IN THE COURT OF APPEALS OF IOWA

No. 2-522 / 12-0772
Filed July 11, 2012

IN THE INTEREST OF M.E.,
Minor Child,

R.K.E., Mother,
Appellant,

D.W.K., Father,
Appellant.

Appeal from the Iowa District Court for Poweshiek County, Randy S. DeGeest, District Associate Judge.

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

Jane Odland of Walker, Billingsley & Bair, Newton, for appellant-mother.

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

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Rebecca L. Petig, County Attorney, for appellee-State.

Fred Stiefel, Victor, for legal father.

Dustin Hite, Oskaloosa, attorney and guardian ad litem for minor child.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

TABOR, J.

Rhonda and David appeal the termination of their parental rights to their daughter, M.E., who is now twenty-one months old. They contend the State failed to prove the grounds for termination by clear and convincing evidence and failed to make reasonable efforts to reunify them with M.E. Rhonda also contends termination is not in the child's best interest.

The evidence shows that in spite of reasonable efforts by the Department of Human Services (DHS), M.E. remains at risk of being sexually abused by David, and Rhonda cannot appreciate and protect her from this threat. Because M.E. cannot be safely returned to either parent's custody, the State proved the statutory grounds for termination. Finding termination is in M.E.'s best interests, we affirm the juvenile court's order.

I. Factual and Procedural History

In March 2010, before M.E. was born, David was accused of physically abusing another of Rhonda's children.[1] Although the DHS concluded the report of physical abuse was unfounded, it initiated child-in-need-of-assistance (CINA) proceedings upon discovering David had previously sexually abused six-year-old twin girls and his own infant daughter. The court adjudicated Rhonda's children as CINA in June 2010.[2] Later, when a DHS worker learned that Rhonda left the

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[1] Throughout this case, the mother has been married to another man with whom she has three children. The mother is separated from her husband and testified she plans to divorce him.

[2] Our court affirmed the CINA adjudication of the three older children. *In re K.E.*, No. 10-1759, 2011 WL 221892 (Iowa Ct. App. Jan. 20, 2011). We also affirmed an August 16, 2011 dispositional review order regarding those children. *In re K.E.*, No. 11-1345, 2011 WL 5389688 (Iowa Ct. App. Nov. 9, 2011).

children alone with David, the juvenile court removed them her care and placed them with their father.

M.E. was born in September 2010[3] and was removed from the parents' care six days later due to concerns about David's history of sexual abuse and Rhonda's inability to recognize him as a danger to her children. The court adjudicated M.E. as a CINA pursuant to Iowa Code sections 232.2(6)(b) and 232.2(6)(c)(2) (2009) on October 19, 2010.[4] The DHS placed M.E. with a maternal aunt and uncle, where she has remained throughout this case.

The case permanency plan required Rhonda to sever all ties to David. In October 2010, Rhonda reported to her case worker that she and David were just friends. But Rhonda's mother indicated that Rhonda and David continued a romantic relationship. In November 2010, Rhonda moved in with her mother in Williamsburg to be closer to her children. Rhonda's mother informed the DHS that Rhonda would talk on the phone or send text messages while in the bathroom, but Rhonda claimed she was not communicating with David. A DHS worker saw David and Rhonda holding hands while walking across a street. Rhonda later admitted lying about ending her relationship with David.

In January 2011, Rhonda moved to Grinnell, where David lived, claiming she was unable to find employment in Williamsburg. The move placed her farther away from her children. Eventually, Rhonda and David moved in together.

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[3] Due to the mother's marriage to another man, David was considered M.E.'s putative father until a December 2010 DNA test established his paternity.

[4] We affirmed M.E.'s CINA adjudication. *In re M.E.*, No. 11-0225, 2011 WL 1584451 (Iowa Ct. App. April 27, 2011).

The juvenile court held a dispositional hearing on January 27, 2011. The court found Rhonda and David "maintained an ongoing relationship during the pendency of this action and have at times hidden and/or denied the existence of the relationship to DHS and service providers" contrary to the case permanency plan requirements. Although the DHS offered Rhonda daily contact with M.E., the court noted the mother only visited the child forty times out of ninety-eight opportunities. The court ordered that M.E. remain a CINA and continued her placement with relatives.

Because David's paternity was not established at the time of the October 2010 CINA adjudication, the court held a second adjudicatory hearing regarding David on March 22, 2011. The court decided it would be contrary to M.E.'s welfare to place her in the father's custody, noting David (1) had recently spent ten days in jail for driving while barred; (2) had convictions for lascivious acts with a child and failure to register as a sex offender; (3) had founded abuse reports for sexually abusing six-year-old twins and his own infant daughter; (4) had a founded abuse report for smoking marijuana in front of children; (5) violated a safety plan in December 2006; (6) had a founded report of physical abuse against a minor in June 2005; and (7) had maintained an ongoing relationship with Rhonda, denying or hiding the existence of the relationship from the DHS, the guardian ad litem (GAL), and the court. The court adjudicated M.E. as a CINA with regard to David pursuant to sections 232.2(6)(b) and 232.2(6)(c)(2).

