

IN THE COURT OF APPEALS OF IOWA

No. 6-993 / 06-1699
Filed January 18, 2007

**IN THE INTEREST OF R.R. JR.,
Minor Child,**

**R.R.R., Father,
Appellant,**

**J.B., Mother,
Appellant.**

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

A mother and father appeal the termination of their parental rights.

AFFIRMED.

Esther Dean, Muscatine, for appellant father.

Roland Caldwell of Muscatine Legal Services, Muscatine, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Gary Allison, County Attorney, and Korie Shippee, Assistant County Attorney, for appellee State.

Mark Neary, Muscatine, for intervenor.

Neva Rettig-Baker, Muscatine, for minor child.

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

MAHAN, P.J.

Raymond and Jessica appeal the termination of their parental rights. We affirm.

I. Background Facts and Proceedings

Raymond and Jessica are the parents of R.R. Jr., born March 24, 2003. The Iowa Department of Human Services (DHS) became involved after Muscatine police officers found the child and his two-year-old sister in a busy street in September 2004. Both children appeared to have fecal matter on them. At the time, Raymond was ill and home sleeping. Jessica was upstairs cleaning and did not realize the children left the house. DHS initiated services. Reports indicate the parents initially worked well with the case worker, worked hard on assignments, and met expectations. They missed one scheduled meeting after Jessica left the home for a week after an argument.

R.R. Jr. was adjudicated a child in need of assistance (CINA) on December 13, 2004. The court placed him in his parents' custody. Jessica left the family home on April 11, 2005. She informed the service provider she left due to domestic violence. Raymond later alleged Jessica was using drugs. Jessica participated in services for two weeks between April and July 2005. On July 2, 2005, R.R. Jr. was again found alone in the street wearing only a diaper. The "Child Protective Service Assessment" found Raymond failed to supervise R.R. Jr. Raymond left the child with a woman about whom DHS had previously warned Raymond and with whom Raymond had agreed not to leave R.R. Jr. Raymond admitted current substance abuse and previous domestic violence against Jessica. R.R. Jr. was removed on July 19, 2005. The removal order

stated that Raymond continued his substance abuse, resisted treatment, and failed to abide by a safety plan.

The district court reviewed the case in October 2005 and found little change in the parents' behavior. Jessica missed services from the latter part of July to mid-September. She did not complete a substance abuse evaluation. In October 2005 Raymond was charged with driving while intoxicated. He completed a substance abuse evaluation and was successfully discharged from outpatient treatment in December 2005. Jessica's visitations with R.R. increased throughout December 2005 and January 2006. In January she completed a substance abuse evaluation that found she had amphetamine and cannabis dependence in full remission. Raymond was arrested on January 16, 2006, for a probation violation. In February he was sentenced to 142 days in the county jail. After his release, he was sent to the violator's program until October 2006.

Trial to terminate parental rights was held on June 7 and July 12, 2006. The DHS case worker testified that she believed Jessica was still using drugs. Jessica had been unable to maintain a stable residence and employment. Further, she was dishonest about being in a relationship with a convicted drug offender. Another service provider testified that Jessica's visits with R.R. usually went well. Nonetheless, she recommended termination. Jessica's therapist testified Jessica had been diagnosed with bipolar disorder II versus possible major depression; panic disorder; post-traumatic stress disorder; attention deficit/hyperactivity disorder (combined type); and poly-substance abuse in remission. She testified that her prognosis, however, was good. Jessica herself testified that she had not used drugs since her release from prison in 2001. She

claimed she became committed to recovery after having her parental rights to another child terminated while she was in prison. Raymond was incarcerated at the time of trial.

The district court terminated Jessica's parental rights pursuant to Iowa Code sections 232.116(1)(g), (h), and (l) and 232.117 (2005). Raymond's parental rights were terminated pursuant to sections 232.116(1)(d), (e), (h), and (l) and 232.117. Both parents appeal. Raymond argues the State failed to present clear and convincing evidence (1) he was offered services and the circumstances of the child's removal remained; (2) he had not maintained significant and meaningful contact with the child for six months; (3) the child could not be returned to his custody; (4) the child cannot be returned to his custody within a reasonable period of time; and (5) the child cannot be placed with the intervenor grandmother. Jessica argues the State failed to present clear and convincing evidence (1) she lacked the ability or willingness to respond to services or that an additional period of rehabilitation would not correct the situation; (2) the child could not be returned to her custody; (3) that she has a severe, chronic substance abuse problem, or that her prognosis indicates the child could not be returned to her in a reasonable period of time.

