

IN THE COURT OF APPEALS OF IOWA

No. 6-402 / 06-0562
Filed July 12, 2006

IN THE INTEREST OF A.T. and C.T., Minor Children,

F.T., Father,
Appellant,

K.S.-T., Mother,
Appellant.

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

Parents appeal a juvenile court order terminating their parental rights.
AFFIRMED.

James A. Schall of Schall Law Office, Storm Lake, for appellant father.

Charles A. Schulte of Schulte & Graven Law Firm, P.C. Sac City, for
appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Earl E. Hardisty, County Attorney, and Tina Meth-Farrington,
Assistant County Attorney, for appellee State.

Bruce Becker of Vest, Becker & Murray Law Firm, Sac City, guardian ad
litem for minor children.

Considered by Sackett, C.J., and Huitink and Miller, JJ.

PER CURIAM***I. Background Facts & Proceedings***

Francis and Kay are the parents of Alexander, born in January 2000, and Chrystopher, born in January 2004. Kay is also the mother of Henry, who was born in 1996. Francis and Kay were married in May 1999, and had been living together for some time prior to that. Francis participated in services with Kay in regard to Henry.¹ When Henry was removed from the family's care in November 1999 he had thirty-nine bruises on his body.² Kay voluntarily terminated her parental rights to Henry in February 2000. Francis pled guilty to child endangerment.

Kay is a lower functioning adult and she has a history of mental illness. Francis has been diagnosed with an adjustment disorder and a major depressive disorder. Both parents have problems with anger management. Due to the physical abuse of Henry while in the parents' care, services were initiated for Alexander soon after his birth. The parents received family and individual therapy sessions and family-centered services for a number of years.

Alexander was adjudicated to be a child in need of assistance (CINA) under Iowa Code section 232.2(6)(b) (1999) (parent is imminently likely to physically abuse or neglect child). In December 2000, Kay revealed that Francis would get very mad at Alexander and shake him. The juvenile court ordered Francis to vacate the home. Kay did not always properly supervise Alexander,

¹ Kay received family-centered services from February 1997 to March 1999. Kay and Francis were living together at least by October 1998, and Francis also participated in services while in the home.

² Henry also later alleged that he had been sexually abused by Francis.

and the Department of Human Services issued a founded report of denial of critical care. In January 2001, the juvenile court ordered that Alexander should be placed with a paternal aunt. The parents participated in counseling and admitted some of the past abuse of Henry. The juvenile court returned Alexander to their care in February 2001. This CINA case closed in April 2002.

Alexander was removed from the parents' care again in June 2002 due to a report that he had been shot by a BB gun. A new CINA petition was filed. The parents voluntarily agreed to participate in services. Alexander was returned to their care. No new CINA adjudication was entered and the case was officially closed in February 2003. Chrystopher was born in January 2004.

Alexander and Chrystopher were removed from the parents' care in July 2005 after Kay sent the Department three audio cassette tapes of Francis screaming at the children and striking one of them. Alexander was found to have sustained injuries from the abuse. Kay told social workers Francis had verbally, physically, and sexually abused the children. The children were adjudicated CINA under sections 232.2(6)(b) (2005), (c) (child is likely to suffer harm due to mental injury or parent's failure to exercise care in supervision), and (d) (child is imminently likely to be sexually abused).

The State filed a motion to waive reasonable efforts under section 232.102(12), which provides that the reasonable efforts requirement may be waived if there is clear and convincing evidence to show aggravated circumstances exist, including the following:

- c. The parent's parental rights have been terminated under section 232.116 with respect to another child who is a

member of the same family and there is clear and convincing evidence to show that the offer or receipt of services would not be likely within a reasonable time to correct the conditions which led to the child's removal.

Iowa Code § 232.102(12)(c).

In October 2005, the juvenile court granted the motion to waive reasonable efforts. The court found that although Francis was not the biological father of Henry, at the time of the last removal of Henry from Kay's custody, and at the time of the termination order, Francis was in the role of step-father to Henry. The court concluded Henry was "another child who is a member of the same family" The court noted the parents received services for a long period of time, and they were "unable or unwilling to make meaningful sustained progress and have been unwilling to accept responsibility for their actions and inactions." The court determined it was unlikely that further services would correct the abusive conditions in the home.

In November 2005, the State filed a petition seeking termination of the parents' rights. The juvenile court terminated the parents' rights pursuant to sections 232.116(1)(g) (child CINA, parent's rights to another child in the same family were terminated, parent does not respond to services, additional period of rehabilitation would not correct situation) and (i) (child meets definition of CINA, was in imminent danger, services would not correct conditions). The court found:

[T]here is a long history of extensive and intensive services provided for these parents, yet no meaningful improvement or change has been made. Therefore there is clear and convincing evidence that the offer or receipt of any further services would not correct the conditions which led to the abuse or neglect of the children within a reasonable amount of time.

Francis and Kay each appeal the termination of their parental rights.

