

IN THE COURT OF APPEALS OF IOWA

No. 2-412 / 12-0524

Filed June 27, 2012

**IN THE INTEREST OF D.S. and R.S.,
Minor Children,**

D.R., Father of D.S.,
Appellant,

C.M., Father of R.S.,
Appellant.

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

Dennis and Cliff separately appeal from a juvenile court order terminating their parental rights to D.S. and R.S. respectively. **AFFIRMED ON BOTH APPEALS.**

Darren D. Driscoll of Johnson, Kramer, Good, Mulholland, Cochrne & Driscoll, P.L.C., Fort Dodge, for appellant D.R.

Christopher O'Brien, Fort Dodge, for appellant C.M.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kathleen Hahn, Assistant County Attorney, for appellee.

Alyssa Kenville, Fort Dodge, for father J.O.

Marcy Lundberg, Fort Dodge, for mother.

Derek Johnson, Fort Dodge, guardian ad litem for minor children.

Considered by Potterfield, P.J., Mullins, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MILLER, S.J.

Dennis is the father of D.S., born in April 2004 and seven years of age at the time of a March 2012 termination of parental rights hearing. Cliff is the biological father of R.S., born in March 2007, and just short of five years of age at the time of the March 2012 termination hearing. Dennis and Cliff separately appeal from a March 14, 2012 juvenile court order terminating their respective parental rights. We affirm on both appeals.

Chastity is the mother of J.S., born in June 2001; D.S.; T.O., born in April 2005; and R.S. As of May 2010 the children were living with Chastity when the family came to the attention of the Iowa Department of Human Services (DHS) because of a concern that Chastity had physically abused one of the children. Concerns thereafter arose and continued, as to the condition of Chastity's home, supervision of the children, and the use of illegal controlled substances around the children.

A petition alleging the children to be children in need of assistance (CINA) was filed November 5, 2010. Chastity and the children underwent hair testing for controlled substances. Chastity and the three youngest children tested positive for methamphetamine. On November 15, 2010, the juvenile court entered an ex parte order removing the four children from the physical custody of their parents. The court ordered the children placed in the temporary legal custody of the DHS for placement in family foster care, shelter care, or with an appropriate relative. The children have thereafter remained in family foster care.

The juvenile court adjudicated the children CINA in February 2011, pursuant to Iowa Code sections 232.2(6)(b) (2011) (physical abuse or neglect by parent) and 232.2(6)(c)(2) (failure of parent to supervise). Chastity tested positive for methamphetamine in April 2011. Following a July 2011 dispositional hearing the court continued the children's placement in family foster care.

The State filed a petition for termination of parental rights on October 4, 2011. The petition sought termination of Chastity's parental rights to the four children; termination of the parental rights of J.S.'s father, I.A.; termination of Dennis's parental rights to D.S.; termination of the parental rights of T.O.'s father, J.O.; and termination of the parental rights of R.S.'s father, Cliff. The petition was later dismissed as to I.A.'s parental rights to J.S.

Dennis had been married to Chastity from 2003 to about late 2010 or early 2011, and is thus the legal father of T.O. and R.S., conceived and born during the marriage, although he is not their biological father as he was imprisoned from before D.S.'s birth through the termination hearing. The State had not sought termination of Dennis's parental rights to T.O. and R.S. Dennis objected to termination of his parental rights as the legal father of those two children without proper advance notice. The juvenile court therefore did not address or rule on termination of Dennis's parental rights to those two children.

Chastity consented to termination of her parental rights to all four children, and J.O. consented to termination of his parental rights as biological parent of T.O. As the petition had been earlier dismissed as to I.A.'s parental rights to J.S., the issues to be decided by the juvenile court were whether Dennis's

parental rights to D.S. should be terminated, and whether Cliff's parental rights to R.S. should be terminated.

Following a hearing the juvenile court ordered Dennis's and Cliff's respective parental rights terminated pursuant to Iowa Code sections 232.116(1)(b) (desertion), (e) (child adjudicated CINA, child removed from parents' physical custody for at least six consecutive months, parent has not maintained significant and meaningful contact with child and has made no reasonable efforts to resume care of child despite opportunity to do so), and (f) (child four or older; adjudicated CINA; removed twelve of last eighteen months, or last twelve months with any trial period at home less than thirty days; cannot be returned to parent at present time). Dennis and Cliff separately appeal.

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

In re C.B., 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

Neither Dennis nor Cliff contends that the statutory grounds for termination relied on by the juvenile court were not proved by clear and convincing evidence. Each does, however, raise two grounds of alleged error by the court. First, each contends that instead of ordering termination the court should have entered a permanency order, pursuant to Iowa Code section 232.104(2)(b), continuing placement of their child up to an additional six months in order to allow time and

opportunity for the father “to attempt reunification.” Second, each contends that termination was not in the child’s best interest.

Based upon reasons stated in its order terminating parental rights, the juvenile court found the fathers’ requests for permanency orders granting each an additional six months to be “without merit.” Our review of an order concerning permanency is de novo. *In re N.M.*, 528 N.W.2d 94, 96 (Iowa 1995). We give weight to the juvenile court’s findings of fact, but are not bound by them. *Id.*

Continued Placement Issues.

At the time of the termination hearing Dennis was twenty-seven years of age. He has a lengthy record of juvenile delinquency and serious criminal offenses. Dennis was adjudicated a delinquent when sixteen years of age and placed in the Iowa Training School for Boys. He escaped, and was subsequently returned.

