

IN THE COURT OF APPEALS OF IOWA

No. 2-615 / 12-0709
Filed August 22, 2012

**IN THE INTEREST OF G.C., J.C.,
J.N., and E.R.,
Minor Children,**

**B.N., Mother,
Appellant,**

**K.C., Father,
Appellant.**

Appeal from the Iowa District Court for O'Brien County, David C. Larson,
District Associate Judge.

A father and mother appeal a juvenile court order terminating their
parental rights. **AFFIRMED ON BOTH APPEALS.**

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children.

Considered by Vogel, P.J., and Danilson and Mullins, JJ.

MULLINS, J.

A father and mother appeal termination of their parental rights to four children. The father argues termination of parental rights was improper under Iowa Code sections 232.116(1)(e) and (f) (2011). The mother argues the State failed to provide reasonable reunification efforts, termination was not in the best interest of the children, and termination would be detrimental to the children due to the closeness of the parent-child relationship. We affirm on both appeals.

I. Background Facts and Proceedings

The mother and father are not married and have six children together. Four children are at issue in the present case: J.N. (born November 2002), J.C. (born June 2004), G.C. (born December 2005), and E.R. (born October 2007). The two other children, T.C. (born April 2010) and A.C. (born November 1996), are not at issue in the present case. T.C. lives with the mother in Iowa and A.C. lives with the father in Nebraska.

During the first sixteen months of this case, the father had no face-to-face interaction with J.N., J.C., G.C., and E.R. The father provided no financial support to the children other than giving the mother a couple of gift cards. The father sent birthday cards to J.N. and J.C. for their most recent birthdays and wrote several letters to the children. The father's only other contact with the children was over the telephone. The mother suffered a severe head injury as a child. As a result, she has short-term memory issues and a general cognitive ability within the borderline range of intellectual functioning.

This case first came to the juvenile court's attention on June 28, 2010, when the Department of Human Services (DHS) filed an application for an emergency ex parte removal of J.N., J.C., G.C., E.R., and T.C. from the mother's Iowa home. The basis for the ex parte removal was a lack of appropriate supervision placing the children at imminent risk.

On July 1, 2010, Nebraska authorities located the children at their father's home. Local authorities assisted in returning the children to Iowa. On July 6, 2010, the State filed a petition alleging the children to be children in need of assistance (CINA). CINA adjudication proceedings commenced on July 21, 2010, and continued on August 4, 2010.

On August 4, 2010, pursuant to an agreement between the parties, all five children were adjudicated children in need of assistance under Iowa Code section 232.2(6)(c)(2) (2009). Following adjudication, the juvenile court transferred custody of J.N. and J.C. to DHS and placed them in foster family care. The court ordered the return of G.C., E.R., and T.C. to the mother pending her return to Iowa. The court also ordered a home study of the father's home under the Interstate Compact for the Placement of Children (ICPC) to determine if placement with the father was acceptable.

On October 18, 2010, the State issued an arrest warrant for the father for a misdemeanor tampering with a witness charge relating to a witness in his children's CINA proceedings. The warrant provided "No Bail until seen by Magistrate." The father called two attorneys and attempted to contact the

magistrate to resolve this issue. The father did not resolve the issue until his return to Iowa for the termination of parental rights hearing in January 2012.

Meanwhile, on October 15, October 22, and November 2, 2010, the juvenile court held a contested dispositional hearing. On November 3, 2010, DHS requested, and the juvenile court granted, an ex parte removal of G.C., E.R., and T.C. based on lack of appropriate supervision placing the children in imminent danger.

On November 12, 2010, the juvenile court entered a disposition order providing custody of J.N., J.C., G.C., and E.R. was to remain with DHS for placement in foster family care. The State dismissed the temporary removal of T.C. on November 12, 2010 and the court ordered custody of T.C. to return to his mother. At the adjudication hearing, the juvenile court found the mother

suffered a brain injury as a child, and, as a result, she has some short-term memory issues, and her cognitive functioning is below average. [J.N., J.C., G.C., and E.R.] are very active and have behavioral issues related to aggression. At times, [the mother] is overwhelmed by the children's behaviors, and due to her decreased parenting abilities, she is unable to multi-task and appropriate[ly] supervise all five children at the same time.

[J.N., J.C., and G.C.] in particular present behavioral challenges, and they require above average parenting abilities. The four older boys continuously have excessive bruising and injuries as a result of their rough play, and they place themselves in danger when not being appropriately supervised. In relation thereto, when [the mother's] attention is on providing for [T.C.], she is often unaware of what the older boys are doing, resulting in little or no supervision. After removal of [J.N.] and [J.C.] from [the mother's] care, there was some improvement in [the mother's] supervision of the three children in her care, but even with three children, [the mother] becomes overwhelmed at times, and she is not able to properly supervise and provide appropriate care for [G.C.] and [E.R.] when her attention is on [T.C.].

In January 2011, Nebraska authorities denied the home study for possible placement of the children with the father pursuant to the ICPC.

