

IN THE COURT OF APPEALS OF IOWA

No. 6-400 / 06-0560

Filed June 14, 2006

**IN THE INTEREST OF S.R., T.O. Jr., K.R., and T.A.R.,
Minor Children,**

G.E.R., Father,
Appellant,

M.N., Father,
Appellant,

D.R., Mother,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Mary Jane Sokolovske, Judge.

Parents appeal the juvenile court order terminating their parental rights.

AFFIRMED.

Martha M. McMinn, Sioux City, for appellant G.E.R.

Patrick H. Tott, Sioux City, for appellant M.N.

Maxine M. Buckmeier, Sioux City, for appellant D.R.

Randy Hisey, South Sioux City, Nebraska, for father T.O.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Tom Mullin, County Attorney, and David Dawson, Assistant County Attorney, for appellee State.

Jason Gann of Berenstein, Moore, Berenstein, Heffernan & Moeller, L.L.P., Sioux City, guardian ad litem for minor children.

Considered by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

ZIMMER, J.

A mother and two fathers appeal the termination of their parental rights. We affirm.

I. Background Facts & Proceedings

Deb is the mother of Timothy Jr., born in June 1998; Selena, born in May 2002; Kylie, born in March 2003; and Tracie, born in June 2004. Timothy is the legal father of Timothy Jr., Selena, and Kylie.¹ George is the putative biological father of Selena and Tracie. Michael is the putative biological father of Kylie. Deb has a history of mental health problems. She came to the attention of the Iowa Department of Human Services in September 2002 due to concerns that she was not providing care for Selena as ordered by her physician, and that Selena was failing to gain weight.

In October 2002 Selena was adjudicated to be a child in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(c)(2) (Supp. 2001) (child is likely to suffer harm due to parent's failure to supervise), (e) (parent fails to provide needed medical treatment), (g) (parent fails to provide adequate food, clothing, or shelter), and (n) (parent's mental condition or drug use results in child not receiving adequate care). Timothy Jr. was not adjudicated CINA because he was then living with his father, Timothy.

By December 2002 Timothy had been placed in jail in Arkansas on domestic abuse charges, and Timothy Jr. was returned to Deb's care. Timothy Jr. was adjudicated CINA on the same grounds as Selena. After Kylie was born

¹ Timothy is the legal father of Selena and Kylie because he was married to Deb until April 2003. Deb and Timothy had separated prior to these juvenile court proceedings.

in March 2003, she was also adjudicated CINA on these grounds. A psychosocial evaluation from this time indicated Deb did not have the ability to properly care for or parent her children on a daily basis. The report also indicated that George had a limited understanding of the roles of parent and child. In addition, the report stated that Timothy would require a vast amount of services to improve his life situation. Michael was not included in the report.

George had been in prison for parole violations, but he was released in May 2003, and began living with Deb and the children. Deb became uncooperative with services. George had a positive drug test in June 2003. The State attempted to remove the children, but they had vacated their residence, and their whereabouts were unknown. The juvenile court ordered that when the children were located they should be placed in foster care.

Deb, George, and the children were found in May 2005 in a residence where methamphetamine and drug paraphernalia were present. Hair tests showed the children had been exposed to methamphetamine. Deb and George were arrested on a variety of charges.² The children, including Tracie, who had been born in June 2004, were immediately removed and placed with relatives. Tracie was adjudicated CINA under sections 232.2(6)(b) (2005) (parent is imminently likely to neglect child), (c)(2), (g), and (n).

In January 2006 the State filed a petition seeking termination of the parental rights of Deb, Timothy, George, and Michael. At that time, Deb was in

² Deb pled guilty to child endangerment and was sentenced to fifty-four days in jail. After that, she pled guilty to forgery in Missouri, and was sentenced to four months in jail.

prison in South Dakota on a charge of escape as a felony.³ Timothy was in prison in Arkansas on rape charges.⁴ George was in prison on a charge of third-degree burglary.⁵ Michael questioned whether he was Kylie's biological father. He stated he was not interested in pursuing a relationship with Kylie until he was sure he was her father. On the other hand, Michael did not obtain a paternity test to establish whether or not he was Kylie's biological father.

The juvenile court terminated Deb's parental rights under sections 232.116(1)(d) (child CINA for neglect, circumstances continue despite the receipt of services), (e) (child CINA, removed for six months, parent has not maintained significant and meaningful contact), (i) (child meets definition of CINA, was in imminent danger, services would not correct conditions), and (l) (child CINA, parent has substance abuse problem, child cannot be returned within a reasonable time). Timothy's parental rights were terminated under sections 232.116(1)(b) (abandonment), (e), and (h) (child is three or younger, CINA removed for at least six months, and cannot be returned home) (Selena and Kylie). George's parental rights were terminated under sections 232.116(1)(d), (e), (h), (i), and (l). Michael's parental rights were terminated under sections 232.116(1)(b), (e), and (h). Deb, George, and Michael have appealed.

II. Standard of Review

The scope of review in termination cases is *de novo*. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). The grounds for termination must be proven by

³ Deb had been on probation in South Dakota on drug charges. She later pled guilty to escape as a felony, and in January 2006 was sentenced to two years in prison.

⁴ Timothy is serving a ten-year sentence.

⁵ George pled guilty to burglary in the third degree, and in November 2005 he was sentenced to five years in prison.

clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Our primary consideration is the best interests of the children. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997).

III. Deb

Deb asserts that although she was incarcerated, she was doing everything she could to maintain contact and to maintain a relationship with her children. We note that Deb's parental rights were not terminated solely due to failure to maintain significant and meaningful contact with her children. See Iowa Code § 232.116(1)(e). To the extent Deb has not challenged the other grounds for termination of her parental rights under sections 232.116(1)(d), (i), and (l), we may affirm on these grounds. See Iowa R. App. P. 6.14(1)(c) ("Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue.").

In any event, a review of the record shows clear and convincing evidence that Deb's parental rights should be terminated on all of the grounds cited by the juvenile court. Rather than participate in services, Deb absconded with the children for almost two years, and exposed them to drug use. Based on her conduct, Deb was charged with child endangerment, and she pled guilty to this offense. We affirm the termination of Deb's parental rights.

IV. George

George also claims that although he was incarcerated, he was doing everything possible to maintain contact with his children. Like Deb, George's parental rights were terminated on multiple grounds, including section

232.116(1)(e), failure to maintain significant and meaningful contact, and we could affirm on these other grounds. See Iowa R. App. P. 6.14(1)(c). We find sufficient evidence in the record to support termination of George's parental rights on all of the grounds cited by the juvenile court. George placed the children in danger by absconding with them and exposing them to his drug use and criminal activity. We affirm the termination of George's parental rights.

V. Michael

Michael claims there is insufficient evidence in the record to support termination of his parental rights. He asserts that the State should have paid for paternity testing, and that if he had been proven to be the father of Kylie he would have entered into a relationship with her and she could be placed in his care.

Michael's argument shows his ambivalence towards Kylie. Michael has not established whether he is or is not the father of Kylie. He has not entered into any kind of a relationship with Kylie, stating he did not want to create instability with his other children until paternity was established. He has never provided Kylie with any financial support. Michael has failed to step forward into a parental role for Kylie, and we conclude he has abandoned her under section 232.116(1)(b), and has failed to maintain significant and meaningful contact under section 232.116(1)(e). We affirm the termination of Michael's parental rights.

We affirm the decision of the juvenile court.

AFFIRMED.