II. Standard of Review

We review the termination of parental rights *de novo*. *In re D.G.*, 704 N.W.2d 454, 456 (Iowa Ct. App. 2005). The State must prove the circumstances for termination by clear and convincing evidence. *In re L.E.H.*, 696 N.W.2d 617, 618 (Iowa Ct. App. 2005). Our primary concern is the best interests of the children. *Id.* In determining the children's best interests, we look to both long-

term and immediate needs. *Id*; see also *In re J.E.*, 723 N.W.2d 729, 798 (Iowa 2006). We need only find grounds to terminate parental rights under one section cited by the district court in order to affirm the termination. *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2002).

III. Merits

According to section 232.116(1)(d), we may terminate parental rights if (1) the child has been adjudicated CINA after finding the child to have been neglected as the result of the acts or omissions of one or both parents and (2) the parents were offered services to alleviate the condition that led to adjudication but the condition remains. According to section 232.116(1)(e), we may terminate parental rights if (1) the child has been adjudicated CINA; (2) the child has been removed for at least six consecutive months; (3) the parents have not maintained significant and meaningful contact with the child. According to section 232.116(1)(g), we may terminate parental rights if (1) the child has been adjudicated CINA; (2) the court has terminated parental rights with respect to another child in the same family; (3) clear and convincing evidence shows the parent lacks the ability or willingness to respond to services that would correct the situation; and (4) clear and convincing evidence shows additional time for rehabilitation would not correct the situation. According to section 232.116(1)(h), we may terminate rights if (1) the child is three years old or younger; (2) the child has been adjudicated CINA; (3) the child has been removed from the parent's custody for at least either six of the last twelve months or for the last six months, and any home trial period has been less than thirty days; and (4) clear and convincing evidence shows the child cannot be returned to the parent's custody

at the present time. According to section 232.116(1)(f), we may terminate parental rights if (1) the child has been adjudicated CINA and placement has been transferred from the parents pursuant to section 232.102; (2) the parent has a severe, chronic substance abuse problem, and presents a danger to self or others based on prior acts; (3) the parent's prognosis indicates the child cannot be returned to the parent within a reasonable amount of time.

While Jessica has visited her child within the last six months, her interest in services has only become apparent in the months preceding the termination hearing. See *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000). Between April 2005 and February 2006, DHS had no firm idea of where Jessica was really living. She missed several visits between April and December 2005. When she did attend, some visits had to be ended early because she came unprepared. She has not had a home trial period or unsupervised visits. She did not obtain a substance abuse evaluation until fourteen months after it was first recommended. Though DHS has not requested her to undergo drug testing, her behavior has been consistent with behavior she exhibited when previously using. See *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000) ("The future can be gleaned from evidence of the parents' past performance and motivations."). She lied about her relationship with a convicted drug offender and continues to associate with individuals who abuse controlled substances. She has only recently obtained housing and employment.

Raymond has not seen R.R. Jr. since January 2006. *In re J.L.W.*, 523 N.W.2d 622, 624 (Iowa Ct. App. 1994) (noting that an incarcerated parent must take responsibility for the action that caused the incarceration). When DHS first

became involved in the case, he reportedly made threats that, given the chance, he would abscond with the child. He has a significant history of substance abuse. He also has a history of domestic violence. Evidence indicates he becomes violent when drinking. Prior to his incarceration, he was generally consistent with visitation. However, he was unprepared for the visits and often had to be prompted to change the child's diapers. He left an inappropriate individual to supervise his children. He lied to DHS about where and with whom he was living. It is evident that, post-incarceration, his life will remain chaotic and unstable. See *T.B.*, 604 N.W.2d at 662.

We find there is clear and convincing evidence to support the district court's termination decision as to both parents.

Raymond's claim that R.R. Jr. should be placed with his paternal grandmother while Raymond and Jessica are granted more time is not a viable placement option. His parents have been given plenty of time to correct their situation. This child deserves permanency and a stable, loving environment. See *J.E.*, 723 N.W.2d at 800; *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) ("The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.").

The district court ruling is affirmed.

AFFIRMED.