IN THE COURT OF APPEALS OF IOWA

No. 1-774 / 11-1257
Filed October 5, 2011

IN THE INTEREST OF M.S.R.,
Minor Child,

A.S.L. and T.R.H., Parents,
Appellants.

Appeal from the Iowa District Court for Wright County, James A. McGlynn, Associate Juvenile Judge.

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

Douglas Cook of Cook Law Firm, Jewell, for appellants.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant County Attorney, and Eric R. Simonson, County Attorney, for appellee.

Jane Wright, Forest City, attorney and guardian ad litem for minor child.

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

TABOR, J.

The question in this termination-of-parental-rights appeal is whether the juvenile court should have granted a six-month continuance so the parents could have another chance to learn the specialized skills necessary to care for their one-year-old son, who was born with a serious medical condition affecting his lungs and intestines. Because the parents failed to embrace the training offered by the pediatric facility that cared for M.R. and showed little commitment to visiting their son during his seven-month stay there, we find no basis for expecting that they will change their behavior given additional time. In our de novo review, we find it is not in the child's best interests to delay the termination.

I. Background Facts and Proceedings

M.R. was born in May 2010 with numerous physical abnormalities. His condition is known as congenital diaphragmatic hernia with pulmonary hypoplasia and pulmonary hypertension. In lay terms, he was born with a hole in his diaphragm, allowing his intestines to move into his chest during development in utero. As a consequence, the child's lungs are small and abnormally formed. He also developed an abdominal abscess that destroyed some of his intestine. He stayed in the University of Iowa Hospitals Neonatal Intensive Care Unit from his birth until September 2010.

In October 2010 the child was adjudicated as a child in need of assistance (CINA) based on Iowa Code section 232.2(6)(e) (2009)[1]. The juvenile court

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[1] This section provides:

> "Child in need of assistance" means an unmarried child: . . . who is in need of medical treatment to cure, alleviate, or prevent serious physical

found the parents were unable to meet the child's "critical medical needs." A report from a neonatologist advised the court that M.R. would be a "fragile and chronically ill child for the next several years." He required oxygen therapy, a feeding tube, and medication for high blood pressure after he left the hospital. The doctors expressed frustration with difficulty in contacting M.R.'s parents and reported that the parents only visited the infant in the hospital five times since his birth.

The Department of Human Services (DHS) placed M.R. with a foster family in late October 2010, but he was back in the hospital by early November 2010 because of medical complications. With his parents' agreement, the DHS moved M.R. to ChildServe[2] in Johnston upon his discharge from the University Hospitals.

In December 2010, the parents signed a "Contract of Expectations" with the DHS and ChildServe, indicating that they would "actively participate in scheduled visitation" with M.R. and that they understood "they both needed to be trained on caring for [M.R.]." As part of the training, ChildServe required both parents to stay separately at the facility overnight for a minimum of forty-eight hours (Friday morning through Sunday morning) to "exhibit their ability to care for [M.R.'s] needs and show the skills they have learned before [M.R.] would be able to return home." The "Contract of Expectations" noted transportation was

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> injury or illness and whose parent, guardian, or custodian is unwilling or unable to provide such treatment.

Iowa Code § 232.2(6)(e).

[2] ChildServe is a non-profit organization that provides specialized pediatric health care services.

available for the parents from their home in Clarion to the Johnston facility. The document was translated into Spanish because neither parent understood English. The DHS also assigned a bilingual social worker to the family.

After making some initial progress, the parents' visits with M.R. dwindled. The parents were allowed unlimited visitation with their son at the ChildServe facility. The parents visited M.R. once in November 2010; seven times in December 2010; nine times in January 2011; six times in February 2011; once in March 2011 and not at all in April 2011.[3] The father visited M.R. once in May. Neither parent visited M.R. at all in June or during the first two weeks of July leading up to the termination hearing.

By May 2011, the DHS reported to the court that the parents still had not learned "how to operate the feeding tube, administer medication and nebulizer treatments." The parents scheduled their overnight visits, but failed to show up at the ChildServe facility. The DHS also had concerns about the suitability of the parents' one-bedroom basement apartment, which was musty from water damage and did not offer enough space for M.R.'s medical equipment in addition to the parents' two other children. The DHS worker had helped the parents locate a trailer home, but they were unable to afford the move because the father lost his full-time employment.

As ChildServe was ready to discharge M.R., the DHS explored the option of placing him with a foster family. The DHS identified a foster family in Iowa City capable of caring for M.R. following his discharge. The foster parents obtained

[3] The mother gave birth to another child in April.

the training necessary to provide for M.R.'s specialized care and their home was a pre-adoptive placement. The DHS placed M.R. with this foster family in late June 2011. The DHS worker testified that M.R. was developmentally delayed and needed therapy for his gross and fine motor skills and speech.

On June 30, 2011, the State filed a petition seeking to termination parental rights. The juvenile court heard testimony on July 14, 2011. The parents testified that the mother's pregnancy, the unpredictability of the father's job, and language barriers had prevented them from completing the training offered by ChildServe. The parents acknowledged they were not prepared to assume M.R.'s care right away, but pledged they would learn to care for him. The father also testified that he was working more regular hours and the family planned to move out of the basement apartment.

