IN THE COURT OF APPEALS OF IOWA

No. 1-238 / 10-2121
Filed April 13, 2011

IN THE INTEREST OF A.G. and A.G.,
Minor Children,

A.G., Father,
Appellant,

J.S.-V., Mother,
Appellant.

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

A mother and father appeal from the termination of parental rights to two children. **AFFIRMED.**

Allen A. Anderson of Spayde, White & Anderson, Oskaloosa, for appellant father.

Michael O. Carpenter of Gaumer, Emanuel, Carpenter & Goldsmith, P.C., Ottumwa, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Allen Cook, County Attorney, and Seth Harrington, Assistant County Attorney, for appellee.

Ryan Mitchell of Orsborn, Milani, Mitchell & Goedken, L.L.P., Ottumwa, attorney and guardian ad litem for minor children.

Considered by Vogel, P.J., and Doyle and Tabor, JJ.

TABOR, J.

A mother and father, who are both nineteen years old, appeal from the termination of parental rights to their three-year-old daughter and two-year-old son. The father is serving a prison sentence on several felony convictions. The mother, who dropped out of Ottumwa High School, is unemployed and living with family in Omaha, Nebraska. The mother is not pursuing her education and has relapsed in the use of drugs and alcohol. Because the children cannot be safely returned to the custody of either parent at the present time and termination is in their best interest, we affirm the termination order.

I. Background Facts and Proceedings

When their son was born prematurely in June 2008, his meconium tested positive for marijuana. The Department of Human Services (DHS) then intervened with the family, placing the children with their grandmother after the juvenile court adjudicated them as children in need of assistance in August 2008. The children were returned to their mother in September 2008, but again placed with their grandparents a month later due to the parents' use of illegal substances. In December 2008, the DHS removed the children from their grandparents' home and placed them in foster care because their uncle, who also was residing with the grandparents, was wanted by the Ottumwa police for attempted murder.

The parents resumed custody of the children in June 2009, but that placement was short-lived because the father tested positive for marijuana. The mother and father separated, but the mother expressed to DHS workers a fear of

living alone with her two children. The workers told her that moving in with family was not an option because of the criminal history and gang affiliation of certain family members. In July 2009, the DHS obtained an emergency order for removal. When authorities went to execute the order at the mother's Ottumwa address, they couldn't find the mother or children. Their whereabouts remained unknown until October 2009, when DHS learned that the mother gave birth to her third child in Omaha, Nebraska. Meanwhile in Ottumwa, the father was arrested in August 2009 for robbery, gang participation, and interference with official acts. The father was convicted of felony criminal mischief and assault on a peace officer and went to prison in March 2010. He has not had contact with the children since his incarceration.

By the March 9, 2010 hearing, the mother had made sufficient progress in maintaining her sobriety, attending high school, and staying consistent with visitations, that the DHS anticipated transitioning to partially unsupervised visits with the children. But on March 10, 2010, the mother was arrested in Ottumwa for possession of marijuana and drug paraphernalia. In late March, the mother took a bottle of vodka from her father's house and drove around drinking. The DHS recommended that the mother be evaluated for substance abuse and start any recommended treatment. The mother procrastinated in following these directives until June 2010. The mother also missed more than half of her scheduled visits with the children since June 2010.

On August 25, 2010, the Wapello 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 October 8, 2010, and issued its ruling terminating parental rights on December 14, 2010. The court found clear and convincing evidence in support of terminating parental rights under Iowa Code section 232.116(1)(h)[1] (2009). The parents appeal from that termination order.

II. Scope and Standard of Review

Our review of the termination ruling is 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 record lacks clear and convincing evidence of the elements necessary for termination. *Id*. The State's evidence is "clear and convincing" when there are no "'serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.'" *Id*. (citation omitted).

When determining what is in the best interests of these children, we apply the framework established in Iowa Code section 232.116(2). The legislature highlighted as primary considerations: the children's safety, the best placement

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[1] 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.

for furthering their long-term nurturing and growth, and their physical, mental, and emotional condition and needs. *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010).

III. Merits

Both parents contend the record does not include clear and convincing evidence in support of termination under section 232.116(1)(h). The father also asserts that termination is not in the children's best interests under section 232.116(2). The State counters that its proof satisfied the statutory elements for termination and the parents "have already been granted far more than allowed by Iowa Code section 232.116(1)(h)." The State further argues that it is not in the best interests of the children to wait for permanency until their father is released from prison and establishes that he can remain sober and abstain from criminal activity.

We reject the father's assertions. At the time of the termination hearing, he had not seen either of his children for more than one year. The father did not expect to be paroled until April or June of 2011. Even after his parole, the DHS could not return the children to his care until he could establish that he was not engaging in substance abuse or further illegal acts. While the father has done a commendable job of obtaining his general equivalency degree and attending drug treatment in prison, these achievements do not come soon enough to benefit his children. The father argues that because the children are doing well in foster care and he will be released from prison soon, it is not in their best interests for his parental rights to be severed. This argument has not found favor in our courts: "It is simply not in the best interests of children to continue to keep

them in temporary foster homes while the natural parents get their lives together." *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). The children's safety and their long-term physical and emotional needs are best served by allowing them to become eligible for a permanent, adoptive home.

The mother's objections to termination present a closer case. She has flirted with success during the pendency of this case, but has not been able to maintain the kind of self-improvement that would allow for reunification. Most disappointing was her conduct on March 10, 2010, when she was arrested on drug charges just a day after learning that she earned unsupervised contact with her children.

Since the mother's arrest, her visits with the children have been sporadic. She claims that the expense of traveling from Omaha to Ottumwa has hindered her ability to see the children. She asked that the DHS consider placing her children in a Nebraska foster care home. But the DHS workers opted against uprooting the children from their current placement. The juvenile court determined that the mother had "only herself to blame for this situation," having decided to leave Iowa, without notice to the DHS, and give birth in another jurisdiction. In addition, at the time of the termination hearing, the mother was not working or going to school. She also had not followed through with the DHS recommendations to address her on-going substance abuse problems. She left open the possibility of reuniting with the children's father after he was released from prison. The juvenile court observed, after having been offered numerous services, the mother was "really no closer" to having her son and daughter

returned to her custody than she was more than a year earlier when they were removed.

We concur with the juvenile court's observation that the mother was not making the strides necessary with her education, work history, independent living, visitations, or substance abuse to warrant a return of the children. Her forward progress appeared to slow after the spring of 2010. "'It is unnecessary to take from the children's future any more than is demanded by the statute.'" *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990) (citation omitted). At the time of the termination order, these children had been out of their parents' care for twenty-two of the last twenty-five months. The time for termination had come.

Finally, we can identify no countervailing factors in section 232.116(3) weighing against termination of parental rights. Accordingly, we agree with the juvenile court's decision.

AFFIRMED.