

IN THE COURT OF APPEALS OF IOWA

No. 1-409 / 11-0589
Filed June 29, 2011

**IN THE INTEREST OF T.P., M.P., and A.T.,
Minor Children,**

A.T., Mother,
Appellant,

J.T., Father of M.P. and A.T.,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Mary L. Timko,
Associate Juvenile Judge.

A mother and father appeal separately from a juvenile court order
terminating their parental rights. **AFFIRMED.**

Joseph W. Kertels, Sioux City, for appellant-mother.

Robert J. Pierson, Sioux City, for appellant-father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Patrick Jennings, County Attorney, and J. Aaron Kirsch,
Assistant County Attorney, for appellee.

Martha McMinn, Sioux City, attorney and guardian ad litem for minor
children.

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

TABOR, J.

A mother and father ask us to reverse the juvenile court order terminating their parental rights. The mother, Amparo, asserts the court should grant her more time to work toward reunification because no evidence was presented at the hearing to suggest harm to the children if additional time is granted. The father, Jason, alleges no clear and convincing evidence exists to support termination of his parental rights. He too argues for an additional six months to become a suitable parent.

Because Amparo has not made progress in treating her substance abuse and has not obtained safe housing in the time extended to her under the statute, we affirm the juvenile court's decision. We also affirm the termination of Jason's rights because he has not secured a means of supporting the children nor has he demonstrated the ability to tend to the children's emotional needs. There is no reason to believe that his circumstances will change in the next six months and further delaying termination is not in the children's best interest.

I. Background Facts and Proceedings

Amparo is the mother and Jason is the father of M.P., born February 2004 and A.T., born September 2000. Amparo and Jason married in 1999 and have been separated since 2005, though they remain legally married. Since their separation, Amparo has had primary custody of the children. Amparo is also the mother of T.P., born July 2005.¹ All three children are at issue in this appeal.

¹ T.P.'s father is currently incarcerated and is not contesting the termination of his parental rights.

In response to reports of truancy, neglect, and physical abuse, the Department of Human Services (DHS) visited Amparo's home on February 18, 2010. DHS found the home filthy and discovered many safety hazards. In addition, the DHS worker's conversation with Amparo and the children raised concern for the children's safety. That same day, DHS removed M.P., A.T., and T.P. from Amparo's home and placed them together in foster care. DHS conducted drug testing on Amparo, M.T., and A.T.; both Amparo and M.T. tested positive for cocaine. On March 15, 2010, a juvenile court adjudicated M.P., A.T., and T.P. as children in need of assistance (CINA).

On March 2, 2010, Amparo entered the Women and Children's Program for drug treatment, but was discharged on March 15, 2010, because she did not have insurance. She subsequently enrolled in outpatient treatment with Jackson Recovery Center treatment facility and attended six of her twelve scheduled appointments. After her discharge on June 16, 2010, she was referred to Community and Family Resources for continued treatment.

On May 17, 2010, the court adopted the DHS case permanency plan and ordered Jason to complete a psychological evaluation. The court also ordered Amparo to complete a chemical-dependency assessment and follow all recommendations.

On July 19, 2010, the court granted Amparo and Jason a six-month extension to reunite with the children, due to the favorable results of Jason's psychological evaluation and Amparo's recent graduation from the Community and Family Resources program. Jason's psychological evaluation indicated that

he “would appear to be capable of sufficient nurturing and empathy necessary for appropriate parenting” and stated that he “has the advantage of seeming to be quite non-defensive, desiring to examine self and make improvements where necessary concerning major areas, such as employment and relationships, but also specifically as it may concern parenting.” The psychologist also recommended continued counseling for Jason. At the time of the hearing, Jason was employed as a truck driver. Amparo’s discharge report from Community and Family Resources rated her “significantly improved.” She was to continue “after-care” with Jackson Recovery Center.

