

IN THE COURT OF APPEALS OF IOWA

No. 2-923 / 12-1601
Filed November 15, 2012

**IN THE INTEREST OF T.L.H., T.E.H., and J.A.H.,
Minor Children**

S.F., Mother,
Appellant,

T.H., Father,
Appellant.

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

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

Sarah Smith of Bennett, Crimmins & Smith, Fort Dodge, for appellant
mother.

Derek Johnson of Johnson & Bonzer, P.L.C., Fort Dodge, for appellant
father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, and Benjamin John Smith, County Attorney, for appellee State.

Marcy Lundberg, Fort Dodge, for minor children.

Considered by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ.

EISENHAUER, C.J.

A mother and father appeal separately from the order terminating their parental rights to three children. They contend the court should have entered a permanency order transferring guardianship and custody to the paternal grandparents instead of terminating their parental rights. We affirm on both appeals.

The children, born in 2001, 2004, and 2006, were adjudicated in need of assistance (CINA) in June 2009 under Iowa Code section 232.2(6)(c)(2) (2009) following a March 2009 founded child abuse assessment based on unsafe conditions in the home and the parents' substance abuse. Positive hair stat drug tests for both parents before the July disposition hearing led to the children's removal from the home and placement with the paternal grandparents. A trial home placement began in late October. In January 2010 the court modified the disposition to return custody of the children to the parents, followed by automatic dismissal of the CINA cases in February if the parents provided negative drug tests. In February the father tested positive for methamphetamine; the mother's test was negative. The parents voluntarily agreed to return the children to the grandparents' care. In early March the court modified the disposition and approved the children's placement with the grandparents. Just prior to a review hearing in May, the father tested positive for marijuana use. The court continued the children's placement with the grandparents. The father had positive drug tests in September and November.

In March 2011 the court held a permanency hearing. Based on the parents' compliance with much of the contract of expectations, the court extended permanency for six months and ordered increased visitation and continued reunification services. The father's sweat patch worn in late May tested positive for methamphetamine. Although the parents were allowed visitation any day of the week, their visits decreased to weekly or even biweekly by September. The recommended permanency outcome at that time was to appoint the grandparents as guardians. The father stopped submitting to drug tests in August. By November, based on the parents' lack of progress, the permanency recommendation was changed to adoption. A report to the court noted the grandparents were "appropriate and willing to adopt the children." Because of the parents' inconsistency in visits and conflict between the parents and grandparents, a service provider started supervising visits. Both parents tested positive for methamphetamine in February 2012 and positive for marijuana twice in April. Conflict between the parents, especially the father, and the grandparents continued.

The court held a termination hearing in May and August. The court considered guardianship and concluded:

Although guardianship with the paternal grandparents was initially proposed by the State some time ago and was resisted by the parents at that time, it is now the permanency option urged by the parents in lieu of termination of parental rights. The Court disagrees. Under the circumstances of this case, a guardianship would not actually provide permanency for the children. The paternal grandfather testified about the confrontational relationship with his son []. . . . The hope of the parents is that if guardianship with the grandparents is ordered, then the CINA case can be closed. The parents would then be able to assert their rights as

parents without assuming any of the responsibilities of being a parent. They may be able to convince a Court someday that the guardianship should be terminated and the children returned to them. In other words, the parents are hoping for an “end-around play” which would get DHS out of their lives, allow them to use drugs how and when they wish, allow them to visit the children and be a part of their lives how and when they wish, and to always keep the possibility alive that they can regain custody. . . . There would be a constant threat to request an end of the guardianship if the grandparents did not act as demanded by the parents. The parents, especially the father, have demonstrated conclusively that they follow no rules except their own. Therefore, the parents are not proposing permanency. They are proposing just the opposite, a temporary placement with the grandparents which would only last as long as permitted by the parents. The Court concludes that the only way in which placement with the grandparents will succeed for the long term is to order termination of parental rights so that the grandparents may adopt the children as their own.

The court terminated the mother’s and father’s parental rights under Iowa Code section 232.116(1)(f) and (j) (2011). It found the best interests of the children required termination instead of guardianship. The court noted the grandparents are willing to adopt and to allow the parents and children to have a continuing relationship “so long as the parents address their substance abuse and mental health issues and present no safety concerns for the children.”

Our review on appeal is de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We give weight to the juvenile court’s findings, especially concerning witness credibility, but are not bound by them. *Id.*

On appeal, the parents do not challenge the statutory grounds for termination, so we need not discuss them. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010) (“Because the father does not dispute the existence of the grounds . . . we do not have to discuss this step [in the analysis].”). Because the parents raise identical claims, we address their appeals together. Both contend

termination was not in the children's best interests and the court should have entered a permanency order "placing guardianship with the paternal grandparents." They assert there is a strong parent-child bond and they "continue to exercise meaningful and significant visitation and enjoy numerous activities with the children." Both argue, "Due to the bond and continuing relationship with the parents, it is in the children's best interests for this case to enter a permanency order establishing a guardianship with the paternal grandparents pursuant to Iowa Code section 232.104(2)(d)(1)."

We agree with the court's conclusions quoted above and adopt them as our own. The children have been out of their parents' custody for more than two years. They need and deserve a safe, secure, and permanent home. Placing them with their grandparents under a permanency order is not a legally preferable alternative to termination. See *In re L.M.F.*, 490 N.W.2d 66, 67-68 (Iowa Ct. App. 1992). Before entering a permanency order transferring guardianship and custody of a child, the court must find "termination of the parent-child relationship would *not* be in the best interest of the child." See Iowa Code § 232.104(3)(a) (emphasis added). "[W]e cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child." *P.L.*, 778 N.W.2d at 41. Although it is clear the parents love their children, our consideration must center on whether the children "will be disadvantaged by termination, and whether the disadvantage overcomes [the parents'] inability to provide for [the children's] developing

needs.” See *In re D.W.*, 791 N.W.2d 703, 709 (Iowa 2010). Terminating the parental rights of both parents to free these children for adoption by their paternal grandparents will provide them with a safe, stable, secure home while allowing them to have a continuing relationship with their parents.

AFFIRMED ON BOTH APPEALS.