

IN THE COURT OF APPEALS OF IOWA

No. 1-319 / 11-0230
Filed May 25, 2011

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

**E.E.C., Mother,
Appellant,**

**L.A., Father,
Appellant.**

Appeal from the Iowa District Court for Johnson County, Deborah Farmer
Minot, District Associate Judge.

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

Amy L. Evenson of Larson & Evenson, Iowa City, for appellants.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Janet M. Lyness, County Attorney, and Patricia A. Weir,
Assistant County Attorney, for appellee.

Rachel Antonuccio, Iowa City, attorney and guardian ad litem for minor
child.

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

EISENHAUER, P.J.

A mother and father appeal the termination of their parental rights to their child. They contend the State failed to prove the grounds for termination by clear and convincing evidence. They also contend termination is not in the child's best interests. We review these claims de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

The child was born in September 2004 with a medical condition that causes paralysis of the lower intestine, which can result in severe and life-threatening constipation. An ileostomy was performed shortly after his birth. Over the next four months, several surgeries were completed to allow him to expel stool normally.

When the child was fourteen months old, he was admitted to the emergency room with severe dehydration and his sodium levels were critically low. Four days after his admission, it became clear the child had suffered severe brain damage. The child has been fed through a gastrostomy tube since.

The parents separated in February 2008 and the mother brought the child to Iowa. At that time, the child weighed just less than twenty-four pounds. By February of 2009, the child weighed twenty-one pounds, nine ounces and was so malnourished he was assessed to be in shock and "near death." The child was removed from the mother's care in March 2009 and was adjudicated to be in need of assistance (CINA) in April 2009.

The mother was offered services to remedy the circumstances leading to the CINA adjudication and made some progress during the course of the CINA

proceedings. Following the March 2010 permanency hearing, the mother was granted additional time to prove she could provide the medical treatment necessary to care for the child. However, concerns about her ability to parent the child remained and a termination petition was filed in July 2010. The father failed to participate in the CINA proceedings or the services offered him until he moved to Iowa and reunited with the mother shortly after the termination petition was filed. The mother and father married in September 2010.

Following trial in November and December 2010, the juvenile court entered its order terminating the mother's parental rights pursuant to Iowa Code sections 232.116(1)(d), (f), and (i) (2009), and terminating the father's parental rights pursuant to sections 232.116(1)(d), (e), (f), and (i). The parents contend the juvenile court erred because the State failed to prove these grounds for termination by clear and convincing evidence. We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

Termination is appropriate under section 232.116(1)(d) where the State proves:

(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.

The parents dispute the circumstances that led to the CINA adjudication continue to exist.

We find clear and convincing evidence supports termination of the mother and father's parental rights pursuant to section 232.116(1)(d). The mother is inconsistent with her attendance at the child's doctors' visits and has been unable to demonstrate she could provide for the child's medical needs as directed. These circumstances existed prior to the CINA adjudication and led to serious medical neglect of the child on multiple occasions, including the child's condition in February 2009 when he was described as "near death." In addition, the mother has not been forthcoming about her own shortcomings, often looking to redirect the blame instead of taking responsibility for her own actions or inaction.

Although the mother and father argue the child remained healthy during the two-month period of time leading up to the termination hearing when they exercised extended overnight visitation, the majority of the child's care during that time was left to his foster family. There is no indication the parents' combined effort to care for the child would be more successful than before removal; the child's history indicates he suffered neglect even prior to the parent's separation. The father was not involved in the child's life from the time of the CINA adjudication until August 2010, despite knowing of the CINA proceedings and the severity of the allegations against the mother. He not only left it to the mother to seek return of the child to her care, he failed to have any contact with the child until September 2010, just two months before the

termination hearing. Nor is there any evidence to support the conclusion the parents will remain together, especially in light of their tumultuous relationship.

The mother and father also contend termination of their parental rights is not in the child's best interests. In determining best interests, the court considers 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 at 37. We further conclude termination is in the child's best interests. In contrast to the neglect suffered in the care of his parents, the child made tremendous improvements while in foster care, not only in his weight but also his mobility and gross motor development. His ability to communicate verbally and nonverbally also improved. He was attending school.

