

IN THE COURT OF APPEALS OF IOWA

No. 2-081 / 11-2074
Filed February 15, 2012

**IN THE INTEREST OF T.Z. and S.Z.,
Minor Children,**

M.L., Mother,
Appellant,

C.Z., Father,
Appellant.

Appeal from the Iowa District Court for Story County, Victor G. Lathrop,
Associate Juvenile Judge.

A mother and father appeal separately from the order terminating their
parental rights. **AFFIRMED ON BOTH APPEALS.**

Robyn C. Huss of Thornton, Coy & Huss, P.L.L.C., Ames, for appellant
mother.

Matthew A. Mauk of Ostebee Law Office, Ames, for appellant father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, Stephen Holmes, County Attorney, and Jessica Reynolds and Tiffany
Meredith, Assistant County Attorneys, for appellee State.

Paul Rounds, Local Public Defender, and Shannon M. Leighty, Assistant
Public Defender, for minor children.

Considered by Eisenhauer, C.J., and Potterfield and Bower, JJ.

POTTERFIELD, J.

A mother and father separately appeal from the order terminating their parental rights. Statutory grounds for termination exist with respect to both parents. These children need a stable, permanent home, which neither parent is able to provide. Because termination is in the children's best interests and no factor weighs against termination, we affirm on both appeals.

I. Background Facts and Proceedings.

Melissa and Chris are the biological parents of S.Z., born in February 2006, and T.Z., born in June 2009.¹

An ex parte removal of T.Z. occurred on January 20, 2010, and was based on the following incidents: on January 13, 2010, T.Z. was found unresponsive and was taken to the hospital. Melissa had left the children unsupervised while she showered and S.Z. had picked up T.Z. and dropped him. After an overnight hospital stay, T.Z. was returned to the parents upon their agreement with a safety plan that required Melissa to supervise her children at all times and agree to a child protective worker stopping in daily for fifteen days. On January 17, while the worker was in the home, S.Z. picked up and dropped T.Z. Melissa did not react. The worker told S.Z. she was not to pick up her brother. On January 18, again while the worker was in the home, S.Z. picked up T.Z. and put him on her lap. T.Z. fell and hit his head against the floor. And, on January 19, 2010, Melissa told the protective worker that she had placed T.Z. on the bed and he rolled off, hitting his head on a picture frame.

¹ Melissa later claimed Chris may not be the children's biological father, but paternity testing established Chris was the biological father of both S.Z. and T.Z.

The State filed a child-in-need-of-assistance (CINA) petition regarding T.Z. on January 21, 2010.

A temporary removal hearing was held on February 3, 2010, at which the parties stipulated T.Z. could be returned to the mother's care without continuing to be in danger since there would be drop-in checks on the family at the mother's home. The parents were no longer residing together and Chris was under a protective order that prohibited contact with Melissa or the children. (The protective order was lifted about a month later and Chris began to have supervised visits with the children.)

On February 8, 2010, T.Z. was adjudicated CINA and a dispositional hearing was set for March 24. On March 23, however, an Iowa Department of Human Services (DHS) social worker, Lynn Chitty, filed a report with the court that recommended the children be removed from the mother's care based upon concerns expressed by the Family Safety, Risk, and Permanency (FSRP) service provider after visits.

[Contact notes concerning this family indicate] that there has been little benefit from the FSRP services recommended since the return of [T.Z.] to the home. The home is not clean or safe for the children as noted in the contact notes from March. There are bare wires in the home that Melissa was asked to repair twice. The home just obtained running water after a month. The family has a pet [that] is not house trained and Melissa cleans up the messes with just toilet paper even though she has been instructed to use a disinfectant as well as to possibly not have a pet at this time. There are also continuing concerns about Melissa supervising her children properly and allowing other children to pick up [T.Z.] and not responding to him when he is in distress. Feeding of the children is also a concern. Melissa was given a chart by the Homeward nurse to complete for feeding [T.Z.], however she rarely does it and then is not necessarily honest per her conversations again with the FSRP worker.

There are also concerns about her ability to parent [S.Z.] She appears to be hungry and again her statements are not consistent with her mother's who says she has had food. Also, supervision is a concern. There are reports that she is unsupervised in the mobile home community or is with an 8 yr old friend. Melissa has also threatened [S.Z.] with a raised hand with the provider present and after having a discussion of other possible options she did it again. Melissa is also reported to have several boyfriends. It is not clear exactly what the relationship is with these men, however there ha[ve] been references to having at least one of them at the home to protect her from Chris.