The court ordered both parents to obtain and maintain employment and suitable housing. The court also ordered both parents to participate in services as recommended by DHS. The court instructed Amparo to complete treatment at Jackson Recovery Center and to undergo drug tests every two weeks. The judge expressed hope that the children would be able to begin trial-home visits by the December permanency hearing and emphasized the importance of the next six months.

In September 2010, after DHS confirmed Jason’s residence was safe and adequate space existed for both children to sleep, Jason began having overnight visits with M.P. and A.T. Jason expressed concern that he would not have enough food for the children to eat and canceled a weekend visit due to these concerns. To facilitate the weekend visits, DHS occasionally provided financial support and food. DHS noted that Jason seemed “overwhelmed” with the idea of having the children full time and was concerned with his ability to parent M.P.

because of M.P.'s behavioral difficulties. DHS reported that Jason's mother provided most of the care for the children during the weekend visits.

In October, DHS ended Jason's weekend visits and returned to supervised weekly visits, in part because Jason did not take very good care of the children's hygiene and did not follow through with A.T.'s head-lice treatments. In addition, DHS expressed concern with Jason's practice of yelling at M.P. and threatening to "whip his butt." DHS warned Jason multiple times that this was inappropriate, especially in light of the fact that T.P.'s father had physically abused M.P. in the past. After DHS ended weekend visits, Jason attended a two-hour class on Attention Deficit Hyperactivity Disorder (ADHD) at Mercy Hospital to address his difficulties parenting M.P., who has ADHD. In January 2011, he also attended an all-day parenting class at Mercy called Light a Child's Life.

On December 30, 2010, the State petitioned for termination of parental rights. At the termination hearing on February 24, 2011, Amparo testified that she had stopped attending AA meetings and admitted to using cocaine earlier that week. She was discharged in November 2010 from outpatient treatment after she stopped attending services and would not respond to calls from the treatment center. In addition, her drug screens indicated positive for cocaine use in May, August, September, and December of 2010. At the time of the termination hearing, Amparo was staying with a friend, but told the court she was moving out of town "today," to live with another friend in Remsen, citing her need to leave Sioux City in order to "stay clean." Amparo frequently canceled her

supervised visits with the children and DHS noted that parenting continues to be very difficult for her.

Chronically unemployed, Jason last worked for a period five months prior to the termination hearing, and testified that he had applied for several jobs since that time but had been unable to obtain an interview. Jason, who is thirty-nine years old, resides with his mother and stepfather in their three-bedroom home. The household income from his parents' social security and disability benefits is around \$1500. Jason's mother testified at the termination hearing, stating that she is willing to serve as a support person for Jason and the children should the children be placed with him. Jason testified to attending five or six sessions with a counselor at the Veteran's Administration (VA) clinic. Jason takes medication to treat his depression. Jason expressed a willingness to care for all three children, despite the fact that T.P. is not his biological son. The DHS case worker testified that Jason has "great difficulty parenting M.P." because the child "can become very aggressive and not follow instructions." The worker also testified that the children are adoptable, and stated that the goal is to place the three children together. The children's guardian ad litem recommended that both the mother's and the father's parental rights be terminated.

On April 1, 2011, the court terminated Amparo's parental rights pursuant to Iowa Code section 232.116(1)(d), (f), and (l) and terminated Jason's parental rights pursuant to section 232.116(1)(d) and (f) (2009).

II. Scope and Standard of Review

We exercise de novo review in termination appeals. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). While we give weight to the juvenile court's findings of fact, we are not bound by them. *Id.* We give no weight to allegations that are not supported by the record. See *In re Nash*, 739 N.W.2d 71, 73 n.3 (Iowa 2007).

The State must prove grounds for termination under section 232.116(1) by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). In any decision whether to terminate parental rights, our primary concern is the best interests of the children. *Id.* "There is a rebuttable presumption that the best interest of a child is served when custody is left with the natural parents." *In re S.J.*, 451 N.W.2d 827, 830 (Iowa 1990).