The juvenile court made the following findings and conclusions in its thorough and detailed termination order:

This case is heartbreaking in many ways. Unimaginable hardship and tragedy have visited upon this family and this child. But [the child]'s story is not a tragedy. His life bears witness to the indomitable strength of the human spirit, for there can be no doubt that despite his fragile body and damaged mind, [the child]'s soul is joyful. As his foster mother said, "He just loves life." Nowhere is this more poignantly evident than in the photograph of [the child] taken in March 2009, just after his discharge from the hospital. His ravaged body is horrific, but his smile is radiant. That smile reveals so much about this extraordinary child.

[The child] loves people. He thrives on interaction with his foster family, his therapists, his providers, his schoolmates and teachers, and his family. It is clear that he can recognize people he knows, that he can form relationships with them, and that he prefers people he knows to strangers—although it seems that no one is a stranger to [the child] for long. Whether he can discern or appreciate specific familial relationships is difficult to determine. Although he is developing a few words, he does not use names or phrases for specific people. It may well be that his physical disabilities prevent him from expressing concepts that he

understands. It may also be the [the child]'s cognitive abilities do not, and may not ever, allow him to conceptualize the different relationships in his life. Regardless, the Court finds that [the child] does have a bond with his biological mother, father and brothers. He recognizes them, enjoys their company, and loves them. There is some indication that he prefers their company to that of most others. In addition, [the child] has formed a bond with his foster mother, siblings, and extended family members. This appears to be similar in all respects to his relationship with his biological family. The Court finds no convincing evidence that there is a significant distinction between the two.

[The child] is totally dependent on his caretakers. Although his chronological age is six, he is helpless to meet any of his own needs. A newborn infant can suck and swallow; [the child] cannot. An older infant can sit up on his own, hold a bottle, and feed himself small bits of solid food; [the child] cannot. A toddler can walk, run, and climb; [the child] cannot. A preschooler can complain when something hurts; [the child] cannot. The Court is heartened by the tremendous developmental progress [the child] has made while in foster care and has every hope that he will continue to make gains. Still, he will require enormous, unceasing care for the rest of his life. The damage to his body and brain may be further ameliorated, but cannot be undone. For these reasons, exceptional parenting is a necessity. Without it, regression is a certainty and death is a frighteningly real possibility. For [the child]'s caretakers, the margin of error is razor-thin. If any one of a number of things goes wrong, [the child]'s life will hang in the balance. Depending upon the situation, a caretaker's actions or inactions could result in serious debilitation or death within seconds, minutes, hours or days.

[The child]'s parents love him dearly. Their contacts with him are loving, positive, and nurturing. They go to great lengths to include [the child] in their daily lives during visits, and they encourage strong relationships between him and his brothers. Unfortunately, [the child] needs much more than his parents are able to give him. Because his needs are so exceptional, the Court finds that [the child] cannot safely be returned to the care of either parent at this time or in the reasonably near future without continuing to be at risk for adjudicatory harm. Indeed, the Court finds that if [the child] were returned he would continue to be at high risk of removal. The evidence is clear and convincing that neither parent has demonstrated the ability to meet [the child]'s medical and developmental needs at present or in the future. There are several reasons for the Court's finding: the past history of failure to meet [the child]'s needs; [the mother]'s medical, mental, and addiction issues; [the mother]'s lack of honesty; the pattern of instability in [the mother]'s life as a single parent as well as in the

parents' relationship; and [the father]'s failure to maintain contact with [the child] over an extended period of time.

. . . .
The Court finds that the child was removed from his mother's care due to a life-threatening condition that resulted from her neglect of his physical, nutritional, developmental, and medical needs. Since removal, the mother has been provided extensive services for nearly two years to assist her in developing the skills to meet this child's needs on a consistent basis, yet she has not made sufficient progress such that the child can safely be returned to her custody. For a period of at least one year prior to the child's removal, the child's father failed to maintain an active role in his life. After the child was removed, the father failed to participate in visits and services, despite the opportunity to do so. This child has been living in the limbo of foster care for nearly two years. He deserves permanency, safety and security. His parents cannot provide these now or in the reasonably near future, if ever. Further, the child has become integrated in the home of the foster family, which is willing to adopt him. Therefore, the Court finds this child's need for permanency, security, and safety, and his imminent and long-term physical, medical, mental, developmental, and emotional needs dictate that it is in his best interest to have parental rights terminated and that he be placed for adoption.

Upon our de novo review of the record, we find the juvenile court's conclusion termination is in the child's best interests is supported by the record.

AFFIRMED.