure the day-to-day consistency in care that A.E. deserves. A.E.'s special needs require "above-average parenting skills" and her biological parents have not shown a steady commitment to that difficult task. A.E. has experienced some developmental delays and needs a family who can help her reach her potential.

The DHS social worker testified that A.E.'s mother was a "wonderful" parent when she was "clean and sober." But when she is on drugs, "she poses a safety risk to her child." We credit this testimony as a strong indication of what is in A.E.'s long-term best interests. A child cannot be left on tenterhooks wondering if her mother will be attentive to her needs or under the influence of drugs. Or likewise, wondering if her father will be mentally stable and a part of her life or commit more crimes and return to prison. The social worker testified that A.E. was adoptable. It is in A.E.'s best interests to have a more permanent and predictable home life as she approaches her primary school years. *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”).

Finally, the mother asks that A.E. be placed with her former foster parents, Donna and Casey, who are willing to obtain a guardianship. The mother believes that if Donna and Casey were A.E.’s guardians then she could maintain a bond with the child. Donna and Casey were A.E.’s foster parents when she was an infant and they developed a friendship with A.E.’s mother over the years. The DHS social worker testified that A.E. was not returned to these foster parents on subsequent occasions due to “boundary issues.” Donna admitted in her testimony that it was unusual for her to have become so close to the biological mother of one of the children placed in her foster care. We do not think that the proposed guardianship would serve A.E.’s long-term need for permanency.

A guardianship does not necessarily provide stability for the child. So long as a parent’s rights remain intact, 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 and adoption are 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.”).

Finally, we see no countervailing factors in section 232.116(3) standing in the way of termination. Accordingly, we agree with the juvenile court's decision to terminate parental rights.

AFFIRMED.