

IN THE COURT OF APPEALS OF IOWA

No. 7-002 / 06-1865
Filed January 18, 2007

**IN THE INTEREST OF S.W., Jr.,
Minor Child,**

**M.L.C., Mother,
Appellant,**

**S.R.W., Sr., Father,
Appellant.**

Appeal from the Iowa District Court for Scott County, John G. Mullen,
District Associate Judge.

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

AFFIRMED.

Martha McCall Whitmer, Davenport, for appellant mother.

Lawrence J. Lammers of McCarthy, Lammers & Hines, Davenport, for
appellant father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, William E. Davis, County Attorney, and Gerda Lane, Assistant
County Attorney, for appellee State.

Dana Copell, Davenport, guardian ad litem for minor child.

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

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

Steven Sr. and Michelle are the parents of Steven Jr., who was born in July 2004. At the time the child was born he tested positive for cocaine. Michelle admitted to using crack cocaine and agreed to enter a substance abuse treatment program. Both parents have a history of substance abuse. Their relationship has involved incidents of domestic violence.

In March 2005 Steven Jr. was adjudicated a child in need of assistance (CINA) under Iowa Code section 232.2(6)(o) (2005) (illegal drug present in child). A dispositional order was entered on April 21, 2005, which ordered the parents to continue with aftercare services and obtain a sponsor. The parents were also ordered to participate in relationship counseling.

Steven Jr. was removed from the parents' care in July 2005. Both parents were continuing to use illegal substances. Michelle had recently been arrested for criminal mischief and public intoxication, and a few days later she was arrested for domestic assault against Steven Sr. Steven Jr. was placed in the care of a paternal uncle and aunt.

Steven Sr. was arrested for operating while intoxicated and was incarcerated until February 2006. Michelle and Steven Sr. reunited when he was released. Although both parents attended substance abuse treatment programs, they continued to use illegal substances. After a permanency hearing in June 2006, the juvenile court found, "It's clear that the parents are just going through the motions but not making a true commitment to sobriety." The court ordered the county attorney to initiate termination proceedings.

The State filed a petition seeking to terminate the parental rights of Steven Sr. and Michelle in July 2006. The juvenile court terminated the parents' rights under sections 232.116(1)(e) (child CINA, removed for six months, parent has not maintained significant and meaningful contact with the child) and (h) (child is three or younger, CINA, removed for at least six months, and cannot be safely returned home). The court found:

The Court concludes that the living situation of the parents remains unstable. The child cannot safely be returned to the custody of the parents at this time. It is unknown if the child could ever be returned because of their decision-making and continued involvement in the drug culture. The Court concludes that if the child was placed in the custody of either parent, the child would be subject to a high risk of adjudicatory harm in the nature of neglect, failure of supervision and failure of parenting.

Steven Sr. and Michelle both 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 concern is the best interests of the child. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997).

III. Steven Sr.

A. Steven Sr. contends that at the time of the permanency hearing the juvenile court improperly ordered the county attorney to file a termination petition. He states he was not able to complete the presentation of his evidence at the permanency hearing, and Michelle was not able to present any evidence, before the court announced its ruling.

At the permanency hearing, the State presented several documents and recommended that a petition to terminate parental rights be filed. Michelle Curran, a social worker for Families, Inc., was questioned extensively by all of the parties. The guardian ad litem then made the recommendation that a petition to terminate parental rights be filed as soon as possible. The court stated it would order that a termination petition be filed within thirty days. Counsel for Steven Sr. asked to present the testimony of the paternal uncle who had been caring for the child. The court did not accept the additional testimony, stating, “I don’t see any reason to make this kid wait any longer. We need to get moving because we’re not going in a positive direction toward reunification.”

On appeal, Steven Sr. has not asserted that the result of the permanency hearing would have been different if the testimony of the paternal uncle had been admitted into evidence.¹ See Iowa R. App. P. 6.14(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.”). As the juvenile court pointed out, the evidence at the permanency hearing showed the parents continued to be involved with illegal substances and to engage in an unstable lifestyle. We find the court properly ordered the filing of a petition to terminate parental rights.

B. Steven Sr. claims the State did not present sufficient evidence to show his parental rights should be terminated. On our de novo review, we find clear and convincing evidence in the record to support termination of Steven Sr.’s parental rights under section 232.116(1)(h). We may affirm the juvenile court on

¹ Even if Steven Sr. could raise an issue on behalf of Michelle, the transcript of the permanency hearing does not show Michelle sought to introduce any evidence at the hearing.

only one of the grounds cited by that court. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The evidence shows the child could not be returned to Steven Sr.'s care at the time of the termination hearing. Steven Sr. had not fully committed to a life of sobriety. He remained in an on-again-off-again relationship with Michelle. The child could not be safely returned to his care.

C. Steven Sr. asserts it was not in the child's best interests to terminate his parental rights. He states he has a close relationship with his son and has been consistent in attending supervised visits. We find termination of Steven Sr.'s parental rights is in his son's best interests. Steven Sr. has not shown he is able to meet his son's needs.

IV. Michelle

A. Michelle contends the State failed to prove by clear and convincing evidence that her parental rights should be terminated. We find there is sufficient evidence in the record to terminate Michelle's parental rights under section 232.116(1)(h). The evidence clearly shows the child could not be returned to Michelle's care. Despite attending several substance abuse treatment programs, Michelle continued to use illegal substances. She continued to associate with her drug dealer. Also, she had a volatile relationship with Steven Sr. For all of these reasons, we conclude the child could not be safely placed with Michelle.

B. Michelle asserts termination of her parental rights is not in the child's best interests. She states she had a strong bond with her child. After considering all of the evidence in this case, we find termination of Michelle's parental rights is in the child's best interests. Michelle consistently placed her own needs before those of her child.

We affirm the decision of the juvenile court terminating the parental rights of Steven Sr. and Michelle.

AFFIRMED.