

IN THE COURT OF APPEALS OF IOWA

No. 7-798 / 07-1500
Filed November 15, 2007

**IN THE INTEREST OF N.T., A.T., and N.B.
Minor Children,**

M.T., Mother,
Appellant,

D.T., Father,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Mary L. Timko,
Associate Juvenile Judge.

A mother and a father each appeal from juvenile court orders terminating
their parental rights. **AFFIRMED ON BOTH APPEALS.**

Craig H. Lane, Sioux City, for appellant-mother.

Brian B. Vakulskas, Sioux City, for appellant-father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Patrick Jennings, County Attorney, and David A. Dawson,
Assistant County Attorney, for appellee.

Marchelle Denker, Juvenile Law Center, Sioux City, guardian ad litem for
minor children.

Considered by Huitink, P.J., and Miller and Eisenhauer, JJ.

MILLER, J.

Mariela is the mother of twelve-year-old Nayeli, nine-year-old Angel, and one-year-old Natalie. Duong is Natalie's father. Mariela and Duong appeal from an August 2007 juvenile court order terminating their parental rights to Natalie in one case. Mariela appeals from an August 2007 juvenile court order terminating her parental rights to Nayeli and Angel in another case. The order in the second case also terminated the parental rights of Nayeli's and Angel's putative father, and he has not appealed. We affirm on both appeals.

Nayeli and Angel were removed from Mariela and Duong in October 2004 based on allegations that Nayeli had been sexually abused by, among others, her stepfather, Duong. A child abuse investigation ensued. Nayeli graphically described her sexual abuse by Duong, and Angel described other inappropriate sexually-oriented activities by Duong. The investigation resulted in a "founded" report of sexual abuse in the second degree, with Duong as the perpetrator and Nayeli as the victim. In December 2004 Nayeli and Angel were adjudicated children in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(b), (c)(2), and (d) (2003).

Duong was ordered to have no contact with Nayeli and Angel. In late January 2005 Nayeli recanted her allegations of sexual abuse. Numerous services were offered and provided to the family. By late 2005 Nayeli's therapist opined that in view of Nayeli's recantation (which was viewed with skepticism by the Department of Human Services (DHS) and the children's guardian ad litem/court appointed special advocate) Nayeli should not be forced to continue

with therapy as doing so would be emotionally harmful to her. The no contact order was vacated and the CINA case was dismissed in late 2005.

Natalie was born to Mariela and Duong in June 2006. In September 2006 Nayeli, Angel, and Natalie (“the children”) were removed from Mariela and Duong based on allegations that Duong had again been sexually abusing Nayeli. A petition seeking an adjudication of the children as CINA was filed. A child abuse investigation ensued. Nayeli described in detail at least three incidents of sexual abuse. The investigation resulted in a second “founded” report of sexual abuse in the second degree, with Nayeli as the victim and Duong as the perpetrator.

In November 2006 the juvenile court bifurcated the CINA case involving the children into one case concerning Natalie and a second case concerning Nayeli and Angel. In early January 2007 the State filed a petition seeking termination of the parental rights of Mariela and Duong to Natalie. On the same day the State filed a second petition, seeking termination of Mariela’s parental rights to Nayeli and Angel. Following a February, March, and April hearing the court entered an order in August 2007 terminating the parental rights of Natalie’s parents pursuant to Iowa Code sections 232.116(1)(d) and (i) (2007). Following a May 2007 hearing the court entered an order in August terminating Mariela’s parental rights to Nayeli and Angel, also pursuant to Iowa Code sections 232.116(1)(d) and (i). Mariela and Duong both appeal.

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court’s findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

In re C.B., 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

Duong claims the State did not make reasonable efforts to reunite Natalie with him. However, he makes no claim that he requested different or additional services at any time before the termination hearing, and we find no evidence that he did so. We conclude he has not preserved error on this issue and decline to further address it. See *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999) (holding that where parent did not demand other, different, or additional services prior to the termination hearing the issue of whether services were adequate was not preserved for appellate review); see also *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997) (stating parents should demand services prior to the termination hearing, and challenges to services should be made when the case plan is entered).

Mariela and Duong both claim the State did not prove each of the requisite elements of at least one of the statutory grounds upon which the juvenile court terminated their parental rights. In support of her claim Mariela argues that she never sexually or physically abused or neglected her children. Mariela also questions whether the State proved that a threat of harm to the three children will remain if they are returned solely to her care. She questions whether the circumstances that resulted in a CINA adjudication continue to exist. This question implicates the second element of section 232.116(1)(d), whether the “circumstance which led to the adjudication . . . continues to exist despite the offer or receipt of services.” We address together these very similar and related claims by Mariela and Duong.