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 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. Francis

A. Francis contends the juvenile court should not have entered an order pursuant to section 232.102(12)(c), waiving reasonable efforts for him because his parental rights had not been terminated “with respect to another child who is a member of the same family” Francis points out that he is not the biological father of Henry, and therefore, he had no parental rights to be terminated.

We note that in the case, *In re C.W.*, 522 N.W.2d 113, 116 (Iowa Ct. App. 1994), a mother argued that her children by one father could not be considered to be in the same family as her child by another father. We rejected the argument that because the children had different fathers they were not members of the same family. *C.W.*, 522 N.W.2d at 116. So also in this case, Henry, Alexander, and Christopher all had the same mother, and just because Henry had a different father than the other two children does not lead to a finding that the children were not members of the same family.

We look to *In re Adoption of Cheney*, 244 Iowa 1180, 59 N.W.2d 685 (1953), for an analogy concerning the relationship between step-parents and step-children. In that case the Iowa Supreme Court held that a step-father who had custody of a child was entitled to notice of an adoption. *Cheney*, 244 Iowa at 1189, 59 N.W.2d at 689. The court stated:

[A] stepparent who voluntarily receives the stepchild into the family and treats it as a member thereof stands in the place of the natural parent, and the reciprocal rights, duties, and obligations of a parent and child subsist and continue as long as such relation continues.

Id. at 1185, 59 N.W.2d at 687 (citations omitted). See also *Fransen v. Iowa Dep't of Human Servs.*, 376 N.W.2d 903, 907 (Iowa 1985) (“[A] step-parent living with his step-children is legally obligated to provide for their support.”); *Kelley v. Iowa Dep't of Social Servs.*, 197 N.W.2d 192, 199 (Iowa 1972) (same).

Francis was married to Kay and living with her at the time Henry was returned to her home, when the child was abused, and when the parental rights to the child were terminated. We find clear and convincing evidence that Francis, Kay, and Henry were all members of a family, and that the subsequently born children, Alexander and Christopher, were also members of this same family. Thus, although Francis had no parental rights to Henry terminated, Francis was a member of the same family of another child, Henry, when parental rights to that child were terminated. We find the juvenile court properly applied section 232.102(12)(c) to the facts of this case.

Francis also claims that the State did not show by clear and convincing evidence that “the offer or receipt of services would not be likely within a reasonable period of time to correct the conditions which led to the child’s

removal.” Iowa Code § 232.102(12)(c). Francis asserts that with additional services he would have been able to resume care of Alexander and Chrystopher.

Reasonable efforts may be waived when aggravated circumstances are found to exist. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). The evidence in the present case shows that Francis received services with regard to Henry from at least October 1998 until Kay’s parental rights were terminated in February 2000. Also, Francis received services regarding Alexander from his birth in January 2000 until the first CINA case was closed in April 2002. Then in June 2002, the family voluntarily agreed to participate in services. That case was closed in February 2003. Francis additionally received services from July 2005 until the juvenile court waived further services in October 2005. Despite the receipt of services for many years, Francis remained abusive to the children. The evidence clearly shows that additional services would not correct Francis’s parenting deficiencies within a reasonable period of time. We determine the juvenile court correctly determined that reasonable efforts could be waived under the facts of this case.

B. Francis claims there is insufficient evidence in the record to support the termination of his parental rights. The evidence showed Francis verbally, physically, and sexually abused the children and they were in imminent danger from his abusive conduct. Francis had received services for many years, but the situation had not essentially changed since the time Henry was removed from the parents’ care in November 1999 with thirty-nine bruises on his body. Further services would not correct the abusive conditions in the home. We determine

Francis's parental rights were properly terminated under sections 232.116(1)(g) and (i).

IV. Kay

A. Kay asserts that the requirement for reasonable efforts should not have been waived. Like Francis, she claims the State failed to show "the offer or receipt of services would not be likely within a reasonable period of time to correct the conditions which led to the child's removal." See Iowa Code § 232.102(12)(c). She claims that the fact that she secretly taped the abuse by Francis shows she is ready to participate in services as she has not in the past.

The reality, however, is that Kay has been involved with services for a very long period of time, since Henry was initially removed in February 1997. Even though Kay has received services throughout the years, she has remained unable or unwilling to protect the children from abuse. We find clear and convincing evidence that additional services would not correct Kay's parenting deficiencies within a reasonable period of time. We find the juvenile court properly waived additional services under section 232.102(12)(c).

B. Kay claims the juvenile court improperly terminated her parental rights under section 232.116(1)(g). She does not raise a claim regarding section 232.116(1)(i), although her parental rights were also terminated under this section. A party's failure in a brief to state, to argue, or to cite authority in support of an issue may be deemed waiver of that issue. Iowa R. App. P. 6.14(1)(c). Because Kay has waived any argument that her parental rights were not properly terminated under section 232.116(1)(i), we may affirm on this ground. Once we

have affirmed on one ground, we do not need to consider the other grounds cited by the juvenile court. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

We affirm the decision of the juvenile court.

AFFIRMED.

Sackett, C.J., concurs specially without opinion.