Melissa and Chris remain apart at this time. He is having consistent contact with the children, as well as with Melissa. Their relationship as of late last week was strained as Chris said he was asking for custody at the suggestion of his attorney. This upset Melissa and they are now not really talking. Frequently when they are together they argue. This was noted in the doctor's office and they had to be asked to stop by the medical staff. It was also noted by the FSRP provider while at the library last week.

I have concerns that these children are not being appropriately cared for by their mother. I also do not believe Chris is an option at this time as he was homeless as of March 11, 2010 when I left on vacation. He had no idea of where he would live at that time.

On March 31, 2010, the State filed a CINA petition regarding S.Z., which included allegations of lack of supervision; unclean living environment (Melissa blamed S.Z.—age four—for making messes and not picking up after herself); and that S.Z. had been inappropriately touched by “daddy.”² Melissa was then living in a trailer with her paramour, Dusty. Chris was residing at a motel.

A dispositional hearing with regard to T.Z. was held on April 7. But as a result of the concerns relating to S.Z. noted above, Melissa signed a voluntary placement agreement, and both T.Z. and S.Z. were placed in family foster care. The dispositional order was filed on April 8; the juvenile court found that the

² Because S.Z. called men other than Chris “daddy,” it was not possible to pinpoint the identity of an alleged perpetrator.

conditions of Melissa's trailer were such that T.Z. would not be safe in that environment. S.Z. was adjudicated CINA on April 21, 2010.

The parents were ordered to complete psychological or mental evaluations. The DHS materials noted the parents had been involved with services previously in Colorado to address parenting concerns before they moved to Iowa. The evaluations were to be used to determine an appropriate method of teaching parenting skills to each parent.

S.Z.'s dispositional hearing was held on July 7, 2010, and custody of S.Z. was transferred to DHS for placement in family foster care. Both children have remained in family foster care since April 7, 2010.

A review hearing was held September 1, 2010, at which time the parties agreed to continue family foster care and neither parent requested additional services.

The court-ordered evaluations were completed by Cynthia Davis, a licensed mental health counselor and certified clinical criminal justice specialist, in October 2010.³ Chris's evaluation indicated he is in the low-average range of intellectual functioning. There is some indication Chris has suffered brain damage; Chris reported he had been told by someone in Colorado he had brain damage, which Ms. Davis noted was supported by Chris's epilepsy, memory problems, higher levels of paranoia, and rigid and inflexible thinking. Testing indicated Chris may "frequently experience anger, which [may be] express[ed] in

³ The juvenile court notes in the termination order that the delay in completing the evaluations was due to the difficulty in finding an appropriate person to conduct them. The evaluation process included observing the parent interacting with both children.

aggressive behavior directed towards other persons or objects in the environment.” Ms. Davis concluded, “Poor judgment when combined with, poor memory and deficient parenting skill (as suggested by parental skills testing), suggests he should not parent independently.”

Melissa’s evaluation indicated her intellectual functioning is in the mild mentally retarded range. Melissa had been hospitalized overnight several times for suicidal feelings. Ms. Davis concluded:

As a first step, it would appear advisable to implement methods to ameliorate Melissa’s anxiety, depressive hopelessness, and pathological personality functioning by the rapid implementation of supportive psychotherapeutic measures, i.e. therapy. Given her Bipolar diagnosis, referral to a psychiatrist is appropriate.

A short-term and circumscribed focus is likely to be optimally suited for this patient. Formal behavior modification methods may be more fruitful than cognitive methods, which are likely to be less effective due to low intellectual functioning. . . .

Given her lowered intellectual functioning, change may be quite slow in coming. As the children appear to be of average intellectual functioning, as they continue to grow and mature, I anticipate her to have significant problems in parenting them adequately. . . . I do not believe she can parent even 2 children independently.

A permanency hearing was held on February 9, 2011. The parents agreed the children should remain in family foster care, but disagreed with DHS’s recommendation for termination of parental rights. No additional services were requested. Because S.Z.’s dispositional order was filed after T.Z.’s and because she was older, the court ordered the State to commence termination of parental rights proceedings in approximately 120 days, which effectively granted the parents additional time to work towards reunification.

On April 21, 2011, Chris filed a motion to modify the dispositional order and a hearing on that motion was held on May 3, 2011. The hearing was to continue on May 16, but on that date the father filed a withdrawal of his modification request, which states in part, "The Father has determined to not pursue the immediate custody of his children at this time." The State filed a new termination petition on June 23, 2011.

On October 5, a termination hearing was held. The evidence showed that Melissa began receiving services immediately upon DHS involvement, while Chris began receiving services after the protective order was dropped. Despite more than a year of intensive services, neither Melissa nor Chris had progressed beyond supervised visits.

