

IN THE COURT OF APPEALS OF IOWA

No. 2-215 / 12-0073
Filed April 11, 2012

**IN THE INTEREST OF D.W. and D.W.,
Minor Children,**

J.W., Father,
Appellant,

B.W., Mother,
Appellant.

Appeal from the Iowa District Court for Grundy County, Kellyann M. Lekar,
Judge.

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

Melissa A. Nine of Kaplan, Frese & Nine, L.L.P., Marshalltown, for
appellant-father.

Jennifer Meyer of Jennifer Meyer Law, P.C., Marshalltown, for appellant-
mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Kirby D. Schmidt, County Attorney, and Erika L. Allen,
Assistant County Attorney, for appellee.

Maria Hartman of Sweet Law, P.L.C., Reinbeck, for grandparent
intervenors.

Tammy Banning, Waterloo, attorney and guardian ad litem for minor children.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

TABOR, J.

A mother and father separately appeal the termination of their parental rights to their three-year-old daughter and two-year-old son. The father, Justin, contends the State failed to prove the grounds for termination by clear and convincing evidence. He also asserts termination is not in the children's best interest. The mother, Brittany, argues the Department of Human Services (DHS) did not make reasonable efforts to reunite her with the children.

We find the circumstances that led to the children being adjudicated in need of assistance—including Justin's struggle with controlled substances and his minimization of the domestic violence he perpetrated against Brittany—continued to exist at the time of the termination hearing. We further find termination is in the children's best interests. Finally, we conclude Brittany did not raise a claim in the juvenile court regarding any deficiency in the services that DHS offered to her. Accordingly, we affirm the order terminating parental rights.

I. Background Facts and Proceedings.

Justin and Brittany had a daughter born in 2008 and a son born in 2009. In January 2011, the DHS received reports that these parents were using controlled substances and leaving their children alone. Justin, who abused marijuana and methamphetamine, was committed for chronic substance abuse on January 4, 2011. Brittany was smoking marijuana as a means to self-medicate her mental health conditions. Both parents accused the other of domestic violence, and Brittany obtained a protective order against Justin.

The State filed petitions to adjudicate the children in need of assistance (CINA) on January 28, 2011. The DHS removed the children from the parents' care on February 8, 2011, and placed them with Brittany's grandparents. On February 22, 2011, the juvenile court found the children to be in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) (2011) by stipulation of Justin and Brittany.

The DHS offered services to the parents in an attempt to reunify them with the children. The record shows Brittany has a lengthy mental health diagnosis, including adjustment disorder with mixed anxiety, depression, intermittent explosive disorder, dyssomnia, partner relational problems, nicotine dependence, and possible personality disorder due to a history of borderline personality traits. She refused to seek mental health or substance abuse treatment and continued her marijuana use. Brittany later reported she had stopped using marijuana but was drinking to the point of intoxication every other day. By July 2011, Brittany had started a new romantic relationship, again with an abusive partner.

Justin submitted to a mental health evaluation but failed to follow up with additional testing as requested. The case worker found him to be dishonest about his need for additional testing. The psychologist described Justin as a "complicated patient" who may have manipulated the assessment. The psychologist believed Justin was bipolar and possessed narcissistic traits. Justin participated in substance abuse treatment until he was charged on May 11, 2011, with possession of LSD with intent to deliver. He pleaded guilty and was incarcerated.

The State filed a petition to terminate the parental rights of both the mother and father on July 12, 2011. Brittany became upset following a visit with a service provider in August 2011 and—having lost hope of the children being returned to her care—stopped participating in services after that time.

Justin remained incarcerated until October 26, 2011, when he was transferred to a residential facility. He expected to be released as early as March 2012 and no later than early fall of 2012. He finally obtained the mental health evaluation that had been requested the past spring. At the time of the termination hearing, he had not yet completed a batterer's education program. Justin reported ten and one-half months of sobriety, but that duration could not be verified because his drug tests were compromised when patches were removed or fell off.

The juvenile court heard evidence regarding termination on November 15 and 16, 2011. Brittany testified that she stopped participating in services because she was involved in another abusive relationship, which she claimed to have ended three weeks earlier after her paramour severely beat her. But she also admitted seeing him only a week before trial. The juvenile court expressed concerns regarding the mother's demeanor and attitude at the trial, finding she appeared to be "stuck in a spiraling circle of domestic violence." Although Brittany had established her own residence and was employed at the time of the termination trial, the court described her attitude as "defeated." The fact that Brittany defended Justin and supported his request to defer permanency by minimizing his issues with domestic violence, mental health, and substance

abuse “presented to [the juvenile court] court as an eerie echo of an abused person making excuses for their abuser.”

