

IN THE COURT OF APPEALS OF IOWA

No. 1-561 / 11-0754
Filed August 10, 2011

IN THE INTEREST OF B.W.,
Minor Child,

B.K.W. JR., Father,
Appellant.

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

A father appeals the termination of his parental rights to his child.

AFFIRMED.

John J. Bishop, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, Jerry Vander Sanden, County Attorney, and Kelly Kaufman, Assistant
County Attorney, for appellee.

Thomas Viner, Cedar Rapids, attorney and guardian ad litem for minor
child.

Considered by Sackett, C.J., and Vaitheswaran and Tabor, JJ.

TABOR, J.

A father who is living “couch to couch” asks us to reverse the termination of his parental rights and allow him to reunite with his five-year-old son. Because we find the State established the boy cannot be returned to the custody of his father at the present time and severance of the parental ties is in the child’s best long-term interests, we affirm the juvenile court.¹

I. Background Facts and Proceedings

At the age of seventeen, Bart became a father. His live-in girlfriend, Jessica, gave birth to B.W. in March 2006. The following September, the family came to the attention of the Department of Human Services (DHS) when the police responded to a report of domestic violence. Bart had pushed Jessica, who was holding their son. Bart then threw a jar of Vaseline toward his girlfriend, but instead struck six-month-old B.W. in the face. Bart was charged with child endangerment and entered a plea of guilty. B.W. remained in the care of his mother.

While Bart was living at a community correctional facility, the DHS investigated a report that Jessica was not providing proper care and supervision for then one-year-old B.W. The workers discovered that Jessica allowed a total of seven pit bulls inside of her house; two of the pit bulls had recently killed another dog in the back yard. Jessica said that she was boarding the dogs in return for rent money. Jessica allowed two of the pit bull owners to babysit for B.W. Investigators also found dog feces, urine, and other garbage throughout

¹ The juvenile court also terminated the parental rights of B.W.’s mother, Jessica. She did not file an appeal.

the home. The mother did not understand DHS workers' concern for B.W.'s welfare living in those conditions. The juvenile court adjudicated B.W. as a child in need of assistance on May 30, 2007. The court allowed B.W. to stay with Jessica, who signed a safety plan, agreed to clean her home, and obtain pre-approval from the DHS for B.W.'s caretakers.

But in October 2007 the DHS workers again grew concerned about B.W.'s situation. They learned Jessica left marijuana within the child's reach and allowed Bart to visit in violation of the no-contact order. At the same time, Bart was dating a woman he met while in the community correctional center and was not cooperating with drug testing requested by the DHS. Removal of the child occurred on October 23, 2007.

In March 2008, the juvenile court articulated that the permanency goal was still to return the child home, but determined that family foster care was the appropriate placement at that time. The court noted the family was receiving a variety of counseling and instructional services. The court found the father was an inappropriate caregiver so long as he declined to participate in drug testing. In September 2008, Bart's visits were changed from semi-supervised to fully supervised because he was untruthful with DHS workers concerning his exposure of B.W. to unapproved caregivers. Despite that concern, authorities were encouraged that Bart found a job and was satisfying the terms of his probation.

The State filed its first petition for termination of parental rights on November 14, 2008, and the court set trial for March 31, 2009. That trial was

continued by agreement of the parties to allow Bart additional time to demonstrate he could safely parent B.W. The DHS initiated a trial home placement with Bart in January 2009. That arrangement lasted until October 19, 2009, when case workers were increasingly unable to complete safety checks at Bart's home. The case worker explained:

There would be a week go by and nobody would know where Bart and [B.W.] were. And also day care, [B.W.] was supposed to be at day care. Wasn't at daycare so nobody had any contact for a week period of time.

The DHS workers also realized Bart was violating the permanency plan directives by allowing Jessica to have unsupervised visits with B.W. Bart explained: “[S]he called me and wanted to see her son and I let her see her son.”

The State filed a second petition for termination of parental rights on November 5, 2010. The district court held a hearing on March 29, 2011, and entered an order terminating the parental rights of both parents on May 3, 2011. Bart appeals.

II. Scope and Standard of Review

We review termination orders de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010) (“Although the court has to use its best judgment in applying the factors contained in the statute, this does not mean we review its decision for an abuse of discretion.”). We are not bound by the juvenile court’s findings of fact, but we accord them weight, especially in assessing witness credibility. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination

under section 232.116. *Id.* Evidence is considered “clear and convincing” when there are no “serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.” *Id.*

III. Analysis

A. Statutory Ground for Termination

Bart asserts the State failed to meet its burden to prove that his rights should be terminated pursuant to Iowa Code section 232.116(1)(f) (2009).² He challenges only the fourth element of this provision: that B.W. could not be returned to his father’s custody at the present time as provided in section 232.102(9) and section 232.2(6).