About three months prior to the termination hearing, Melissa essentially disappeared, had no visits with her children, and DHS did not know where she was. On appeal, she contends this was because she moved from Ames to Des Moines and consequently "was unable to continue visits." However, she did not immediately inform DHS where she was living; when she eventually did contact service providers and they offered transportation assistance, she stated she would make those arrangements on her own. As of the October trial, the mother had not seen the children since June 2011 and had not attempted to contact them.

As for Chris, service providers had begun to provide semi-supervised visits. Ms. Chitty testified:

We've had various conversations over the last probably six months about trying to give Chris more time alone such as leaving the room or allowing Chris and the children to roam freely in the

house and the provider just stays in one room, so it's just voices that are being heard. I've talked to them about actually walking out, being out for 15, 20 minutes and coming back.

.....
The concerns have not decreased. I know the current provider has expressed that on one occasion she had to end a phone call when she was out in the hallway because of escalated voices in the home between Chris and [S.Z.]

.....
Q. Do you believe that your recommendation as part of the [DHS] in the near future will be for unsupervised visits? A. No.

Q. Why is that? A. Because Chris continues to be inconsistent in his parenting of [S.Z].

Chris expressed to his FSRP provider his desire to use corporal punishment, insisting it was his right.

Neither Chris nor Melissa completed any parenting classes in spite of information about such classes being provided to them. About a month prior to the termination hearing, Chris started parenting classes after his attorney signed him up for them.

The evidence also showed that S.Z. exhibited troubling behaviors during her months in foster care: she displayed extreme attention seeking behaviors, including vomiting at will; she had violent temper tantrums; and at times she was aggressive to T.Z. and other children.

Psychologist Michael Lelwica conducted a psychological evaluation of S.Z. in mid-2011 regarding her "significant developmental delays, behavior problems and emotional concerns in foster care." Mr. Lelwica noted that [S.Z.] reportedly requires constant attention and supervision in the home of her foster

mother.” He diagnosed S.Z. with reactive attachment disorder (RAD),⁴ which results from a lack of attachment to a primary caregiver in the first two or three years of life. Mr. Lelwica’s report observes:

Reports concerning [S.Z.’s] behavior at home, in daycare, and in preschool, along with observations made by her therapist and witnessed during the evaluation sessions provided a great deal of evidence for [S.Z.] being highly agitated, hypervigilant, and emotionally labile. This presentation, given her confirmed history of inadequate care when she was younger, is likely a result of early trauma due to inadequate care, inadequate supervision, and/or maltreatment and possible abuse. [S.Z.’s] problems regulating her emotions and her regressed behaviors are likely the result of early trauma. In addition, her delayed development in terms of speech and language may make it extra hard for her to cope given her inability to rely on language to communicate her distress and meet her needs in an environment that was not good at meeting her needs. . . . She has made considerable gains in an environment where she is receiving good care.

His recommendations note S.Z. “and her caretakers will continue to require a high level of support and intervention services in order to stabilize her and to facilitate her progress in a number of areas,” including individual play therapy; family therapy/parent training support services; medication monitoring; ongoing participation in special education, speech, and language therapy; and an evaluation to determine whether occupational therapy might help address her delayed visual-motor coordination.

S.Z.’s therapist, social worker Tracie Engstrom, had been working with S.Z. since August 2010 when S.Z. “present[ed] with erratic and exaggerated

⁴ The disorder was described by Tracie Engstrom:

[A] baby is not being responded to in a timely manner, so legally it may be defined as neglect. What we tend to see is if a child is crying or fussy, then they’re looking for a response [and do not receive one.]

. . . .
 What we see usually long-term with children who are diagnosed with reactive attachment is . . . ongoing fairly severe mental health issues.

emotional responses, has trouble regulating her emotions, dissociates, and displays aggression towards dolls.” She testified that S.Z. was in need of a permanent attachment figure now. She had met with Chris and informed him of S.Z.’s needs for long-term continued therapy and consistent support, to which he expressed a “verbal desire” to follow through and comply. However, he did not follow up with her after that meeting.

Ms. Chitty, the DHS social worker assigned to the case, summarized her concerns:

Melissa is homeless She’s not been able to provide consistently for herself, so I don’t believe she can do it for the children.

. . . .
[As to Chris,] I’m concerned that these children will be on a full time basis way more than he can handle. Their needs are phenomenal and he struggles in a two or three hour visit to be consistent and provide for their needs

. . . .
[Chris] has talked about having memory problems and some learning disability and both of those things would impact Chris’s ability to be a consistent structured parent for [S.Z.]

. . . .
Yes, I believe the FSRP providers have been attempting to work with Chris at a level and pace that he can understand, but he’s resistive to the recommendations.

