

IN THE COURT OF APPEALS OF IOWA

No. 1-916 / 11-1509
Filed December 7, 2011

**IN THE INTEREST OF J.C.,
Minor Child,**

**W.L.C., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Kevin A. Parker,
District Associate Judge.

A father appeals the district court's ruling terminating his parental rights.

REVERSED.

Bryan Webber of Carr & Wright, P.L.C., Des Moines, for appellant father.

Thomas J. Miller, Attorney General, and Janet L. Hoffman, Assistant
Attorney General, John P. Sarcone, County Attorney, and Faye Ann Jenkins,
Assistant County Attorney, for appellee State.

Stephie Tran, Des Moines, for appellee mother.

John P. Jellineck, Des Moines, attorney and guardian ad litem for minor
child.

Considered by Sackett, C.J., and Vogel and Eisenhauer, JJ.

VOGEL, J.

Willians appeals the termination of his parental rights to J.C., born 2008. On September 12, 2011, the district court ordered termination of Willians's parental rights under Iowa Code section 232.116(1)(d) (adjudicated CINA for physical or sexual abuse or neglect, circumstances continue despite services), (h) (child three or younger, adjudicated CINA, removed from parent's custody at least six of last twelve months or for at least six consecutive months and trial period at home less than thirty days, and child cannot be returned to parent's custody) and (i) (adjudicated CINA for physical or sexual abuse or neglect, significant risk to life of child or child in imminent danger, offer or receipt of services would not correct conditions that led to abuse or neglect within reasonable period of time) (2011).¹ Because we agree with Willians that the State failed to prove the statutory elements, we reverse.

I. Background Facts and Proceedings

The Iowa Department of Human Services (DHS) became involved with this family in July 2010, when allegations regarding the mother's abuse of illegal substances while caring for J.C. and three older siblings, the mother's unstable mental health, and the family's deplorable living conditions were reported. J.C. was removed from the home in July 2010, and adjudicated a child in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(c)(2) and (n) in August 2010. Since removal, J.C. and his three older siblings have lived with their maternal grandparents, where all four of the children are well-cared for and

¹ The parental rights of J.C.'s mother, Patricia, were also terminated under Iowa Code section 232.116(1)(d), (h), and (i). She does not appeal.

are making good progress in that they have a sense of safety, a routine, and are acclimated to their grandparents' home. Willians has had weekly or bi-weekly contact with J.C. during the pendency of these proceedings. A termination hearing was held on August 30, 2011, and on September 12, 2011, the district court terminated the parental rights of both Willians and Patricia. Willians appeals.

II. Standard of Review

Our review of termination of parental rights proceedings is de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). Although we are not bound by the district court's findings of fact, we do give them weight, particularly in assessing the credibility of witnesses. *Id.* An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under Iowa Code section 232.116. *Id.* "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.'" *Id.*

III. Analysis

Willians alleges the State did not meet its evidentiary burden to prove by clear and convincing evidence that his parental rights should be terminated as to J.C. It appears that most of the services in this case were focused on the mother, as she had a history of illegal substance abuse and mental health problems, and it was these problems that led to the children's removal. At the termination hearing, Patricia testified that in her opinion, Willians was not the person who brought about the CINA adjudication, but that "I feel like I brought him into this."

Testimony offered by service providers also supported that termination was not in J.C.'s best interests. Gwen Babberl, a mental health therapist who provided family safety, risk, and permanency services and in-home services for the family from July 2010 to June 2011, testified that while it is important to keep the four children together in the same household, it is also important that J.C. maintain contact with Willians and that it would not be in J.C.'s best interests to have no further contact with his father. Rob Watson, a DHS social worker/case manager, also testified that it would not be in J.C.'s best interests to terminate his relationship with Willians.

Moreover, there was little testimony or evidence that Willians presented any safety concern with respect to J.C.² There was some concern that Willians, still legally married to Patricia, was maintaining a relationship with her, and that he would then expose J.C. to all of Patricia's problems. A DHS report submitted to the district court on August 22, 2011, states:

Willians . . . has supervised contacted twice weekly with his son J.C. due to the confirmed child abuse allegations in regards to the victim, D.H.-K., and in addition, concerns that Willians maintains poor boundaries and a relationship with the mother of the children . . . who he remains legally married to. [Willians's] relationship with [Patricia] is not fully known. It has been alleged/reported that Patricia lives with Willians's brother who is an illegal immigrant, and that Willians . . . pays the rent. [Willians's] visits with his son are usually in a public setting and go well.

However, the record reveals no proof of any contact between Willians and Patricia since January 2011. At the termination hearing, Betty Mond, Willians's

² During the pendency of this case, Patricia's daughter D.H.-K. came forward with a sexual abuse allegation involving Willians approximately three years earlier. Although this was a founded abuse incident there was no evidence as to how this would be a concern for Willians's contact with J.C.

counselor at Catholic Charities, and Watson testified that they had no concerns regarding Willians's ability to parent J.C. Watson further described the visitations he observed between Willians and J.C. as "completely appropriate."

On our review of the record, we find the State did not prove by clear and convincing evidence that Willians's parental rights should be terminated under any of the three statutory grounds alleged. Moreover, there was no testimony that termination of Willians's parental rights was in J.C.'s best interests. Iowa Code § 232.116(2); see *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000) ("The primary interest in termination proceedings is the best interests of the child."). Indeed, the contrary was most evident. Nearly every witness agreed on several critical points: (1) that it was in J.C.'s best interests that he not be separated from his three half-siblings; (2) that he should stay in the care of his grandparents; (3) that Willians was not a safety risk to J.C.; and (4) that it was in J.C.'s best interests to maintain some contact with Willians.

The statutory elements for termination of Willians's parental rights were not proved. Concluding that the State failed to carry its burden of proof, we reverse the order terminating Willians's parental rights to J.C.³

REVERSED.

³ At the termination hearing, Willians urged that in the event J.C. was not returned to his care, the court should order that the maternal grandparents have guardianship of J.C., and allow Willians to maintain his parental rights and a relationship with J.C. On appeal, Willians also maintains that

Creating a guardianship with the current custodians would allow for J.C. to maintain his current living arrangements with his half-siblings yet would also allow him to have a relationship with his father. That clearly would have been a less detrimental outcome for J.C. as opposed to terminating his relationship with his father.