

IN THE COURT OF APPEALS OF IOWA

No. 6-513 / 06-0791

Filed July 26, 2006

**IN THE INTEREST OF K.Y.,
Minor Child,**

**C.A.B., Mother,
Appellant,**

**J.Y., Father,
Appellant.**

Appeal from the Iowa District Court for Tama County, Kristin L. Hibbs,
Judge.

Mother and father appeal from the termination of their parental rights.

AFFIRMED.

Nancy Burk, Toledo, for appellant mother.

Melissa Nine, Marshalltown, for appellant father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, and Brent D. Heeren, County Attorney, for appellee State.

John Haney, Marshalltown, guardian ad litem for minor child.

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

HUITINK, J.

I. Background Facts and Proceedings.

K.Y. was born in July 1999. C.B. is her mother. J.Y. is her father. K.Y. was removed from parental custody and placed with relatives on March 31, 2003, because of the risk of harm presented by her parents' domestic violence and substance abuse.

K.Y. was adjudicated a child in need of assistance (CINA) in May 2003, pursuant to Iowa Code sections 232.2(6)(c) (2003) (child is likely to suffer harm due to (1) mental injury or (2) parent's failure to exercise care in supervising child) and 232.2(6)(n) (parent's mental capacity (or condition, or drug or alcohol abuse) results in child not receiving adequate care). The July 23, 2003 dispositional order continued K.Y.'s placement with relatives. In addition, C.B. and J.Y. were required to complete substance abuse and mental health evaluations and follow all treatment recommendations. C.B. and J.Y. were offered services intended to remedy the circumstances necessitating K.Y.'s removal and facilitate reunification. These services included supervised visits and parenting instruction, multiple substance abuse evaluations and treatments, random urine analyses, family centered services, psychological evaluations and counseling, hair stat testing, foster care services, individual therapy, individual skill development, probation supervision and Iowa Department of Human Services (department) case management.

In January 2004 the department requested a change in the case permanency plan from reunification to K.Y.'s permanent placement with relatives. The department cited C.B.'s unresolved substance abuse, mental health issues,

and J.Y.'s incarceration, as well as their failure to maintain significant contact with K.Y. In October 2005 the State filed a petition for termination of parental rights, requesting C.B.'s and J.Y.'s parental rights be terminated pursuant to Iowa Code sections 232.116(1)(d) (2005) (child CINA for physical or sexual abuse (or neglect), circumstances continue despite receipt of services), 232.116(1)(e) (child CINA, child removed for six months, parent has not maintained significant and meaningful contact with child), 232.116(1)(f) (child four or older, child CINA, removed from home for twelve of last eighteen months, and child cannot be returned home), 232.116(1)(i) (child meets definition of CINA, child was in imminent danger, services would not correct conditions), 232.116(1)(j) (child CINA, parent imprisoned for crime against child (or unlikely to be released for five or more years)), and 232.116(1)(l) (child CINA, parent has substance abuse problem, child cannot be returned within a reasonable time).

On April 28, 2005, the court terminated C.B.'s and J.Y.'s parental rights under Iowa Code section 232.116(1)(d) (child CINA for physical or sexual abuse (or neglect), circumstances continue despite receipt of services), 232.116(1)(f) (child four or older, child CINA, removed from home for twelve of last eighteen months and child cannot be returned home), and 232.116(1)(l) (child CINA, parent has substance abuse problem, child cannot be returned within a reasonable time).

Both J.Y. and C.B. appeal the juvenile court's termination order. C.B. raises the following issues:

- I. Was there clear and convincing evidence that continued custody of the child by C.B. would likely result in emotional or physical damage to the child?

- II. Was termination necessary given the current placement of the child?

J.Y. argues the following:

- I. While the statutory criteria for termination have been met, the juvenile court failed to consider that a termination of parental rights is not necessary and definitely not in the best interests of the child because a relative placement is available.
- II. Additionally, the juvenile court failed to consider that a termination of parental rights would be detrimental to the best interests of the child due to the close bond that is shared between the child and her father, as well as the father's family.

