

IN THE COURT OF APPEALS OF IOWA

No. 2-953 / 12-1609
Filed November 15, 2012

**IN THE INTEREST OF B.S.,
Minor Child,**

K.S., Father,
Appellant,

A.S., Mother,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Judge.

A mother and father appeal the termination of their parental rights to their child. **AFFIRMED ON BOTH APPEALS.**

Mark A. Milder, Waverly, for appellant-father.

Brooke Trent of Nelson Law Firm, P.L.L.C., Waterloo, for appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Steven J. Halbach, Assistant County Attorney, for appellee.

Linnea Nicol, Assistant Public Defender, attorney and guardian ad litem for minor child.

Considered by Potterfield, P.J., and Danilson and Tabor, JJ.

TABOR, J.

The mother and father of a one-year-old child challenge the juvenile court's termination of their parental rights, alleging the Department of Human Services (DHS) did not make reasonable efforts toward reunification. Both parents also allege the juvenile court erred in finding clear and convincing evidence they lacked the ability or willingness to respond to services. The father also contests the court's denial of his motion to continue the termination hearing.

Our review of the record brings us to the same realization reached by the juvenile court: these parents have been unable to establish a home for their son "as they have both continued to abuse substances and have placed immediate gratification of their own needs above the needs of their child." Accordingly, we affirm the termination of parental rights.

I. Factual Background and Procedural Posture

This family has faced termination proceedings before. On September 2, 2011, the Butler County juvenile court terminated the parents' rights to their three older children. That termination order chronicled the history of substance abuse by both parents, the father's domestic abuse of the mother, and the father's extensive criminal record. On December 16, 2011, the court terminated the mother's rights to two other children she had with two different fathers.

B.S. was born in September 2011. The court denied initial requests by the DHS to remove the infant from his mother's care. On September 26, 2011, the mother voluntarily entered the Heart of Iowa, an in-patient substance abuse treatment program. But the mother relapsed on New Year's Eve 2011, using

methamphetamine while caring for her son. She also left the facility with the father, despite the existence of a non-contact order prohibiting him from being in her company. On February 9, 2012, the juvenile court ordered the removal of B.S. from his parents' care based on the mother's relapse and the violation of the no-contact order.

The court adjudicated B.S. as a child in need of assistance (CINA) on March 8, 2012. As part of the CINA adjudication, the court ordered the parents to obtain updated substance abuse and mental health evaluations. By mid-May 2012, neither parent had completed those evaluations nor initiated contact with mental health providers. The parents were not providing drug screens to the DHS as directed.

On May 23, 2012, the mother completed a substance abuse evaluation, which recommended outpatient treatment. The mother reported to the DHS that she used crack cocaine on July 7, 2012. She later claimed that information resulted from miscommunication. The father was arrested for third-offense operating while intoxicated in March 2012, and failed to appear for a hearing on that charge in May 2012. On June 19, 2012, the father completed a substance abuse evaluation, at which he tested positive for cocaine. He later claimed the test was inaccurate.

Both parents were inconsistent in their visits with B.S.—missing more than one-third of the sessions scheduled by the DHS and leaving many visits early.

On July 20, 2012, the State filed a petition for termination of the rights of both parents, alleging the following statutory grounds: Iowa Code section

232.116(1)(e) (2011) (failure to maintain significant and meaningful contact), (g) (lack of ability or willingness to respond to services), (h) (clear and convincing evidence child cannot be returned home at the present time), and (l) (parent suffers from severe and chronic substance abuse problem). The juvenile court heard testimony on August 15, 2012, and approved the petition for termination on August 22, 2012. The court did not find the testimony of either parent to be believable. The court relied on the grounds for termination set out in sections 232.116(1)(g) and (h). The parents file separate challenges to the termination order.

II. Standard of Review/Statutory Framework

We engage in a de novo review of rulings terminating parental rights. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We give weight to the juvenile court's findings of fact, especially in assessing the credibility of witnesses, but are not bound by them to reach the same conclusion. *Id.* We will uphold a termination order if the record contains clear and convincing evidence of grounds alleged 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.*

Termination cases follow a three-step analysis. *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). First, the juvenile court must determine if the petitioning party has established a ground for termination under section 232.116(1). *Id.* Second, the court must apply the best-interest framework set out in section 232.116(2). *Id.* Third, if the best-interest framework supports termination, the court still must

consider if any factors in section 232.116(3) preclude termination of parental rights. *Id.*

III. Motion to Continue

One week before the termination hearing, the father filed a motion to continue the proceedings for thirty days so he could address his medical condition. At the hearing the father alleged that he received an overdose of his anti-seizure medication while at the Black Hawk County jail, which caused him extreme confusion and forgetfulness. The guardian ad litem resisted the motion to continue, accusing the father of “malingering” and asserting the child’s best interest was served by going forward with the termination hearing. After listening to the father’s testimony, the juvenile court found no good cause to continue the matter: “I’ve observed [the father] on the witness stand. He appears to have it all together today. He’s alert and his memory appears to be intact.”

