

IN THE COURT OF APPEALS OF IOWA

No. 1-253 / 11-0312
Filed April 27, 2011

**IN THE INTEREST OF E.D. and L.K.,
Minor Children,**

**L.L., Mother,
Appellant,**

**W.D., Father of E.D.,
Appellant.**

Appeal from the Iowa District Court for Polk County, Colin J. Witt, District Associate Judge.

A mother and father appeal the termination of their parental rights.

AFFIRMED.

William A. Eddy of Eddy Law Firm, Indianola, for appellant-father of E.D.

Adam D. Hanson of Hanson Law Firm, Winterset for appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, Jennifer G. Galloway, Assistant County Attorney, for appellee.

Nicole Garbis Nolan, Des Moines, attorney and guardian ad litem for minor children.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

TABOR, J.

A mother appeals the termination of her parental rights to her two daughters, L.K. and E.D. E.D.'s father also appeals the termination of his parental rights.¹ Both parents contend the State failed to prove the circumstance leading to adjudication still exists despite the offer of services. The parents also assert the children can now be safely returned to their care. Accepting the juvenile court's finding that the parents were not credible witnesses, we perceive a continued risk to the children from the father's addiction and the mother's co-dependency issues and affirm the termination.

I. Background Facts and Proceedings

In December 2008, police raided the home where Wes and Leah lived with their then ten-month-old daughter, E.D., and Leah's then seven-year-old daughter, L.K. The father possessed four pounds of marijuana. A search of the family home uncovered another 1800 grams of marijuana, three grams of cocaine, and six grams of the drug Ecstasy. Both parents tested positive for tetrahydrocannabinol (THC), the active ingredient in marijuana.

Wes, who was twenty-seven years old at the time of the termination hearing, started using marijuana when he was just fourteen years old. By the time he was sixteen, he consumed marijuana on a daily basis. While in his early twenties, he started using cocaine and Ecstasy once or twice a month. He also experimented with LSD and other hallucinogens. Wes acknowledged dealing

¹ L.K.'s father appeared at the termination hearing, but does not appeal the termination of his parental rights.

drugs for five or six years before the raid. In January 2009, Wes entered an intensive out-patient substance abuse program, which he successfully completed in April 2009.

The juvenile court adjudicated E.D. and L.K. as children in need of assistance (CINA) on March 3, 2009. The Department of Human Services (DHS) offered the parents Family Safety, Risk and Permanency (FSRP) services, therapy, drug screening, and drug treatment. The children remained in the custody of Wes and Leah through the spring of 2009.

On July 4, 2009, Wes was arrested for public intoxication and violating his probation. Wes and Leah initially lied to the DHS workers, telling them Leah was home with the children when police picked up Wes. More than a month later, Leah acknowledged she had been out with Wes at the bars and was present when he was arrested. In August 2009, Wes spent two weeks in jail for the probation violation and attended a relapse prevention program. The children remained in the care of their mother through the fall of 2009. In October 2009, the juvenile court continued the CINA adjudication, finding the parents “lacked insight” and “seem to lack the motivation to develop insight” into the problems that led to the DHS involvement.

In February 2010, the juvenile court ordered Wes to undergo a “hair stat” test that revealed he had been using cocaine. The court noted that the positive drug screen revealed the father’s lack of truthfulness with the DHS workers regarding his commitment to a reformed lifestyle. Leah represented to the DHS workers that she would follow a safety plan for the children premised on Wes

moving out of the family residence. But the workers discovered later that she did not honor this plan and allowed Wes to remain in the home after his positive drug test. The juvenile court approved the removal of the children from their mother's custody on March 3, 2010. The DHS placed E.D. with Wes's parents. The DHS initially placed L.K. with her father, but soon transferred custody to her paternal grandparents after the father was accused of a domestic abuse assault against his live-in girlfriend. L.K. started therapy in April 2010; despite an invitation from the therapist, Leah did not attend any of her daughter's more than thirty counseling sessions.

In spring 2010, Wes completed the relapse substance abuse treatment program again. He did not participate in any aftercare programs or support groups for recovering addicts. Wes started his own painting business with Leah's brother, who also had a history of illegal drug use.

After her daughters were removed from her care, Leah pursued community college classes. After a couple months of delay, she eventually gained admittance to the "Healthy Transitions" program to address parenting, mental health, and self-sufficiency issues. Leah participated in this House of Mercy program from July to November 2010, but was unable to successfully complete the treatment. The House of Mercy discharge report explained that the counselors were concerned about Leah's "ongoing dishonesty" and "lack of engagement." During her time in treatment, Leah told counselors that she was using passes out of the facility to run errands, but instead spent time with Wes. Despite telling FSRP workers that she did not intend to resume her relationship

with Wes, she immediately returned to living with him after leaving the House of Mercy. The DHS case worker expressed her frustration with the mother's decision-making:

Leah has made no progress at all. She couldn't make progress at House of Mercy. She will go to therapy . . . and she will be very strong in her therapy sessions Then as soon as she walks out the door, she can't apply that in everyday life. . . .