As for Justin, the court found that he “attempted to paint a picture of walking the straight and narrow and intending to lead a conservative life” but determined his compliance with the case plan was minimal. Justin continued to deny or minimize the domestic violence and had “no insight into the role that played in the removal of his children or his future ability to keep them safe.” The juvenile court described his attitude toward Brittany as “negative and degrading” and found he attempted “to minimize his own role and maximize her role in all past failures.” Justin also downplayed his past involvement with substance abuse and his mental health issues. The court observed: “He attempted to maintain a calm demeanor during the trial proceeding and although his words were sometimes neutral, his tone and attitude were often angry.”

The juvenile court concluded the State established the grounds for termination under sections 232.116(1)(d), (h), and (l) as to both the mother and father. The court also found termination was in the children’s best interest. Both Justin and Brittany filed timely notices of appeal.

II. Scope and Standard of Review.

We review termination orders de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). The juvenile court’s findings of fact do not bind us, but we accord them weight, 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.* 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. The Father’s Appeal.

On the same day this case was submitted to our court, Justin moved to dismiss the State’s response to his petition on appeal, alleging the response was untimely. Pursuant to Iowa Rule of Appellate Procedure 6.202(2), the State had fifteen days from the date of service to respond to the petition on appeal, plus an additional three days for mailing pursuant to rule 6.701(6).

Justin served his petition on February 3, 2012. Brittany served her petition on February 7, 2012. In the interests of judicial economy, we conclude the appellee’s deadline runs from the last timely filed petition. Accordingly, the State had eighteen days—or until February 25—to file its combined response to both petitions. Because February 25 fell on a weekend, the response was due Monday, February 27, 2012. See Iowa Code § 4.1(34) (2011). The State’s response—filed on February 27—was timely. Justin’s motion to dismiss is denied.

We next consider Justin’s contention that the State failed to prove the grounds for termination by clear and convincing evidence. Justin’s parental rights were terminated under sections 232.116(1)(d), (h), and (l). We can affirm by finding termination appropriate under any one of these sections. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Termination is appropriate under

section 232.116(1)(d) where the State proves by clear and convincing evidence the following:

(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.

The children at interest were adjudicated CINA under section 232.2(6)(c)(2) for their parents' failure to exercise a reasonable degree of care in supervising them, satisfying the element in section 232.116(1)(d)(1). We conclude the evidence shows the circumstances that led to the CINA adjudication continued to exist despite the offer or receipt of services, meeting the requirement of section 232.116(1)(d)(2). As the juvenile court noted, at the time of the termination hearing, Justin was assigned to a residential facility "with unknown future availability." He had not fully complied with services to address the risks of harm to the children from further substance abuse, mental health, or domestic violence issues. Accordingly, clear and convincing evidence supports termination under section 232.116(1)(d).

Justin also asserts terminating his rights does not serve the children's best interests. In determining best interests, we must consider the children's safety, the best placement for furthering their long-term nurturing and growth, and their physical, mental, and emotional condition and needs. *P.L.*, 778 N.W.2d at 37. Our consideration of these factors leads us to conclude that termination would

promote the children's well-being in both the short term and the long run. We reject the father's suggestion that these preschool-aged children should be placed in a guardianship. Without termination, these children—as well as any family members appointed as guardians—could be subject to Justin's irresponsible decisions and manipulation well into the future. Such uncertainty is disfavored by our statutory scheme. See *In L.M.F.*, 490 N.W.2d 66, 68 (Iowa Ct. App. 1992) (holding permanency orders are not a legally preferential alternative to termination of parental rights).

Justin lacks insight into his destructive behaviors and the risk they pose to his children. Rather than complying promptly with the request for a mental health evaluation and batterer's education, Justin was dishonest or manipulative in his attempts to avoid the requirements of the case plan. His decision to participate in drug dealing at the expense of obtaining needed services shows little commitment to his children. His efforts to obtain compliance on the eve of termination come too late. Justin squandered the statutory time allotted for improving his parenting skills; he has used up his "full measure of patience" built into the time frames of chapter 232. See *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000).

IV. The Mother's Appeal.

On appeal, Brittany summarizes her one assignment of error as follows: "The State, through the Department of Human Services, adopted an adversarial position that prevented the parents from reunifying with their children." She includes no legal argument in support of this contention. The State views this

issue as a challenge to the reasonable efforts made to reunify Brittany with her children. Considering the legal authority cited in support of her argument, we are inclined to agree. But Brittany fails to cite where in the record she requested additional services or complained about the adequacy of the services provided. Although the DHS is obliged to make reasonable efforts to reunify a family, the parents have a responsibility to demand services before the termination hearing. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994). A challenge to the sufficiency of such services should be raised when the services are offered. *Id.*

Brittany was offered services to reunify her with the children, but she stopped participating after the State filed the termination petition. Because Brittany does not identify any deficient services, we affirm.

AFFIRMED.