We review the court’s denial of the father’s motion to continue for an abuse of discretion and will only reverse if the court acted unreasonably or the denial resulted in an injustice. See *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996). The judge presiding over the trial “must sense whether a given continuance motion stems from a legitimate need, or from a wish to delay.” *State v. Teeters*, 487 N.W.2d 346, 348 (Iowa 1992).

On appeal, counsel for the father asserts: “Forcing the father to proceed under the circumstances was tantamount to proceeding in his absence, given the memory lapses and confusion he was experience at the time.” We reject the father’s hyperbolic assertion. The father provided detailed responses to his

attorney's questions, attempting to explain his pending criminal charges, his employment and housing situation, why the report that he tested positive for cocaine was inaccurate, and why he missed visits with his son. The record does not support the father's ground for a continuance. We find no basis to interfere with the juvenile court's exercise of its broad discretion to go ahead with the termination hearing.

IV. Reasonable Efforts

Our child welfare laws require the DHS to "make every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interests of the child." Iowa Code § 232.102(7); *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). But we do not view reasonable efforts as a "strict substantive requirement of termination." *C.B.*, 611 N.W.2d at 493. The State must show that it exerted reasonable efforts to reunify the family "as part of its ultimate proof the child cannot be safely returned to the care of a parent." *Id.*

On appeal both parents claim the DHS failed to provide adequate transportation assistance. They describe a situation where they were swindled out of their car and had trouble using the bus system. The mother notes her mobility is limited by her reliance on a prosthetic leg. The parents blame their difficulty in securing transportation for missed visits with their son and their failure to secure drug tests.

The juvenile court gave little credence to the parents' excuses: "If they fail in something, it is always someone else's fault." The record shows that DHS provided bus passes regularly to both parents, but that they did not take full

advantage of the available public transportation. Beyond transportation issues, the DHS offered the parents numerous services, but they opted for minimal participation. While B.S. was removed from their care the father continued to engage in criminal activity and the mother demonstrated an unhealthy dependence on the father. We defer to the juvenile court's credibility findings and conclude the DHS satisfied the reasonable efforts requirement.

V. Deferral of Permanence

The parents ask for six more months to reunify with B.S. The father argues that in the closing months of the case, they have started making progress. He claims both parents have completed psychological evaluations and their financial situation is improving. The mother notes in recent months she has voluntarily checked herself into in-patient substance abuse treatment and has engaged in mental health counseling.

The parents' eleventh hour attempts to prevent termination by engaging in services do not overcome their years of addiction and instability. See *In re D.M.*, 516 N.W.2d 888, 891 (Iowa 1994) (rejecting efforts of "recent origin" to accept parenting responsibilities). We reject their claims that "additional time could make all of the difference" and B.S. would not be harmed by the delay. These parents have been involved with the DHS for two years and have not addressed the problems that led to the termination of their older children in September 2011. Meanwhile, B.S. has been removed from parental custody for half of his life. His foster parents stand ready to adopt him, and the juvenile court acted reasonably in moving him toward that resolution.

VI. Statutory Grounds for Termination/Best Interest

The district court terminated parental rights on two bases. First, B.S. was adjudicated CINA; the parents' rights had been terminated with respect to another child; the parents continue to lack the ability or willingness to respond to services to correct the situation; and an additional period of rehabilitation would not correct the situation. Iowa Code § 232.116(1)(g). Second, the child was younger than three years of age, had been adjudicated CINA, had been removed for six consecutive months, and he could not be returned to the custody of his parents at the present time. *Id.* § 232.116(1)(h).

Both parents allege that they were willing and able to respond to services, but were hampered by the lack of assistance from the DHS and the lack of additional time to improve their situation. The State points out that neither parent argues B.S. could be returned to his or her care at the present time.

We find that omission to be telling. Where the juvenile court terminates on more than one ground, we need only find sufficient evidence to affirm based on one of the statutory provisions cited. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Here, we affirm under section 232.116(1)(h). Because an imminent reunion is not a realistic possibility on this record, the State has proved the necessary elements for termination by clear and convincing evidence. B.S. cannot be returned to his parents at this time because their ongoing substance abuse and the continuing dynamics of domestic violence pose a threat to his safety and well-being.

In deciding whether to affirm the termination of parental rights, we primarily consider the child's safety; physical, mental, and emotional condition and needs; and the placement that best provides for his long-term nurturing and growth. Iowa Code § 232.116(2); see *P.L.*, 778 N.W.2d at 40 (holding "there is no all-encompassing best-interest standard to override the express terms of the statute"). Severing the parental bonds is in B.S.'s best interests and will free him for likely adoption by his foster family.

The State proved the grounds for termination in section 232.116(1)(h); termination is in the child's best interests as set out in section 232.116(2); and no countervailing factors arise under section 232.116(3). We affirm.

AFFIRMED ON BOTH APPEALS.