The juvenile court concluded that the father’s request for an additional six months of services was not in the child’s best interests and terminated both the father’s and the mother’s parental rights pursuant to Iowa Code sections 232.116(1)(f) and (h) (2011).⁵ They appeal separately.

⁵ Iowa Code section 232.116(1) allows termination where:

(f) The Court finds that all of the following have occurred:

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

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

II. Scope and Standard of Review.

We review all termination decisions de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We are not bound by the juvenile court's findings of fact, but we accord them weight, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010).

III. Analysis.

After reviewing the record in this case de novo, we conclude there is clear and convincing evidence that grounds for termination exist as to both parents. As to T.Z., Iowa Code section 232.116(1)(h) provides that termination may be ordered when there is clear and convincing evidence that a child under the age of three who has been adjudicated CINA and removed from the parents' care for at least the last six consecutive months cannot be returned to the parents' custody at the time of the termination hearing. And as to S.Z., section 232.116(1)(f) provides that termination may be ordered when there is clear and convincing evidence that a child age four or older has been adjudicated CINA

(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.

....

(h) The court finds that all of the following have occurred:

(1) The child is three years of age or younger.

(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 six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

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

and removed from the parents' care for at least the twelve consecutive months cannot be returned to the parents' custody at the time of the termination hearing.

A. *Statutory grounds for termination exist.* The father contends there is not clear and convincing evidence the children cannot be placed with him. He states he has an appropriate residence and lives with "an appropriate paramour whose co-parenting skills assist [Chris] in his ability to parent."

We first note that at the termination hearing, the father did not contend the children could then be placed with him—he requested an additional six months.

In any event, upon our review of the record, we find no evidence that the children could safely be placed in Chris's home at present. As noted by Ms. Davis in her evaluation report, "he is likely to respond better to short-term cognitive or interpersonal methods that are specific in their procedures, rather than to more expressive or nondirective techniques." Services provided to Chris corresponded with those suggested methods; those providing in-home services used one-on-one modeling behaviors. After Chris attended a parenting class, the provider of that class indicated it would be beneficial to attend Chris's visitations to provide more individualized feedback, but Chris had not followed through with that suggestion. The father refused anger management classes. His unresolved anger management issues, in combination with the "phenomenal needs" and challenging behaviors of the children, particularly S.Z., would result in a high risk of harm to the children. The presence of his relatively short-term paramour in the household does not convince us otherwise as she denied Chris has any anger issues. It is apparent he wishes to be a parent for his children. But the evidence presented shows he is not able to provide their full-time care.

The children's mother was homeless and had not seen or contacted the children for three months before the termination trial. The evidence clearly demonstrated her inability to care for the children.

B. Termination is in the children's best interests. Having found statutory grounds for termination, "we turn to further consider the circumstances described in section 232.116(2) that drive the actual decision-making process." *D.W.*, 791 N.W.2d at 708. We are required to use the best-interests framework established in section 232.116(2), with the primary considerations of "the child's safety," "the best placement for furthering the long-term nurturing and growth of the child," and "the physical, mental, and emotional condition and needs of the child." *D.W.*, 791 N.W.2d at 708. We recognize that lower mental functioning alone is not sufficient grounds for termination. But it may be, and here it is, a contributing factor to each parent's inability to provide a safe and stable home for the children. See *D.W.*, 791 N.W.2d at 708–09; see also *In re Wardle*, 207 N.W.2d 554, 563 (Iowa 1973) ("Ordinarily, mental disability in a parent does not operate in a vacuum so far as the best interest and welfare of his child is concerned but is usually a contributing factor in a person's inability to perform the duties of parenthood according to the needs of his child.").

C. Factors weighing against termination. Each parent argues that termination is not required because of the bond between the children and the parent. See Iowa Code § 232.116(3)(c) (providing the court need not terminate if "[t]here is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship"). Nothing in this record supports the assertion.

Melissa had not contacted her children from more than three months. S.Z. was at the time of the termination hearing demonstrating a need for an attachment figure. She had been diagnosed with reactive attachment disorder, which generally results from abandonment and neglect, and which occurs in the first two years of a child's life—here, while S.Z. was in the custody of her parents. There was evidence that T.Z. was beginning to mimic some of S.Z.'s behaviors. Ms. Engstrom testified that S.Z. was not demonstrating an attachment to the parents "as much as a trauma bond," which she described as a connection that occurs when people experience the trauma together. There was no evidence that T.Z. was bonded to either parent such that termination would be detrimental.

These children need and deserve a permanent placement. Termination of parental rights will allow for that possibility. We therefore affirm the termination of each of the parent's parental rights.

AFFIRMED ON BOTH APPEALS.