And one significant observation of that is when she left the House of Mercy. They tried to meet with her to help her find housing so she wouldn't go back to Wes. And she walked right out the door and went back to Wes even though knowing he hadn't maintained therapy like he should have been throughout this case and has not made progress. She knows he hasn't been cooperating with services that much.

She's very dependent on him. And I believe she's always going to be dependent on him, and I don't think she's going to protect these children.

At the direction of the juvenile court, the State filed a petition to terminate parental rights on November 8, 2010. Following a December hearing, the juvenile court entered its order terminating the parental rights of the mother and both fathers on February 14, 2011. Wes and Leah filed separate appeals challenging the termination order.

II. Standard of Review

We review termination orders de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). But a de novo review does not mean that “we decide the case in a vacuum, or approach it as though the trial court had never been involved.” See *Davis-Eisenhart Mktg. Co., Inc. v. Baysden*, 539 N.W.2d 140, 142 (Iowa 1995). Our court consistently accords “great weight” to the trial court's findings of fact, especially determinations as to veracity, “because the witnesses are before [the

trial judge] and [he or she] is in a far better position to pass upon their credibility than is this court, which is limited to the printed record.” *Id.*

We highlight our deference to the trial judge’s credibility determinations in the instant case because of the juvenile court’s frank observation regarding Wes and Leah: “[T]hey are two of the least reliable witnesses the undersigned has endured in his time on the bench. Neither of them has proven they are capable of doing what they say they are going to do.”

III. Analysis

Wes and Leah both challenge the statutory grounds for termination. The juvenile court relied on Iowa Code sections 232.116(1)(d) and (h) (2009) for the termination of parental rights involving E.D. and section 232.116(1)(d) for L.K. To terminate under section 232.116(1)(d), the State was required to prove by clear and convincing evidence the following:

(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, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

Neither parent disputes the State’s proof of the first element. Instead, they contend the State failed to offer clear and convincing evidence the circumstance that led to the adjudication continues to exist. Wes claims he has “addressed his substance abuse problems and has changed his life and no longer associates

with his former friends . . . who were involved in drug use.” Leah similarly claims that all she “should have had to demonstrate was her new found insight and ability to follow a safety plan in the case of [Wes’s] relapse.”

The parents also challenge the court’s decision to terminate their rights to E.D. under Iowa Code section 232.116(1)(h). Under section 232.116(1)(h), parental rights may be terminated if the court finds by clear and convincing evidence (1) the child is three years of age or younger, (2) the child has been adjudicated CINA, (3) the child has been removed from the physical custody of the parent for at least six months of the last twelve months, or for the last six consecutive months, and (4) the child cannot be returned to the custody of the parent at the present time. Leah and Wes do not dispute that E.D. fits the age criteria, had been adjudicated CINA, and had been removed from their custody for more than six months. They challenge the State’s evidence in support of the fourth element, asserting that they can now resume care of E.D.

We reject the parents’ claims that the circumstance that led to the CINA adjudications has been fully resolved or that the children may be safely returned to their care at this time. We view the juvenile court’s factual findings as persuasive. The court stated it was “convinced that [Wes] has done little to change during the course of this case, and he has internalized almost nothing.” As for Leah, the juvenile court saw an “incongruence” between “her verbalizations and behaviors.” The juvenile court was rightly skeptical of Wes’s claim that he was not at risk of returning to the drug culture that he inhabited for more than a decade and Leah’s claim that she could protect her children from the

perils of that lifestyle. Wes admitted on the witness stand that he was a recovering drug addict, explained that “relapse is a part of recovery,” and yet claimed that he could stay drug free without any aftercare or support programs. The DHS worker testified that she learned from Wes’s mother that he continued to associate with the friends he had when he was using drugs. Leah testified that she was living with Wes but also claimed to be looking for her own apartment.

The court predicted that Wes would inevitably relapse and Leah would be unable to separate and protect the children from that circumstance. In our de novo review of the record, we agree and find that the State presented clear and convincing proof supporting the disputed elements. *See In re J.K.*, 495 N.W.2d 108, 113 (Iowa 1993) (approving termination when parents had chronic substance abuse problems: “it is simply too soon to conclude these problems will not recur”).

We also conclude that termination is in the children’s best interests under the factors outlined in Iowa Code section 232.116(2) (emphasizing (1) the children’s safety, (2) the best placement for furthering their long-term nurturing and growth, and (3) their physical, mental, and emotional condition and needs). Both E.D. and L.K. live with their paternal grandparents, who are providing stable homes and stand ready to adopt their granddaughters. The DHS worker testified that the grandparents are willing to provide the girls with ongoing contact with their parents. The worker believed continuing interaction would be beneficial to the children given their strong bonds with Leah and Wes. Finally, the parents do

not argue—and we do not find—that the factors listed in section 232.116(3) militate against termination.

AFFIRMED.