III. Analysis

A. Mother's Appeal

We first address Amparo's appeal. Amparo argues she was following the requirements listed in the case permanency plan at the time of the termination hearing and therefore should be granted an additional six months to work toward reunification. Amparo's failure to secure stable housing or attend treatment and her admitted cocaine use at the time of the termination hearing contradicts this assertion.

A parent's failure to address substance-abuse problems constitutes a failure to cooperate in correcting the circumstances that led to the adjudication. *In re T.C.*, 489 N.W.2d 53, 55 (Iowa Ct. App. 1992). "Where the parent has been

unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting.” *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). “Termination must occur if enough time has passed and the parent still cannot take care of the child. After twelve months, the case must be viewed with a sense of urgency.” *In re L.S.*, 483 N.W.2d 836, 840 (Iowa 1992) (citations omitted). Children deserve the opportunity to establish permanency and stability in their lives. See *In re J.S.*, 470 N.W.2d 48, 50 (Iowa Ct. App. 1991).

Amparo contends no evidence was presented at the hearing to suggest harm to the children if the court delayed placement for another six months. We find this contention to be unpersuasive. The court provided Amparo with sufficient time to obtain stable housing, yet she planned to move in with a friend on the day of the hearing. In addition, there is no reason to believe that Amparo can successfully address her substance-abuse problem in the next six months. Under the current circumstances she cannot provide a suitable environment for the children. Her children should not be forced to wait any longer for a resolution. Accordingly, we affirm the district court’s termination of parental rights pursuant to sections 232.116(1)(d), (f), and (l).

B. Father’s Appeal

We next address Jason’s appeal, which challenges the sufficiency of the evidence supporting his termination pursuant to sections 232.116(1)(d) and (f)

and requests a six month extension of time to reunite with his children. Section 232.116(1)(d) requires:

(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.

We accept that section 232.116(1)(d)(1) has been satisfied and focus primarily on section 232.116(1)(d)(2).

The second ground for the termination of Jason's parental rights, section 232.116(1)(f), requires:

(1) The child is four years of age or older.

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

We also accept that sections 232.116(1)(f)(1)–(3) have been satisfied, and we focus our analysis on 232.116(1)(f)(4). While the juvenile court relied on both 232.116(1)(d) and (f) in terminating Jason's rights, we need only find grounds under one of the sections in order to affirm the termination of parental rights. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

Jason argues that there is no clear and convincing evidence that he would be unable or unwilling to provide for the physical needs of the children if given an additional six months to secure employment. Although Jason's financial situation is not ideal, parental rights may not be terminated solely based on economic factors. *In re R.M.*, 431 N.W.2d 196, 198 (Iowa Ct. App. 1988). In the termination decision, the district court relied on the fact that Jason lives with his parents, in a home with only three bedrooms, and is currently unemployed. The court concluded that he is incapable of providing "even the basic necessities of life" for his children.

As Jason's brief points out, government benefits would likely allow him to support the children financially until he is able to secure employment, though he has not presented evidence suggesting he has taken any steps to obtain benefits. In regard to Jason's living situation, although it would be preferable for the children to have their own rooms, DHS reported that there is adequate space for the children to sleep when it authorized weekend visits in 2010. In addition, cohabitation with the grandparents does not appear to be to the children's detriment. DHS reported that Jason's mother is involved with the children, and at the termination hearing she expressed her willingness to help her son with their care. Jason has lived with his parents for most of his adult life, and in this respect, his living situation is stable and consistent. Jason and his mother also testified that they are looking for a home with four bedrooms and plan to move sometime in the near future. For these reasons, we do not find that Jason's financial situation is a sufficient ground for termination.

