

**IN THE COURT OF APPEALS OF IOWA**

No. 3-391 / 13-0400

Filed June 12, 2013

**IN THE INTEREST OF H.F., H.F., and T.F.,  
Minor Children,**

**R.P., Father of H.F. and T.F.,**  
Appellant,

**J.F., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

A mother appeals from a juvenile court order terminating her parental rights to three children, challenging termination of her rights to the oldest of the three, and the father of the younger two children separately appeals from a separate juvenile court order terminating his parental rights to the younger two.

**AFFIRMED ON BOTH APPEALS.**

Leslie D. Lamping of Day, Meeker, Lampig, Schlegel & Salazar, Washington, for appellant-father of H.F. and T.F.

Esther Dean, Muscatine, for appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Alan Ostergren, County Attorney, and Korie L. Shippee, Assistant County Attorney, for appellee.

Gregory Johnston, Muscatine, for father of H.F.

Mark J. Neary, Muscatine, attorney and guardian ad litem for minor children.

Considered by Eisenhauer, C.J., Tabor, J., and Miller, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

**MILLER, J.**

Jessica is the mother of Hd.F., Hy.F., and T.F, (“the children”), who were six, four, and three years of age respectively at the time of a November 2012 termination of parental rights hearing. Hd.F.’s father is Dale and Russell is the father of Hy.F. and T.F.

Jessica appeals from a March 1, 2012 juvenile court order terminating her parental rights to Hd.F. The same order terminated Dale’s parental rights to Hd.F., and Dale has not appealed.

Russell separately appeals from a February 27, 2012 juvenile court order terminating his parental rights to Hy.F. and T.F. The same order terminated Jessica’s parental rights to those two children and she has not appealed from that order. We affirm on both appeals.

As of November 2011 Jessica and Russell were separated, and the children were living with Jessica. Both Jessica and Russell had been the subject of previous “founded” child abuse and neglect reports involving some or all of the children. Jessica had previously had her parental rights to two children terminated, and a third child of hers was in the custody of the child’s father. Russell had previously had his parental rights to three children terminated.

In mid-November 2011 the Iowa Department of Human Services (DHS) began an “assessment” relating to allegations that Jessica’s home was unsanitary and unsafe for the children and that the children were being exposed to inappropriate sexual materials. T.F., then just two years of age, was in a dirty diaper, shut in a bedroom, banging to get out, and Jessica was still in bed. The

home contained dirty dishes and filth throughout the living areas, and three-year-old Hy.F. was carrying a pornographic magazine.

The children were removed from Jessica's home and placed with Russell temporarily pursuant to a "safety plan." The DHS child protective worker learned that Jessica had been shutting Hy.F. and T.F. in their room; leaving them at large while locking herself in her room; not feeding them, resulting in them climbing in the kitchen trying to find food; and sleeping at times as late as 7:00 p.m.

Four days after the placement with Russell the children were returned to Jessica with safety services in place. The services included home visits two times per day to ensure the children were being fed and supervised. On that same date Jessica complained to the police department that Russell was harassing her. Four days later she was taken to the hospital due to being suicidal. Another two days later she reported a domestic assault when a man, apparently her then-current paramour, ran over her foot with his car. The children were not consistently dressed and cared for when the protective worker visited, were frequently hungry, and were not having their basic living needs cared for.

On November 28, 2011, the DHS sought and secured an ex parte juvenile court order temporarily removing the children from their parents. The order placed the children in the temporary custody of the DHS for placement in family foster care. The State filed child in need of assistance (CINA) petitions on November 30, 2011. Following a December 8, 2011 hearing concerning temporary removal, contested by only Russell, the court placed the children in

the custody of the DHS for placement in family foster care. The children have thereafter remained in that status.

Following an uncontested adjudicatory hearing the juvenile court adjudicated the children CINA on February 1, 2012. The adjudication was pursuant to Iowa Code sections 232.2(6)(c)(2) and 232.2(6)(n) (2011). After an uncontested disposition hearing and resulting order, and several review hearings and resulting orders, the children's guardian ad litem filed petitions on September 25, 2012, seeking termination of parental rights. The juvenile court held an extended, combined permanency and termination hearing on November 8 and 21, 2012.

On February 27, 2013 the juvenile court entered an order terminating Jessica's and Russell's parental rights to Hy.F. and T.F. The court found that grounds for termination of Russell's rights had been proved under Iowa Code section 232.116(1)(g) (child adjudicated CINA, previous termination of parental rights as to another child or children of the parent, parent lacks ability or willingness to respond to services which would correct the situation, additional period of rehabilitation would not correct the situation) as to both Hy.F. and T.F., and under Iowa Code section 232.116(1)(h) (child three or younger, adjudicated CINA, removed from parents at least six of last twelve months, cannot be returned at present time) as to T.F. Russell appeals.