When seventeen years of age Dennis committed forgery, for which he was convicted of a felony as an adult. In about December 2003, when eighteen years of age, Dennis married Chastity, who was pregnant with D.S.

In February 2004, two months before D.S.’s birth, Dennis began serving a sentence of twenty-two years for crimes including willful injury, burglary, and theft. His tentative discharge date is in January 2014. Dennis was scheduled to appear before the parole board in April 2012, and hoped to be released to a work release residential correctional facility within a month to a month and one-half thereafter. If released on parole, he anticipated being required to spend at least three months in such a “halfway house.”

It thus appears that even if released on parole as he hoped to be, which the juvenile court found to be “speculation and wishful thinking” given his history as a “career criminal,” Dennis would remain in some form of custody for at least five to five and one-half months after the termination hearing before he could even begin to establish any relationship with D.S., whose entire life Dennis has spent in prison. Upon our de novo review, we fully agree with and affirm the court’s decision not to enter a permanency order continuing placement of D.S. for up to six additional months.

At the time of the termination hearing Cliff was twenty-six years of age. He also has a lengthy record of juvenile delinquency and serious criminal convictions. Cliff was adjudicated a delinquent at age fifteen and placed in the Iowa Training School for Boys. He was later paroled, but the parole was subsequently revoked for a parole violation.

When nineteen years of age Cliff began his adult criminal career. He has subsequently incurred several theft convictions, a conviction for domestic abuse assault, an anhydrous ammonia-related conviction, a conviction for possession of a controlled substance precursor, and convictions for burglary, operating a vehicle without owner’s consent, and forgery.

In July 2009 Cliff began serving a prison sentence for conspiracy to manufacture methamphetamine. His tentative discharge date is some time in 2014. Cliff needs to take certain classes in order to be discharged or paroled earlier than 2014. He acknowledges that the earliest he could be “out” would be about December 2012, and that he would need at least a couple of months

thereafter to get a job and an apartment before he would be able to begin assuming custody of R.S. He requested that R.S.'s placement be continued for about a year.

From the evidence it thus appears that even if released on parole or other early discharge in late 2012, it would be about one year after the termination hearing before Cliff would be able to re-establish any relationship with R.S. We fully agree with and affirm the juvenile court's decision not to enter a permanency order continuing placement of R.S. for up to six additional months.

Best Interest Issues.

Dennis was imprisoned before D.S.'s birth, remained imprisoned thereafter through the termination hearing, and would remain imprisoned for some time thereafter. He was uncertain as to D.S.'s birth date, his guess during testimony being off by three days. According to Dennis's testimony he did see D.S. about two times per week during the first five years of his incarceration, which would be from early 2004 to early 2009, when D.S. would be brought to the prison by Dennis's mother or sister. It is unclear whether Dennis saw D.S. with any regularity, if at all, between early 2009 and the commencement of CINA proceedings in early November 2010.

Shortly before CINA proceedings began, D.S. and T.O., then six and five years of age respectively, had been arrested for breaking into cars located near Chastity's home. The initial response of these two boys was that they glorified the idea that their fathers were in prison, and they wanted to end up in prison like their fathers. As a result of this attitude by D.S. and D.S.'s other behavioral

problems, the DHS case worker felt that until such issues were addressed through therapy and services it would be contrary to D.S.'s best interests to have him visit Dennis in prison. D.S. has thereafter received in-home services, counseling, and therapy. Although D.S. continues to harbor remnants of his glorification of prison life, the glorification has been minimized through counseling and other services.

D.S. has had no visits with Dennis for at least one and one-half years. Dennis states that he at one time "did" have some bond with D.S., implicitly acknowledging that little or no bond any longer exists.

D.S. is in a pre-adoptive home with his half-siblings, with whom he has a close relationship. He is doing well in school, involved in extra-curricular activities, making friends, attending church, and is happy.

Cliff entered prison in July 2009, when R.S. was just over two years of age. He has not seen R.S. for almost three years, since going to jail sometime before being imprisoned. It would thus appear that Cliff would no longer have any bond with R.S.

As with Dennis, the juvenile court expressed its belief that because Cliff was a "career criminal," it would be "speculation and wishful thinking" to believe he would leave prison before his 2014 tentative discharge date. R.S. is in the pre-adoptive foster home with her older sister, J.S., and her other two half-siblings. She is close to her half siblings, is doing well, and is happy.

In determining whether termination of parental rights is in a child's best interest, we apply the statutory factors found in Iowa Code section 232.116(2). *In*

re P.L., 778 N.W.2d 33, 37 (Iowa 2010). We consider the child's safety, long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child. Iowa Code § 232.116(2); *P.L.*, 778 N.W.2d at 37. Both D.S. and R.S. need security, stability, and a permanent home. At the time of the termination hearing neither parent could presently or within the reasonably foreseeable future provide them. Dennis has never been a meaningful part of D.S.'s life. Cliff has been no part of five-year-old R.S.'s life for the last three years. Both children are doing very well in the home of the pre-adoptive foster family, which is committed to providing for all of their needs and into which they have become integrated. After considering the statutory factors, we agree with and affirm the juvenile court's decision that termination of Dennis's and Cliff's parental rights to their children is in the best interest of each child.

AFFIRMED ON BOTH APPEALS.