

IN THE COURT OF APPEALS OF IOWA

No. 6-1051 / 06-1864
Filed January 18, 2007

IN THE INTEREST OF C.M.M.S.,
Minor child,

R.M.-S., Mother,
Appellant,

B.L.M.-S., Father,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Associate Juvenile Judge.

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

Martha McMinn, Sioux City, for appellant mother.

Roger E. McEntaffer, Sioux City, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Patrick Jennings, County Attorney, and Dewey Sloan and David Dawson, Assistant County Attorneys, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

VAITHESWARAN, J.

Rosada and Byron appeal the termination of their parental rights to their son Cody, born in August 2005.

I. Rosada

Rosada's attorney makes no argument in support of reversal. She states, "[a]s her attorney I cannot find any legal issues." In light of this statement, we affirm the termination ruling as to her.

II. Byron

Byron maintains the record lacks clear and convincing evidence to support termination pursuant to Iowa Code sections 232.116(1)(d) and (h) (2005). On our de novo review, we disagree.

Section 232.116(1)(d) requires proof of several elements including proof that,

the court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents.

Iowa Code § 232.116(1)(d)(1). In its order adjudicating Cody a child in need of assistance, the juvenile court made the following fact finding:

The public health nurse testified that she did not believe Rosada and Byron were meeting Cody's needs due to her concerns over the problems Cody's parents were having with feeding him, nurturing him, handling him, and exposing him to cigarette smoke.

The court also made the following finding:

There is a history of domestic violence between Rosada and Byron, a history of assaults within the extended family, and alcohol abuse. Byron has assaulted Rosada, Doug, and Vicki. Byron, like Rosada, has previously expressed suicidal ideations. Over the last two years, there have been twenty law enforcement

interventions/investigations involving Rosada, Byron, and extended family members.

And, the court made the following finding:

Rosada and Byron had difficulties in answering basic childcare questions. The investigators noted that they were almost out of formula for Cody and that the residence was cluttered and needed to be cleaned, though Cody himself appeared to be neat and clean. Byron told the investigator that he took his medications to help him with his temper. The investigator noted a strained relationship between Byron and Doug. Both Rosada and Byron were very defensive. Due to the concerns/observations of the investigator, COAR services were immediately initiated.

Based on these findings, the court adjudicated Cody a child in need of assistance pursuant to several provisions. Iowa Code §§ 232.2(6)(b) (defining child in need of assistance as child whose parent “has physically abused or neglected the child, or is imminently likely to abuse or neglect the child”), (c)(2) (defining child in need of assistance as child who has suffered or is imminently likely to suffer harmful effects as a result of a parent’s “failure . . . to exercise a reasonable degree of care in supervising the child”), and (n) (defining child in need of assistance as child whose parent’s “mental capacity or condition . . . results in the child not receiving adequate care”).

In its termination ruling, the juvenile court incorporated by reference the fact findings contained within the adjudicatory order. The record supports those findings. Therefore, this element for termination of parental rights pursuant to Iowa Code section 232.116(1)(d) was satisfied.

Turning to Iowa Code section 232.116(1)(h), the State was required to prove that “the child cannot be returned to the custody of the child’s parents.” A licensed psychologist who evaluated Byron opined as follows:

It is not recommended that Byron's son be returned to his care, due to the very high risk of violence in the home (given past history), the fact that the family is already extremely stressed by life-events outside the realm of parenting. Byron has marginal abilities to care for himself and should not be responsible for the care of another. He is prone to anxiety and, it appears, that he may become aggressive when overly anxious or stressed. This situation would surely place Cody at-risk of abuse or neglect.

This and other evidence supports the juvenile court's conclusion that Cody could not be returned to Byron's care. As the juvenile court stated:

The evidence in support of the statutory grounds for termination of parental rights is not only clear and convincing but, quite frankly, overwhelming. While the court does not question the love which Rosada and Byron have for Cody, they are simply incapable, notwithstanding the myriad of services which have been offered/provided to them, to meet even the basic needs of Cody. Their lack of parenting skills coupled with their domestically violent/relational issues, anger management issues, and mental health concerns would place Cody in grave/imminent danger if Cody was returned to the custody of either of them.

We conclude there is clear and convincing evidence to support termination under Iowa Code section 232.116(1)(h).¹

AFFIRMED.

¹ On appeal, Byron argues for the first time that the Americans with Disabilities Act precludes termination under the circumstances of this case. We decline to consider this argument, as it was not preserved for review. *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994).