On March 1, 2013, the juvenile court entered an order terminating Jessica's and Dale's parental rights to Hd.F. The court found that grounds for

termination of Jessica's rights had been proved under Iowa Code section 232.116(1)(g). Jessica separately appeals.

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).

**Russell.** Russell asserts:

THE RECORD CONTAINS INSUFFICIENT EVIDENCE TO SUPPORT TERMINATION OF PARENTAL RIGHTS OF FATHER RUSSELL [ ] BECAUSE [RUSSELL] HAS MADE SUBSTANTIAL IMPROVEMENT IN HIS MENTAL HEALTH.

He argues he "was responding to services designed to address his anger issues that led to the placement of the children in foster care"; the psychologist who was counseling him on anger management testified to his "regular participation and success in counseling"; "[h]is anger issues concerned adults, not the children"; and he "was making progress in the counseling."

Although Russell's anger issues were part of what led to Hy.F. and T.F. being placed in and remaining in foster care, there were several other issues that continued, to a greater or lesser extent unaddressed and unresolved, throughout both the CINA proceeding and up to the time of the termination hearing. Further, although some evidence supports some of the arguments made by Russell, the record contains other, stronger evidence to the contrary on some of those points.

A May 2012 psychological evaluation of Russell resulted in a diagnostic impression of not-otherwise-specified depressive, attention deficit/hyperactivity,

anxiety, and borderline personality disorders. The psychologist recommended psychotherapy and medication management. The psychologist opined that the prognosis for Russell's personality disorder was poor, as he had received current and past psychotherapy but continued to have little insight into how he played a role in the involvement of the DHS. In the opinion of the psychologist, Russell focused blame on Jessica, lacked the insight needed to progress with his other problems, and had difficulty even admitting the existence of his own problems. Concerns throughout the juvenile court proceedings included not only Russell's anger management problems, but also his chaotic, unstable, and at times violent relationships with an ever-changing series of paramours, and his other unaddressed mental health issues.

At the commencement of the CINA proceedings Russell was living with Athena. He shortly thereafter began residing with Jessica, believing that doing so best served the possibility of the return of the children. He apparently maintained a relationship with Athena during that time. Following a December 2011 incident of domestic violence between Russell and Jessica, Russell returned to Athena. In early April 2012 Russell was to attend a vision appointment of Hy.F.'s that would also be attended by Jessica. Russell brought Athena to the appointment. A dispute occurred between Russell and Jessica. Russell became agitated and screamed at the service provider who was present. The appointment had to be canceled.

In about May 2012 Russell engaged in "pushing and shoving" Athena. He "kicked Athena out," and began a relationship with Wendy, who herself had been

involved in child abuse/neglect proceedings. When attending a late July 2012 family team meeting Russell became agitated. Wendy attempted to calm him by placing her hand on his arm. According to some accounts, Russell struck Wendy. According to Russell, he “flicked” her hand away. Shortly thereafter Russell ended his relationship with Wendy and renewed his relationship with Athena.

At a meeting in late October 2012 the DHS case manager attempted to discuss domestic violence issues with Russell. He became very upset, raised his voice, and left.

Russell received services, including psychiatric counseling, parenting classes, and supervised visitation, in the case involving termination of his parental rights to three children in about 2001. He again received such services after H.F. was born. He has twice previously attended batterer’s education programs.

All such services have again been made available to Russell during the present proceedings. He has willingly participated in anger management counseling, and takes medication for depression. He nevertheless continues to demonstrate anger and engage in domestic violence. Russell, however, denies that he has any other mental health problems or issues. He declines to engage in counseling for mental health issues other than anger, or to attend a batterer’s education program, both of which have been recommended.

Some evidence from his anger management counselor, from Athena, and from himself, indicates Russell has made some progress in anger management.



Other evidence, including ongoing domestic violence and anger and threats directed at DHS personnel and service providers, indicates a substantial, continuing anger management problem. Russell himself testified that his anger problems are worse now than at times in the past, stating they were “not as bad” before the DHS became involved in his life in late 2011.

Russell lays any blame for the earlier termination of his parental rights to three children entirely at the feet of the mother of those children. He lays fault for the present proceeding entirely on Jessica and the DHS. In the opinion of the DHS case manager and the service provider, Russell has no insight into his own problems and issues and his need to make changes, has not incorporated what has been covered in the various services into his interaction with and relationships with the children, and is unable to supervise and nurture Hy.F. and T.F. The DHS, service providers, guardian ad litem, and the State all recommend termination of Russell’s parental rights.

We have above listed the four elements that must be proved by clear and convincing evidence in order for termination of parental rights to be based on section 232.116(1)(g). The issue raised by Russell implicates the third and fourth of those elements. The juvenile court found, in relevant part, that

[Russell] continues to lack the ability and willingness to respond to services that would correct the situation. He is not capable of providing appropriate supervision and that will not change because he disagrees and believes his parenting is just fine.