On March 30 and April 25, 2011, the juvenile court held review hearings on the mother and father's joint motion for modification. The joint motion urged the juvenile court to return custody of all children to the mother. Alternatively, the motion argued the children should be placed in the father's custody or placed in foster family care in Nebraska.

On June 14, 2011, the juvenile court denied the parents' request for modification. Although progress toward reunification had been made, the court found the mother's parenting skills were still below average and the needs of the children were above average. The mother still struggled with providing structure, consistency, and supervision. Visitation required two supervisors. The juvenile court found it would not be in the children's best interest to give the father custody because of his limited contact with the children and the denial of the ICPC home study.

On July 13, 2011, the mother and father separately appealed the modification order. See *In re G.C.*, No. 11-0956, 2011 WL 3925737, at *1 (Iowa Ct. App. Sept. 8, 2011). Both parents argued there was a substantial and material change in circumstances allowing the children to return to either of their care. The mother also alleged she had not received reasonable reunification services.

On September 8, 2011, the Iowa Court of Appeals affirmed the June 14, 2011 CINA modification order. *In re G.C.*, 2011 WL 3925737, at *5. The court found,

[T]he mother's progress has not reached a point where the children can be safely returned to her care. There continue to be concerns regarding her ability to properly supervise the children, and to intervene when the children's behaviors become physically aggressive. Although the mother is actively participating in services, is progressing, and is able to meet T.C.'s needs, the evidence shows that she continues to be overwhelmed when she has all five of her children placed into her care. The children's special needs continue to require two people to help supervise during visitations. The best interests of the children do not require a change in custody to the mother at the present time.

....

[D]ue to lingering concerns regarding the mother's ability to sufficiently supervise her children and meet their safety needs, unsupervised visitation is not consistent with the best interests of the children at the present time.

Id. at *4–5.

On January 9, 2012, the mother and T.C. picked the father up from a bus station in Sioux City, Iowa. The mother drove the father to the Cherokee County jail where he turned himself in and was released the same day, finally resolving his outstanding warrant.

On January 10, 2012, the juvenile court commenced the termination of parental rights hearing. After the first day of the termination hearing, the father had his first face-to-face contact with the children in sixteen months. It was a two-hour supervised visit. The termination hearing proceeded on January 11, January 24, January 25, and February 25, 2012. During the hearing, the Iowa DHS caseworker providing case management; the Family Safety, Risk, and Permanency services provider; the court-appointed special advocate; the Citizen

Foster Care Review Board; and the children's guardian ad item recommended terminating parental rights.

On March 27, 2012, the juvenile court terminated the mother and father's parental rights. The juvenile court found,

Despite the offer and receipt of [at least fifty-nine different] reunification services, a lack of appropriate supervision has remained as an issue in this case, and although progress has been made both in parenting skills by [the mother] and improvements in behaviors by the children, [J.N., J.C., G.C., and E.R.] remain at risk of serious injury due to a lack of appropriate supervision if returned to their mother's custody. Visitation with [J.N., J.C., G.C., and E.R.] with their mother . . . has not progressed beyond supervised visitation, and at present, two visitation supervisors are still required to be present when [the mother] has visits with all four boys together. . . . Overall, [the mother's] parenting skills are below average, and the four older boys have behaviors and needs that are greater than average.

The mother and father now appeal the juvenile court's decision.

II. Standard of Review

This court reviews termination of parental rights *de novo*. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We give deference to the juvenile court's findings of fact, but are not bound by those findings. *Id.* We will uphold an order terminating parental rights if there is clear and convincing evidence for termination under section 232.116. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010).

III. Analysis

A. Statutory Grounds

If the juvenile court terminates parental rights on more than one statutory ground, we need only find one proper ground to affirm. *D.W.*, 791 N.W.2d at 707.

To terminate parental rights under section 232.116(1)(e), the State must show clear and convincing evidence that “the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so.” The Code defines the phrase “significant and meaningful contact” as including “the affirmative assumption by the parents of duties encompassed by the role of being a parent.” See Iowa Code § 232.116(e)(3) (2011) (defining significant and meaningful contact).

The father did not participate in any reunification services despite the State providing him the opportunity and encouraging him to do so. After sixteen months of no personal contact, the first time the father saw his children face-to-face was after the first day of termination proceedings. The father provided no financial support to the children other than providing the mother with a couple of gift cards. The father did, however, have regular, brief phone contact with the children. The father also sent birthday cards to two of the children on two separate occasions.

The father contends the State denied him a fair opportunity to resume care of his children because he had a “no-bond” warrant for his arrest in Iowa.

The State charged the father with tampering with a witness for an incident related to his children's CINA adjudication proceedings. In October 2010, a court issued an arrest warrant for "No Bail until seen by Magistrate." The father called two attorneys and attempted to contact the magistrate to resolve this issue. On January 9, 2012, one day prior to the termination proceeding, the father turned himself in and was released the same day.

