IN THE COURT OF APPEALS OF IOWA

No. 7-161 / 06-2011
Filed March 28, 2007

IN THE INTEREST OF D.A. and K.Y., Minor Children,

E.A., Mother,
Appellant,

L.Y., Father,
Appellant.

Appeal from the Iowa District Court for Johnson County, Stephen C. Gerard II, District Associate Judge.

A mother and father appeal from the order terminating their parental rights to two children. **AFFIRMED.**

Christine Boyer, Iowa City, for appellant-mother.

Patrick Ingram of Mears Law Office, Iowa City, for appellant-father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Janet Lyness, County Attorney, and Kristin Parks, Assistant County Attorney, for appellee.

Shelly Mott, Coralville, guardian ad litem for minor children.

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

SACKETT, C.J.

A mother and father appeal from the juvenile court order terminating their parental rights to two children. They contend the State (1) did not prove the grounds for termination by clear and convincing evidence and (2) it did not make reasonable efforts to reunite the parents and children. They also contend the termination hearing was tainted by the admission of hearsay evidence. We affirm.

Background

Larry and Evelyn are the parents of Devin, born in 1994, and Keaton, born in 1999. Devin and Keaton were removed from their parents' care in 2000, placed in family foster care, and then returned to their parents in 2001. When Larry and Evelyn's marriage was dissolved in 2003, the court placed the children in Evelyn's care. Devin and Keaton were removed from Evelyn's care in May of 2005 following allegations of abuse. At the time of their removal, there were ten prior founded reports of abuse and neglect in the home. At the temporary removal hearing in June, all parties stipulated and agreed continued removal was necessary to avoid imminent risk to the children's life and health and was in their best interest. The court found the children in need of assistance and continued their placement in foster care. In July of 2006, the State petitioned to terminate both parents' parental rights under Iowa Code sections 232.116(1)(d) and 232.116(1)(f) (2005). Following a permanency hearing, the court entered an order in August waiving further reasonable efforts toward family reunification with either parent. After that order, the only service provided was supervised visitation between Larry and the children.

In November, following a hearing, the court terminated both parents' parental rights under the sections pled. Both parents appealed.

Issues on Appeal

Larry contends (1) there was insufficient evidence to support the termination, (2) there was insufficient effort to reunite the parents with the children, and (3) the hearing was tainted by hearsay evidence. In addition to the same three claims, Evelyn contends the court erred in finding clear and convincing evidence the children could not be returned to her care.

Scope and Standards of Review

We review terminations of parental rights de novo. Iowa R. App. P. 6.4. Although we are not bound by them, we give weight to the district court's findings of fact, especially when considering the credibility of witnesses. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). The statutory grounds for termination must be proven by clear and convincing evidence. *Id*. If the district court terminates parental rights on more than one statutory ground, "[w]e only need to find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm its ruling." *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2002).

Merits

Hearsay Evidence. In our de novo review of the record, we found it unnecessary to consider the transcript of the permanency hearing. The record contains clear and convincing evidence to support termination without consideration of the transcript. Consequently, we need not address the parties' hearsay challenge to the juvenile court's consideration of the transcript.

Reasonable Efforts. The State contends this issue was not preserved because the parents did not request different or additional services prior to the termination and because the issue was not raised in the termination hearing. We find evidence additional services were requested prior to the termination hearing. Consequently, this issue is properly before us.

One or both of these parents have been involved with the Department of Human Services for much of the period since the early 1990s. Both parents have been abusive to their children or step-children. Evelyn has allowed her children to be abused by her mother and to be exposed to registered sex offenders. The children have suffered physically and emotionally. The core of the reasonable efforts mandate is that the State must make reasonable efforts to prevent placement or to reunify families in each case. *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa Ct. App. 1997). Among the services provided in an effort to reunite these children and their parents were: foster family care; supervised and semi-supervised visitation; mental health evaluations, counseling, and medications; individual and joint therapy; parent skill instruction including nutrition, proper discipline, conflict management, child development, and relationship building; and assistance in developing a support network and in choosing appropriate caretakers. While efforts made by the State to reunify a family may not be successful, this does not mean that the efforts were unreasonable. *Id.* We conclude the State made reasonable efforts toward reunification.

Clear and Convincing Evidence for Termination. The court terminated both parents' rights under Iowa Code sections 232.116(1)(d) (child CINA for physical or sexual abuse (or neglect), circumstances continue despite receipt of services) and

(f) (child four or older, child CINA, removed from home for twelve of last eighteen months, and child cannot be returned home).

Both parents raise this issue as a failure of the court to make a finding they forfeited their constitutionally-protected interest as a parent, citing section 232.116(1). They allege a violation of due process. *See Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 1394, 71 L. Ed. 2d 599, 606 (1982). Section 232.116(1) contains no requirement that the court make an explicit finding "a parent has forfeited the constitutionally-protected interest in parenting a child" before termination may occur. Implicit in finding clear and convincing evidence to support termination on any of the statutory grounds in section 232.116(1)(a)-(n) is a finding the parent has forfeited the constitutionally-protected interest in parenting a child. *In re T.R.*, 483 N.W.2d 334, 337 (Iowa Ct. App. 1992). At some point, the rights and needs of the child rise above the rights and needs of the parent. In re J.L.W., 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). Our legislature has made the determination that point is reached when the statutory time for patience with a parent has passed. *See C.B.*, 611 N.W.2d at 494. We find no violation of these parents' constitutionally-protected rights to parent their children. *See T.R.*, 483 N.W.2d at 336-38 (upholding section 232.116(1) against a constitutional challenge).

Larry does not challenge the statutory grounds for termination. He has waived any such challenge. Iowa R. App. P. 6.14(1)(*c*). Evelyn does not challenge the termination under section 232.116(1)(d). She has waived any challenge based on that section. However, she challenges the court's finding the children could not safely be returned to her care. Iowa Code § 232.116(1)(f)(4). From our careful, de novo review of the record, we find the children would be at risk of physical or

emotional harm if returned to Evelyn's care. Clear and convincing evidence supports termination of her parental rights under section 232.116(1)(f).

AFFIRMED.