As the first point of our analysis, we disagree with Bart’s argument that the ground supporting termination in section 232.2(6) needs to be the same ground on which the child was originally adjudicated as a CINA. A child’s reunification with a parent would not be appropriate even if a new and different CINA ground had arisen during the time that the child was removed from the parents’ care. See *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa Ct. App. 1995) (finding child cannot

² Iowa Code section 232.116(1)(f) provides:

[T]he court may order termination . . . [if] [t]he court finds that all of the following have occurred:

- (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.

be returned to the parental home if any of the definitional grounds in section 232.2(6) exist).

In our de novo review, we find clear and convincing evidence that if B.W. were returned to Bart's custody the child would suffer harmful effects as a result of mental injury caused by Bart's inconsistent parenting, as a result of Bart's failure to provide a reasonable degree of care in supervising him, and as a result of Bart's inability to provide adequate shelter and other essentials. See Iowa Code § 232.2(6)(c), (g).

Bart admitted at the termination hearing that he was not ready to resume care of his son. When asked what he wanted "the court to do today as far as permanency for [B.W.]," Bart responded:

I don't know. I want to keep him with family regardless. Like, I want my son back, but I have to get a permanent residence and all that kind of stuff. I just want to keep him with family. He don't need to be in foster care.

Bart was twenty-two years old, homeless, and unemployed at the time of the termination hearing. He had been bouncing between temporary stays at his father's house, his mother's house, and the residences of girlfriends. Bart did not take advantage of the time granted to him by the court to achieve reunification. In the months leading up to the termination proceedings—rather than securing employment, housing, and his general education diploma—Bart picked up convictions for public intoxication and misdemeanor theft; dated as many as seven different women, impregnating two of them; received a founded child abuse assessment for leaving B.W. alone; and kept a very hit-and-miss visitation schedule with his son. Given Bart's poor decision making and pattern of

irresponsible behavior, we conclude, as did the juvenile court, that B.W. cannot presently be returned to the custody of his father as provided in section 232.102.

B. *Best Interests of the Child*

In his second assignment of error, Bart argues the juvenile court erred in finding that termination was in B.W.'s best interests. The best-interest test is limited to the considerations contained in section 232.116(2). *P.L., 778 N.W.2d* at 39. That section provides:

In considering whether to terminate the rights of a parent under this section, the court shall give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child.

Iowa Code § 232.116(2).

In our de novo review, we find B.W.'s mental and emotional condition is best served by terminating Bart's parental rights and finding a stable and permanent placement for the child.

Bart contends that "but for one foolish mistake" of allowing Jessica unauthorized visits with their son, the CINA case would have been "successfully discharged." We think this contention oversimplifies the circumstances. Bart's trial home placement was not ended solely because he broke rules restricting the mother's contact. The DHS workers also had a difficult time monitoring B.W.'s safety during the trial home placement. Since the termination of the trial home placement, Bart has not shown the kind of stability necessary for proper parenting. Worst of all, Bart has been unreliable in visiting his son, resulting in great disappointment and heartache for the child.

In his own testimony, Bart described his son as “a confused little boy. He has anger built up inside of him and he’s not taking it out the right way.” The social workers agreed with Bart’s assessment and attributed B.W.’s anger to Bart’s inconsistency in his visitation and parenting role. B.W.’s service provider testified that she had no doubt that Bart and B.W. loved each other, but she questioned the security of their bond:

[B.W.] doesn’t know if he’s going to see Bart, when he’s going to see him again or if Bart is going to be at the visits, and I think that truly affects his ability to be able to develop that safe, secure bond with Bart.

B.W. has lived in five different homes during his five years of life. He deserves some consistency and permanency as he enters his school years. *See In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) (“The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.”). We are concerned by the escalating aggression displayed by B.W. and see an urgent need for the DHS to find him a stable placement that will end the painful uncertainty of the interactions with his father. Termination is a necessary first step to promote B.W.’s long-term nurturing and emotional growth.

Bart does not offer an argument under Iowa Code section 232.116(3) and we find no factors in that section that would countermand the necessity of termination.

AFFIRMED.