The juvenile court found the father offered no satisfactory reason as to why he did not resolve the no-bond warrant issue earlier. We agree. The no-bond warrant did not relieve the father of his parental responsibilities nor is the challenge to the constitutionality of such warrants properly before this court. See *In re M.M.S.*, 502 N.W.2d 4, 8 (Iowa 1993) (recognizing incarceration is not a justification for the father's failed responsibilities). The father's acts led to the October 2010 arrest warrant. The father failed to resolve the issue from October 2010 to January 2012. "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987).

The father asserts termination of parental rights without an unfit parent finding violates his due process rights. A parent has a fundamental liberty interest in "the care, custody, and management of their child" protected by the Due Process Clause. See *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). Implicit in finding clear and convincing evidence for termination under section 232.116(1)(e) is a finding the parent forfeited his or her fundamental liberty interest in parenting a child. *In re T.R.*, 483 N.W.2d 334, 337 (Iowa Ct. App.

1992). Our legislature categorically determined terminating parental rights promotes the needs of a child when the parent ceases to maintain significant and meaningful contact for the statutory period under section 232.116(1)(e). *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000); see also *T.R.*, 483 N.W.2d at 337-38 (upholding the constitutionality of section 232.116(1)).

For the foregoing reasons, we find by clear and convincing evidence that the father failed to maintain significant and meaningful contact with his children for the previous six consecutive months prior to the termination proceeding despite being given the opportunity to do so. We find no due process violation. Thus, we affirm the juvenile court's termination of the father's parental rights under section 232.116(e).

As a result, we do not reach the father's additional issues of whether termination of parental rights under section 232.116(1)(f) was proper, whether the ICPC requires a positive home study prior to placing a child with an out-of-state parent, and whether requiring a positive ICPC home study prior to placing a child with an out-of-state parent violates due process.

The mother does not argue, and so concedes, statutory grounds for termination exist under section 232.116(f).

B. Reasonable Reunification Efforts

The State has a duty to make reasonable efforts towards reunification. Iowa Code §§ 232.107(2), 232.102(10)(a) (setting forth reasonable efforts). “[T]he reasonable efforts requirement is not viewed as a strict substantive requirement of termination.” *C.B.*, 611 N.W.2d at 493. The State's duty to make

reasonable efforts is broadly defined to include visitation arrangements “designed to facilitate reunification while protecting the child from the harm responsible for the removal.” *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996).

The mother contends the State failed to make reasonable reunification efforts because the State did not provide an opportunity for unsupervised visitation. The State offered at least fifty-nine different services to the family. The mother’s testimony did not dispute the receipt of those services. Throughout the case, the mother remained distrustful and resistance of many of the services aimed at improving her parenting skills.

On June 28, 2010, the court ordered the initial ex parte removal of the children because a lack of appropriate supervision placed the children at an imminent risk. Despite over sixteen months of services, the mother’s ability to adequately supervise her children never progressed to the point where it was in the children’s best interest to have unsupervised visitation. Thus, we agree with the juvenile court’s finding the State made reasonable efforts to reunify the mother with each of her children.

C. Best Interests of the Child

The mother challenges whether termination was in the best interest of each child. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). To make this determination, we 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.” *Id.* (quoting Iowa Code section § 232.116(2)).

The mother has been distrustful and uncooperative with the wealth of services available to her. The mother's testimony reveals a lack of insight into the role of the service providers, the children's behavioral issues, and her ability to provide adequate supervision. After sixteen months of services, the mother's parenting skills have not improved enough to allow unsupervised visitation. Visitation for J.N., J.C., G.C., and E.R. together still requires two visitation supervisors in addition to the mother to ensure the children's safety.

"Children simply cannot wait for responsible parenting." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). "At some point, the rights and needs of the child[ren] rise above the rights and needs of the parents." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The children need structure, consistency, and supervision and should not have to wait indefinitely to get it. *In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990) ("We have long recognized that the best interests of a child are often not served by requiring the child to stay in 'parentless limbo.'). We find it was in G.C., J.C., J.N., and E.R.'s best interest to terminate the mother's parental rights.

D. Parent-Child Relationship

The mother contends the parent-child relationship precludes termination. See Iowa Code § 232.116(3)(c); *P.L.*, 778 N.W.2d at 41. To determine whether this exception to termination applies, “our consideration must center on whether the child will be disadvantaged by termination, and whether the disadvantage overcomes [the parent’s] inability to provide for [the child’s] developing needs.” *D.W.*, 791 N.W.2d at 709. The mother shows love for her children and we recognize a parent-child bond. The mother remains, however, unable to adequately supervise and protect her children. The possible disadvantage resulting from termination does not overcome the mother’s inability to adequately supervise the children.

IV. Conclusion

For the foregoing reasons, we affirm the order of the juvenile court terminating the father’s and the mother’s parental rights to G.C., J.C., J.N., and E.R.

AFFIRMED ON BOTH APPEALS.