On July 28, 2011, the court issued its ruling terminating parental rights. The court held:

> There is no reason to believe that the parents will make any greater effort in the next six months than they have in the last six months. . . . [T]hese parents squandered their best opportunity to gain reunification when the child was at ChildServe . . . [which] was ready, willing and able to expend considerable resources, including hands-on training, virtually unlimited transportation, language interpretation and daycare for the other children. . . . It would be difficult, if not impossible, to replicate the constellation of services which were passed up by the parents.

The parents appeal.

II. Standard of Review

We review termination orders de novo, *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010), meaning that we have the ultimate responsibility to assess the

entire record. *See Jensen v. Jensen*, 261 Iowa 38, 42, 152 N.W.2d 829, 832 (1967). We are not bound by the juvenile court's factual findings, but we defer to them, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010).

Our court will uphold an order terminating parental rights if there is clear and convincing evidence of grounds for termination under Iowa Code section 232.116. *Id.* Even when the State satisfies the statutory grounds for termination under section 232.116(1), our decision to terminate parental rights must reflect the child's best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). The best-interest determination focuses on the child's safety; the child's physical, mental, and emotional condition and needs; and the placement that best provides for the child's long-term nurturing and growth. Iowa Code § 232.116(2); *see In re P.L.*, 778 N.W.2d at 39.

III. Merits

The parents do not contest the statutory grounds for termination. They only argue that termination at this time is not in M.R.'s best interest. They contend that they deserve more time to reunify with M.R. because they faced daunting circumstances—including a low income, poor housing options, minimal education, lack of fluency in English, difficulty in finding care for M.R.'s older sibling, and the mother's pregnancy and birth of another child. While the parents point to legitimate hardships in their lives, "[a]t some point, the rights and needs of the child rise above the rights and needs of the parents." *See In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997), *overruled on other grounds by P.L.*,

778 N.W.2d at 39. M.R. suffers grave medical conditions and needs parents who have the drive and commitment to gain competency in the skills necessary to keep him alive.

Iowa Code section 232.104(2)(b) gives juvenile courts the option of continuing placement for six months after a permanency hearing, allowing the court to

> [e]nter an order pursuant to section 232.102 to continue placement of the child for an additional six months at which time the court shall hold a hearing to consider modification of its permanency order. An order entered under this paragraph shall enumerate the specific factors, conditions, or expected behavioral changes which comprise the basis for the determination that the need for removal of the child from the child's home will no longer exist at the end of the additional six-month period.

This statute does not allow a juvenile court to continue placement unless it can support its rationale for finding the need for removal will no longer exist at the end of the six-month extension. *In re A.A.G.*, 708 N.W.2d 85, 92 (Iowa Ct. App. 2005). A court may decline to grant the continuance when it is uncertain about the parents' progress. *Id*.

The juvenile court stood unconvinced by the parents' assurances at the termination hearing that they would now learn the necessary skills to care for their son. M.R. has been out of his parents' custody since birth. In the four months leading up to the termination hearing, they visited their son just two times. The parents' difficult circumstances may explain not making the ninety-minute trip from Clarion to Johnston every day. But they do not excuse the parents' near abandonment of their son during his convalescence and early development. In our de novo review of the record, we reach the same

conclusion as the district court. Without more evidence than a parent's belated pledge to make progress, a six-month extension is not warranted.

Even on appeal, the parents do not offer a confident evaluation of their own prospects, suggesting that the continuance could go either way:

> The parents are requesting an additional six months to care for [M.R.]. If they are successful they will have proved they deserve the additional time and termination was premature. The State's goal of preserving the family will be met and siblings will be reunited.
>
> If, as the court predicts, they do not follow through, there is no harm to [M.R.].

We disagree with the parents' assertion that given "his age and condition, the status of this termination will mean nothing to [M.R.] in the next year." A child's safety and his need for a permanent home are "the defining elements in a child's best interests." *See In re J.E.*, 723 N.W.2d 793, 802 (Iowa 2006) (Cady, J., concurring specially). M.R. would be approaching his second birthday by the end of the six-month continuance; this time is critical to his physical, mental, and emotional development. Moving toward adoption in a safe and stable home will be in his best interests. *See* Iowa Code § 232.116(2) ("[T]he 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.").

The parents raise two other points that merit discussion. First, they note that our supreme court has held that whenever possible brothers and sisters should be kept together. *See In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994). M.R. has an older brother and a younger sister who live at home with the

parents. Sadly, because of his health issues, M.R. has not had a chance to forge a bond with his siblings. In this case, we conclude that the goal of sibling reunification is overshadowed by M.R.'s best interests in being with caretakers who have shown the ability to handle his critical medical needs. *See id* (finding it was not in child's best interest "to now seek to establish a relationship with sibling he does not even know").

Second, the parents draw our attention to Iowa Code section 232.116(3)(d), which grants a juvenile court discretion not to terminate if it is necessary to place the child in a facility for care and treatment and continuation of the parent-child relationship does not prevent a permanent placement for the child. This code section may have helped the parents' cause if M.R. had continued to reside at ChildServe, but now that he is with a pre-adoptive foster family, we find that it does not apply to his situation.

In December 2010, the parents signed a document outlining the expectations that they would "actively participate" in scheduled visitation with their son and master the specialized skills necessary to care for him. Seven months later, they had not come close to meeting those expectations. It is not in M.R.'s best interests to postpone a permanent placement further.

AFFIRMED.