Upon our de novo review we fully agree with the juvenile court, concluding that the evidence clearly and convincingly proves the last two elements of section 232.116(1)(g). Russell has had, and continues to have, serious relationship and

anger management problems, and mental health issues. Although he acknowledges an anger problem and attempts to address it, the problem continues, resulting in a continuation of unstable and chaotic relationships and ongoing domestic violence. Although Russell accepts medication for depression, he denies other mental health issues and thus refuses to address them. His lack of insight prevents him from addressing issues and problems that deny him the ability to properly supervise and nurture Hy.F. and T.F. An additional period of rehabilitation will not correct the situation within the reasonably foreseeable future.<sup>1</sup>

Hy.F. and T.F. need permanency, and are doing exceptionally well in a pre-adoptive family foster home. We affirm the termination of Russell's parental rights to Hy.F. and T.F.

**Jessica.** Jessica asserts the juvenile court erred in terminating her parental rights to Hd.F., arguing there is not clear and convincing evidence proving the last two of the four elements of section 232.116(1)(g). She argues she "has been ready, willing and able to respond to services to correct the situation" that has resulted in Hd.F.'s removal, and "believes she has complied with all of the case permanency requirements."

A March 2012 psychological evaluation of Jessica resulted in a diagnostic impression of not-otherwise-specified depression, attention deficit/hyperactivity disorder, and dependent personality traits. The psychologist recommended

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<sup>1</sup> Having found the grounds for termination under section 232.116(1)(g) proved, we need not and do not address whether the section 232.116(1)(h) grounds for termination of rights to T.F. were also proved. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

psychotherapy to help with depression and anger management and to help her gain insight into her mental health issues and the DHS involvement in her life. Additional parenting classes were recommended to help Jessica direct her behaviors.

Concerns throughout the juvenile court proceedings have included supervision of the children, nurturing of the children, anger management, chaotic and unstable relationships, domestic violence, and mental health issues.

Jessica has never progressed beyond supervised visitations with the children. In the opinion of the service provider and the DHS case manager, Jessica remains unable to provide supervision of more than one child at a time. In their opinion Jessica has been unwilling or unable to focus on parenting, nurturing, or even the mental health issues in her life, as she is distracted by and focuses on other things such as community service in a criminal case, another case involving DHS services (Jessica gave birth to a new baby in September 2012, and the baby was removed because of her mental health issues and her volatile relationship with her then-current boyfriend, the possible father of her new child), and the people coming to and going from her home. There has been no significant improvement in her parenting ability after almost a year of services in this case.

During the juvenile court proceedings in this case Jessica has had, and apparently ended, relationships with a "Harold," and with a "Kenneth," Kenneth being the purported father of her most recent child. Jessica has on three prior occasions had domestic violence counseling. During this case the service

provider worked with her to help her understand domestic violence and how it affects children. Jessica was referred to Family Resources for domestic violence counseling. She completed the “core” program, but failed to follow through with recommended further individual counseling. Despite all of the concerns about domestic violence, her prior domestic violence counseling on three occasions, and efforts related to domestic violence in this case, following the September 2012 of her new baby Jessica was twice the aggressor in incidents of domestic violence directed at the purported father of her new baby. Her actions led to police involvement.

Jessica received services in the earlier case involving termination of her parental rights to two children. Numerous services have been provided or offered to her during this case. Weekly individual counseling sessions for her mental health problems were recommended. Jessica attended some sessions at the University of Iowa. When Russell stopped providing transportation to those appointments Jessica stopped going. She did arrange for counseling in the city in which she lives, but stopped going only after two sessions. She asserts she does not go because of a lack of transportation. The evidence shows, however, that the service provider transported her on one occasion, she was provided with bus tickets to enable her to attend the sessions but did not go, and she has not sought further transportation assistance. In the opinion of the service provider and the DHS, Jessica has significant mental health issues, has no insight into her need to change things, and is unlikely to address, much less resolve, the

problems that prevent her from parenting. The DHS, service provider, guardian ad litem, and the State all recommend termination of Jessica's parental rights.

In relevant part the juvenile court found credible and convincing the evidence that Jessica has not improved her ability to supervise children, has not gained much insight from parenting classes, has required intervention and assistance in supervising the children during visitation throughout the case to avoid harm to the children, and that the children "absolutely cannot be returned to her now or in the near future." The court further found that Jessica "continues to lack the ability and willingness to respond to services," and "has shown no ability to improve her parenting."

Upon our de novo review we fully agree with the juvenile court. We conclude, as the juvenile court did, that the evidence clearly and convincingly proves the last two elements of section 232.116(1)(g), that Jessica continues to lack the ability or willingness to respond to services which would correct the situation, and an additional period of rehabilitation would not correct the situation. Hd.F. needs permanency and is doing well in his current foster home. Although that home is not a potential adoptive home, the evidence shows that he is not bonded to Jessica, will not suffer from termination of her parental rights, is doing very well, and is very adoptable. We affirm the termination of Jessica's parental rights to Hd.F.

**AFFIRMED ON BOTH APPEALS.**