While the district court does not appear to rely on Jason's mental health in the termination decision, it was an important issue at the hearing and Jason's appeal challenges the sufficiency of the evidence regarding his mental-health needs. Jason has testified to having mental-health issues including depression, introversion, and a difficulty accepting criticism, and has stated that these issues do affect his parenting. Although Jason's psychological evaluation from June 2010 did not raise any significant concerns regarding Jason's parenting ability, the psychologist recommended Jason's enrollment in counseling. Jason did not begin counseling until December of 2010, after he reported to DHS that he was very depressed. Jason testified to attending several counseling sessions at the V.A. clinic during the period of December 2010 to March 2011. However, he testified that he is no longer seeing the counselor, though he did begin a new depression medication in early 2011.

Jason's delay in seeking counseling and failure to continue the sessions indicates a lack of serious commitment to addressing his mental-health issues and gives rise to concerns that those issues may hinder his ability to parent his children. Overall, Jason's efforts to follow DHS's recommendations have been minimal. In the span of a year, Jason has attended only two parenting classes, has not secured employment or benefits to support his children, and has failed to pursue counseling consistently.

His efforts to become involved with his children have also been meager. For example, Jason attended therapy once with M.P. but stated that he did not attend again because "he wasn't asked back." After DHS pointed out that the

counselor had extended an open invitation to participate in M.P.'s therapy, Jason instead gave the excuse that he "didn't know if it was good for M.P." On another occasion, A.T.'s foster parents invited Jason to A.T.'s tenth birthday party, but Jason did not attend because he forgot. This type of behavior supports the juvenile judge's assessment that Jason is unable to provide the necessary emotional care for the children.

Jason's efforts to improve his parenting skills have been too little and come too late. When DHS stopped Jason's weekend visits in October 2010, it was largely because Jason failed to properly tend to the children's hygiene and yelled frequently at M.P. Only after the children returned to supervised weekly visits did Jason finally heed DHS's suggestion to attend parenting classes. Jason admitted to having trouble parenting M.P., but testified that things had improved since M.P. began ADHD medication and Jason attended an ADHD parenting class. However, Jason did not enroll in a Catholic Charities parenting class in January 2010 because he "figured that the classes [he] took were sufficient." At the termination hearing, a DHS caseworker testified that Jason is not prepared to handle M.P.'s behavioral difficulties or provide care for the children on a day-to-day basis. By only doing the bare minimum required of him, Jason has failed to ensure that he will be able to handle the difficult job of parenting a child with special needs.

The most recent DHS report states "[b]oth parents are mostly receptive to services, they both work with [DHS] but are not always eager to take suggestions that will help them in their lives." For example, a DHS worker often counseled

Jason against having adult conversations in front of his children at his supervised visits, but he continued to do so. Jason's relationship with a prior girlfriend, Heather, raises further concerns because of her history of alcohol abuse. Jason testified at the termination hearing that he does not see a problem with the children being around Heather, and the only reason he would not allow her around the children is because DHS prohibited it. This testimony indicates that Jason does not completely accept the need to create a safe environment for the children. In conclusion, Jason has not demonstrated that he is willing or able to improve his parenting skills substantially in the time given to him.

It is DHS's goal to place all three children together in a permanent home. On multiple occasions, A.T. expressed concern that she and M.P. would be separated from T.P. if Jason receives custody of A.T. and M.P. At the termination hearing, Jason testified that he would be willing to take custody of T.P. in order to avoid separating the children. However, as discussed above, Jason is not in a position to take care of his own children, and would not be able to provide for a third child to whom he has no legal obligation.

In a conversation with his DHS case worker in December 2010, Jason admitted that "he is not able to provide for or parent the children at this time." Although we do not doubt Jason's love for his children, his circumstances have not improved and he remains unable to care for them. Jason was granted ample time to improve his circumstances and there is no compelling reason to extend him additional time to do so. "[W]e 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.” *In re P.L.*, 778 N.W.2d 33, 41 (Iowa 2010). Accordingly, we affirm the district court’s termination of Jason’s parental rights.

Neither parent advances an argument under subsections 232.116(2) or (3). Accordingly, we do not find that those provisions pose any bar to termination.

AFFIRMED.