The court held another dispositional hearing in August 2011. In light of the evidence presented, the court found, "The mother's tearful testimony and

demeanor at the hearing demonstrated to the Court her lack of insight into why her child cannot be returned to her home as long as the child's father, her fiancé and a convicted sex offender, resides with her." The court described Rhonda as "oblivious" to the concerns about David's previously founded reports of sexual abuse with his own child, who was less than one year old. The court also found David's testimony displayed his lack of insight and need for treatment, noting that after only four sessions with a therapist, David thought M.E. should be returned to him. David was unwilling to fully disclose the details regarding his past sexual abuse to the court. The court concluded David had also failed to fully disclose his past abuse to his therapist, and discounted the therapist's assessment as "unreliable" on that basis.

Following a September 2011 permanency hearing, the court found the family was making reasonable progress toward reunification, including supervised visitation, and granted an additional six months to achieve that goal. Rhonda and David decided to move to Brooklyn together to be closer to M.E and Rhonda's other children.

On September 20, 2011, the GAL—in anticipation of the DHS authorizing David's family members to supervise visits with M.E.—filed an application for temporary writ of injunction to prevent anyone but the DHS and its providers from supervising visits between David and M.E. In the court's February 1, 2012 order[5] regarding the temporary writ of injunction, it found David to be "a completely unreliable witness." The court stated:

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[5] The order also adjudicated Rhonda and David's twin son and daughter—born after M.E.—to be CINA.

> His tone of voice; eye movement; nervousness; at times his open disdain for the Court; his repeated texting on his cell phone during the testimony of [Rhonda] at the hearing on January 31, 2012; his admission that he was dishonest with DHS (and the Court) concerning whether he lived with [Rhonda]; his claim that he lied to police when he admitted to the sexual abuse of his seven-month-old daughter; his claim that he had told his family about his prior abuse with children, when in fact he had not at all, all establish to the Court that [David] should not be trusted or believed.

The court also discounted Rhonda's testimony, noting she had been complicit with David in lying to the DHS concerning their ongoing relationship and cohabitation. The court found her "lack of insight into the risks of having the children reside with [David] was clearly and convincingly established." The court adopted the GAL's recommendations.

On January 13, 2012, the State filed a petition to terminate parental rights under Iowa Code section 232.116(1)(h) (2011). The court held a termination hearing in March. On April 10, 2012, the juvenile court entered its order, finding:

> The demeanor of the biological mother and father during their testimony at the termination hearing (and at prior hearings) clearly establishes to the Court that their veracity and truthfulness is always called into question. The Court placed no faith in any of their testimony. In particular, the mother's testimony that she would protect the child is simply not believed by the court.

Concluding it could not safely return M.E. to either parent, the court terminated their parental rights pursuant to section 232.116(1)(h).

II. Scope and Standard of Review

We review the juvenile court's order terminating parental rights de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). "We give weight to the juvenile court's factual findings, especially when considering the credibility of witnesses, but we are not bound by them." *Id.*

III. Analysis

A. Statutory Grounds

Both Rhonda and David contend the State failed to prove the grounds for termination by clear and convincing evidence. To terminate under section 232.116(1)(h), the court must find the child (1) is three years of age or younger, (2) has been adjudicated CINA, (3) has been removed from the physical custody of the parents for at least six of the last twelve months, or for the last six consecutive months, and (4) cannot be returned to the parents' custody as provided in section 232.102 at the present time. Rhonda and David argue M.E. can be safely returned to their care.

1. David's argument

M.E. would be at risk of harm if placed in David's custody. David has sexually abused at least three children—twin six-year-old girls, for whom he babysat, and his own infant daughter. David has denied or minimized the abuse in discussions with his family, law enforcement, and his own therapist. Although he claimed to have attended sex offender treatment while incarcerated, he did not provide any documentation. Furthermore, he abused his own daughter following his release from prison.

David asserts his therapist classifies him as a "low-risk" to reoffend. But the therapist's assessment relied on David's self-reporting and, throughout the course of these proceedings, David has been less than forthcoming about his offending. For instance, David characterized the report of his sexual abuse of his daughter as "a neighbor problem," even though he admitted the abuse when

questioned by law enforcement. He later advanced an incredible claim that he falsely admitted the abuse because he was tired of being questioned. Furthermore, while David's therapist recommended increased visitation with M.E., he also recommended that the visits remain supervised.

David also claims his history of sexual abuse does not establish he poses a danger to M.E. because the State presented no evidence he abused her. M.E. was removed from the home when she was only six days old. David has never had unsupervised visitation with her, and therefore has not had an opportunity to hurt her. The evidence that David sexually abused other children in his care, including his own infant daughter, supports the juvenile court's finding that M.E. cannot be safely returned to his custody. *See In re D.D.*, 653 N.W.2d 359, 362 (Iowa 2002) (noting "perpetrators of sexual abuse often abuse multiple children in the family").