II. Standard of Review.

The scope of review 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 concern is the best interests of the child. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997).

III. The Merits.

When the trial court terminates parental rights on multiple grounds, we need only find clear and convincing evidence to terminate on one of the grounds to affirm the trial court. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Iowa Code section 232.116(1)(I) provides for termination of parental rights if there is clear and convincing evidence that a child has been adjudicated to be a child in need of assistance pursuant to section 232.96 and custody has been transferred from her parents for placement pursuant to section 232.102, the parent has a severe, chronic substance abuse problem and presents a danger to self or others as evidenced by prior acts and that there is clear and convincing

evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

There is no dispute concerning the requisite adjudication and duration of K.Y.'s out-of-home placement. The remaining issues concern the severity and implications of her parents' substance abuse and K.Y.'s need for permanency.

The trial court found:

Each of these parents has a severe, chronic substance abuse problem and presents a danger to themselves or others as evidenced by their prior acts. Neither parent has consistently followed through with recommendations for aftercare or the requirements of the case plan. There is no indication from the past behaviors of either parent that they are ready to address this problem within a reasonable period of time. [C.B.] continued to use illegal drugs during the pendency of the proceedings. [J.Y.] has been in jail or prison most of the time. When he was out, efforts to monitor his use by setting up UA's was unsuccessful because he was unresponsive to attempts to reach him. [J.Y.] and [C.B.'s] severe, chronic substance abuse problems present a danger to themselves and to their child as evidenced by prior acts. The court finds there is clear and convincing evidence that the parents' prognosis indicates that [K.Y.] will not be able to be returned to the custody of either parent within a reasonable period of time considering the child's age and need for a permanent home.

Based on our de novo review of the record, we find clear and convincing evidence supporting the trial court's findings of fact, and we adopt them as our own. We have long recognized that parents with chronic and unresolved substance abuse problems clearly present a danger to their children. See e.g., *State v. Petithory*, 702 N.W.2d 854, 858-59 (Iowa 2005) (citing *In re J.K.*, 495 N.W.2d 108, 113 (Iowa 1993)).

We accordingly affirm the trial court's decision to terminate C.B.'s and J.Y.'s parental rights on this ground.

IV. Best Interests and Relative Placement.

The court has discretion to deny the State's requested termination of parental rights if circumstances indicate that termination is not in the child's best interests. *In re A.L.*, 492 N.W.2d 198, 202 (Iowa Ct. App. 1992). A close relationship between parent and child is an example of a circumstance warranting such restraint. Iowa Code § 232.116(3)(c). However, this circumstance is only one of many factors considered and is not controlling. *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). The primary interest in termination proceedings is the best interests of the children. Iowa R. App. P. 6.14(6)(o); *In re R.K.R.*, 572 N.W.2d 600, 601 (Iowa 1998). In determining the best interests of the children, we look to the children's long-range and immediate interests. *In re J.J.S., Jr.*, 628 N.W.2d 25, 28 (Iowa Ct. App. 2001). "Insight for the determination of the child's long-range best interests can be gleaned from 'evidence of the parent's past performance for that performance may be indicative of the quality of the future care that parent is capable of providing.'" *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (citing *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981)).

The court may similarly defer termination of parental rights when the children are placed with a relative. Iowa Code § 232.116(3)(a). Such restraint is however, permissive, not mandatory. *Id.*

Even if we assume that the parents' relationship with K.Y. is as close as they claim, the risk of harm presented by their unresolved and chronic substance abuse outweighs any other consideration. We, for the same reason, reject the

parents' claim that termination of their parental rights is unnecessary because K.Y. has been permanently placed with relatives.

We have carefully considered all of the issues raised by the parents on appeal and find they have no merit or are resolved by the foregoing. The trial court's decision terminating C.B.'s and J.Y.'s parental rights is affirmed.

AFFIRMED.