Iowa Code section 232.116(1)(d) provides that a court may order the termination of parental rights when it finds that both of the following have occurred:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

Nayeli and Angel were adjudicated CINA in December 2004. The adjudication was based on Duong's sexual abuse of Nayeli, Mariela's and Duong's failure to exercise a reasonable degree of care in supervising Nayeli and Angel, and the two children being at risk for further sexual abuse or neglect. The evidence clearly and convincingly proves the first element of section 232.116(1)(d).

As previously noted, in late January 2005 Nayeli recanted her original allegations that she had been repeatedly sexually abused by Duong. However, as found by the juvenile court in findings with which we agree, the recantation was a result of pressure by family members and was viewed with great skepticism by DHS staff and others involved in the case and familiar with the family members.

Extensive services were made available to the family throughout 2005. Mariela initially represented that she believed Nayeli's allegations of sexual abuse, but in fact has never believed them. As of May 2005 Nayeli, with Mariela's acquiescence or more likely encouragement, stopped attending counseling designed to help her deal with the sexual abuse.

Beginning in late 2004 and continuing until the late 2005 dismissal of the first CINA case Mariela variously represented to the DHS and service providers that Duong was out of her life, she did not know where he was, and she and he were obeying the order that he have no contact with Nayeli and Angel. In fact, however, Duong was staying with Mariela's sister, a fact well known to Mariela; Mariela was having regular and continuing contact with Duong; and Duong was regularly coming to the home shared by Mariela, Nayeli, and Angel. These facts are clearly and convincingly shown by the record evidence, and perhaps tellingly emphasized by the fact that in June 2006 Mariela gave birth to Duong's child, Natalie.

There have now been two "founded" and registered reports finding Duong has sexually abused Nayeli. There have now been two findings by the juvenile court that Duong has sexually abused Nayeli. Mariela nevertheless refuses to believe Nayeli and is indifferent to Nayeli's needs for counseling and the need of the children for protection from Duong. Duong has refused to participate in ordered and available services. We find the evidence clearly and convincingly proves the second element of section 232.116(1)(d), that despite the offer or receipt of services after a CINA adjudication the circumstance that led to the adjudication continues to exist.

We conclude the evidence clearly and convincingly proves the section 232.116(1)(d) grounds for termination of Duong's parental rights to Natalie, and Mariela's parental rights to the children. We need not address whether the evidence also supports termination pursuant to section 232.116(1)(i). See *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996) (holding that when trial court

terminates on more than one statutory ground we need only find grounds to terminate under one of the provisions relied on by the trial court in order to affirm.)

Mariela claims that termination of her parental rights is not in the children's best interest. Duong similarly claims termination of his parental rights to Natalie is not in her best interest. Termination is not mandatory upon finding the requisite statutory elements of section 232.116(1) have been proved. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa Ct. App. 1996). "Even if the statutory requirements for termination are met, the decision to terminate must still be in the best interest of the children." *In re M.F.*, 519 N.W.2d 398, 400 (Iowa Ct. App. 1994).

A parent's failure to address his or her role in abuse may hurt the parent's chances of regaining custody of the children. *In re C.H.*, 652 N.W.2d 144, 150 (Iowa 2002). It is essential in meeting children's needs that parents recognize and acknowledge abuse that has occurred, as meaningful change cannot occur without this recognition. *In re L.B.*, 530 N.W.2d 465, 468 (Iowa Ct. App. 1995). Services that are provided are not likely to be effective without this acknowledgement. *S.R.*, 600 N.W.2d at 65.

To briefly summarize what has been said above, clear and convincing evidence shows that Duong was sexually abusing Nayeli, and yet neither he nor Mariela will acknowledge that fact and take steps to deal with it. Mariela prefers her relationship with Duong to the safety and well-being of her children. The children would be at imminent risk of further harm if returned to Mariela, Duong, or both, now or in the reasonably foreseeable future. The children have been removed from their parents for almost a year, a period that includes the great

majority of Natalie's life. The children need safety and security which their respective parents are unable or unwilling to provide. We find, as the juvenile court did, that termination of Mariela's and Duong's parental rights, to the children and to Natalie respectively, is in the children's best interest.

AFFIRMED ON BOTH APPEALS.