David's April 2011 psychosexual evaluation indicated he presents "at least a **moderate level** of risk to younger children" and advised that David should not be allowed semi-supervised or unsupervised visitation with M.E. or Rhonda's other children. The evaluator believed David was "minimally disclosing information and not being fully cooperative" with the evaluation. The evaluator opined David "is not currently safe to be left alone around younger children." That opinion was based on David's guarded responses, his history of minimizing his sexual offending, his abuse of his own daughter, his acts of "fleeing from county to county and violating registering for the sexual offender registry in

several counties," his history of substance abuse, prior physical abuse of children and overall criminal record.

Our statutory termination provisions are both preventative and remedial. *In re I.L.G.R.*, 433 N.W.2d 681, 690 (Iowa 1988). They are designed "to prevent probable harm to a child," and do not require the juvenile court to delay its decision to sever ties between a parent and child until harm has occurred. *Id.* Termination is necessary to prevent probable harm to M.E. if she were placed in David's custody.

2. Rhonda's argument

We also find M.E. cannot be safely returned to Rhonda's care. Although the case permanency plan mandated that Rhonda sever all ties with David, she continued her relationship with him and, in fact, lied about cohabiting with him. She is unwilling or unable to acknowledge the harm M.E. would be subjected to in David's care, as is evidenced by the fact she left her three older children alone with David after they had been adjudicated to be CINA.

The juvenile court summarized the mother's lack of insight as follows:

> Rhonda testified during the termination hearing that she wanted [M.E.], herself, and David to live together because "he [David] deserves to have a family," despite the fact that he sexually abused 6-year old twins and later sexually abused his own 7-month old daughter. The mother never testified that [M.E.] deserved to be safe.

No witness testified that M.E. could be safely returned to Rhonda's custody at the time of the termination hearing. Returning M.E. to Rhonda's custody would place M.E. at risk of harm. *See In re S.O.*, 483 N.W.2d 602, 604 (Iowa 1992) (upholding termination of mother's parental rights when record demonstrated she

was unable to protect child from future sexual abuse by father and was dishonest about his presence in the home). The State established the ground for termination by clear and convincing evidence.

B. *Reasonable Efforts*

David contends the State failed to make reasonable efforts to reunify him with M.E. He complains paternity testing was not offered to him immediately, causing several months of delay before he began receiving services. David also complains that M.E. was not placed with his sister as he requested; that the DHS did not meet with his therapist to develop a safety plan and allow him to increase his visits with M.E.; and that family members were not allowed to supervise visitation. Rhonda also complains the DHS failed to develop a safety plan for expanded visits with M.E. and declined to place the child with David's sister.

The reasonable efforts requirement is not a strict substantive prerequisite to termination. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). Rather, the scope of the DHS efforts to reunify a parent and child after removal impacts the burden of proving certain elements of termination. *Id.* The State must show reasonable efforts were made to reunify the family as part of its ultimate proof the child cannot be safely returned to the parents' custody. *Id.*

We have already determined the State satisfied its burden to show M.E. cannot be safely returned to the custody of Rhonda or David. Placing her with David's sister or allowing additional visitation would not have benefited M.E. or eliminated the threat posed by entrusting her care to David and Rhonda. Nor would David's participation in services a few months earlier have changed the

outcome where David failed to fully participate in the services offered him, as shown by his failure to be forthright with his therapist about his past abuse.

C. Best Interests of the Child

Once we determine the statutory grounds for termination have been proved, the next step is to consider the factors under section 232.116(2). *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We must "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." Iowa Code § 232.116(2); *P.L.*, 778 N.W.2d at 40.

Rhonda asserts termination is not in M.E.'s best interests because M.E. is bonded to her and she has good parenting skills. Even accepting Rhonda's claims, neither M.E.'s bond nor Rhonda's skills outweigh the risk of exposing M.E. to someone who has repeatedly committed sex offenses against children.

When considering the factors set forth in section 232.116(2), we agree termination is in M.E.'s best interests. In his closing argument and recommendations filed on March 22, 2012, the GAL stated:

> [M]y recommendation is that termination would be in [M.E.]'s best interest. David will always pose a threat to [M.E.], and Rhonda continually fails to acknowledge and appreciate this risk. [M.E.] has been in a state of limbo for almost the entirety of her 18 months of life. She deserves permanency. [M.E.] is in a loving home with people who are ready, willing and able to adopt her. They have even made an attempt to keep [M.E.]'s bond with her biological siblings. [M.E.]'s best interest would clearly be served by terminating the parental rights of David [and Rhonda], which would allow another family to adopt her. This would give [M.E.] the permanency that every child deserves.

The juvenile court adopted the GAL's statement as its findings and conclusions. We agree with the assessment and, accordingly, affirm the termination of the parental rights of Rhonda and David.

AFFIRMED.