

IN THE COURT OF APPEALS OF IOWA

No. 1-688 / 11-1138
Filed September 21, 2011

**IN THE INTEREST OF D.S., J.W.S., IV,
C.N. and D.N.,
Minor Children,**

J.S., III, Father of D.S. and J.W.S.,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Associate Juvenile Judge.

A father appeals the district court's order terminating of his parental rights to his two children. **AFFIRMED.**

Tod J. Deck of Deck Law, Sioux City, for appellant father of D.S. and J.W.S.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Patrick Jennings, County Attorney, and Dewey P. Sloan, Assistant County Attorney, for appellee State.

Patrick H. Tott, Sioux City, for appellee mother.

Robert J. Pierson of Robert J. Pierson Law Office, Sioux City, for appellee father of C.N. and D.N.

Lesley D. Rynell, Sioux City, attorney and guardian ad litem for minor children.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

VOGEL, P.J.

Josh seeks to have the termination of his parental rights to his two sons reversed. The district court terminated rights as to both J.S., born 2006, and D.S., born 2007, under Iowa Code section 232.116(1)(d) and (e) (2011), as well as subsection (h) as it pertains to D.S. Although the record reveals Josh's love for the boys, we agree with the district court that he is simply unable to "provide them with a safe environment" because he lacks the social, emotional and intellectual capability "to adequately see to the needs of active and growing children."¹

Our scope of review was well summarized in the recent case *In re D.W.*:

Our review of termination of parental rights proceedings is de novo. We are not bound by the juvenile court's findings of fact, but we do give them weight, especially in assessing the credibility of witnesses. We will uphold an order terminating parental rights if there is clear and convincing evidence of grounds for termination under Iowa Code section 232.116. 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."

791 N.W.2d 703, 706 (Iowa 2010) (citations omitted). Further, we may affirm the district court if we find clear and convincing evidence supports any one of the statutory grounds for termination found by the district court. *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2002).

Josh argues there is not clear and convincing evidence to support termination under Iowa Code section 232.116(1)(d), which provides:

The court finds that both of the following have occurred:

¹ The mother's rights were also terminated, but she neither appeared for the termination hearing nor appealed the ruling.

(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.

Josh first asserts the child in need of assistance adjudication lacked “a finding that any of these children were physically or sexually abused or neglected.” The adjudicatory order stated that the parties stipulated the children would be adjudicated “for the reasons set forth in the Children in Need of Assistance Petition filed on September 22, 2009.” One of the grounds for adjudication in that petition alleged that under Iowa Code section 232.2(6) (2009), D.S. and J.S. are children in need of assistance because each is a child:

b. Whose parent, guardian, other custodian, or other member of the household in which the child resides has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.

c. Who has suffered or is imminently likely to suffer harmful effects as a result of any of the following:

.....

(2) The failure of the child’s parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.

The adjudicatory order then ordered that D.S. and J.S. be found to be in need of assistance “pursuant to sections 232.2(6)(b) and (c)(2).” Josh’s assertion is belied by the record created by the district court.

Nonetheless, Josh maintains that even if such a finding had been made, the record does not support that “the circumstance continues to exist despite the offer or receipt of services.” Iowa Code § 232.116(1)(d)(2) (2011).

The boys were initially removed from Josh and the boys’ mother’s home in November 2010, due to the extremely chaotic environment in the home, in addition to a lack of structure and parenting in the home, stemming from the parents’ many problems, including Josh’s mental health concerns. Since the boys have been in family foster care, their physical development and social skills have improved dramatically. However, when Josh participates in weekly supervised visitation, the boys’ behavior regresses and Josh is not able to step in with any sort of parental guidance to redirect the boys’ uncontrolled behavior. As Department of Human Services veteran social worker/case manager, Mary Kay Renken, testified:

They have just flourished with that [foster home] structure and stability and consistency that they have been provided there. On the flipside of that, when I have observed the supervised visits with [Josh], it is just utter chaos. . . . And [Josh] has a great deal of difficulty even with many prompts just trying to sit down and—and follow through with any type of activity or conversation or anything.

The record includes Josh’s psychological evaluation, indicating he suffers from bi-polar disorder (as self-reported), and has an obsessive compulsive personality disorder. Many of his problems appear to stem from a severe neck injury he suffered in a motor vehicle accident in 2002, causing him great difficulty in processing information. To his credit, Josh has attempted to follow the advice of his mental health counselors and follow the many services provided during the pendency of this case. Two witnesses on his behalf gave him warm compliments

on his parenting ability. Nonetheless, the record does not support that he has been able to make any progress in improving his parenting skills or his ability to interact with his boys. His short-term memory problems and inability to process information limits his ability to act without prompting from others. The testimony supports the boys would not be safe if in his unsupervised care.

Although this is a difficult situation for Josh, our primary focus still remains on the safety of the children. Iowa Code section 232.116(2) provides in part:

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. This consideration may include any of the following:

a. Whether the parent's ability to provide the needs of the child is affected by the parent's mental capacity or mental condition

See also In re J.E., 723 N.W.2d 793, 802 (Iowa 2006) (Cady, J., concurring specially) (stating a child's safety and need for a permanent home are the defining factors in a child's best interests).

On our de novo review, we agree with the district court that termination of Josh's parental rights to D.S. and J.S. under Iowa Code section 232.116(1)(d) was proved by clear and convincing evidence. We therefore affirm.²

AFFIRMED.

² Josh raises no claim that Iowa Code section 232.116(3) should weigh against termination, and even if such a claim were raised, we would find none of the enumerated circumstances exist on this record.