IN THE COURT OF APPEALS OF IOWA

No. 8-001 / 07-1965
Filed January 30, 2008

IN THE INTEREST OF N.S. and F.S.,
Minor Children,

L.S., Father,
Appellant,

R.F., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Constance Cohen, Associate Juvenile Judge.

A mother and father appeal from the district court's order terminating their parental rights to their daughter and his son. **AFFIRMED.**

Joey Hoover of Kragnes & Associates P.C., Des Moines, for appellant father.

Andrea Flanagan of Sporer & Ilic, P.C., Des Moines, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Stephanie Brown, Assistant County Attorney, for appellee State.

Michael Sorci of Youth Law Center, Des Moines, for the minor children.

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

VOGEL, J.

Rita is the mother of F.S. (born in August 2006) and Lauren is the father of F.S. and N.S. (born in February 1999). Rita and Lauren each appeal from the district court's order terminating their parental rights to F.S. and Lauren appeals from the district court's order terminating his parental rights to N.S.[1] They separately argue that the State failed to meet its burden of proof and termination is not in the best interests of the children. Lauren also contends he should have been given a six-month extension prior to the termination. We affirm the district court.[2]

Rita and Lauren both have had prior involvement with the Iowa Department of Human Services (DHS). In November and December of 2005, DHS discovered Lauren had left N.S. with Rita, who had a history of mental illness and at that time had another child (J.F.) under the jurisdiction of the juvenile court. DHS took no further steps at that time, relying on Lauren's promise that he would not leave N.S. in Rita's care again and further that he had broken off his relationship with Rita. In April of 2006, Rita's parental rights to J.F. were terminated. A few months later, Rita gave birth to F.S. and DHS soon discovered that Lauren was allowing Rita to care for N.S. again. Both children were removed from the custody of Rita and Lauren in August of 2006 and were placed with Lauren's parents.

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[1] The parental rights of F.S.'s legal father, who is Rita's husband, were terminated, but he is not a party to this appeal. Additionally, the parental rights of N.S.'s mother were terminated, but she is not a party to this appeal.

[2] We note that neither Rita's nor Lauren's brief complied with Iowa Rule of Appellate Procedure 6.151(1).

On October 17, 2006, F.S. was adjudicated a child in need of assistance pursuant to Iowa Code sections 232.2(6)(c)(2) and (n) (2005) and N.S. was adjudicated pursuant to Iowa Code section 232.2(6)(c)(2). Both Rita and Lauren were offered numerous services so that they could safely parent the children, but they were unable to make sufficient progress to provide a safe environment for raising the children. Consequently, the State filed a petition seeking to terminate Rita's and Lauren's parental rights. Following a hearing, on November 8, 2007, the district court terminated Rita's parental rights to F.S. pursuant to Iowa Code sections 232.116(1)(d), (g), (h), and (k); Lauren's parental rights to F.S. pursuant to Iowa Code sections 232.116(1)(d), (g), and (h); and Lauren's parental rights to N.S. pursuant to Iowa Code sections 232.116(1)(d) and (f) (2007).[3]

We review termination of parental rights de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We give weight to the factual findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(*g*); *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). The grounds for termination must be proved by clear and convincing evidence. *Id*. Our primary concern is always the best interests of the children. *Id*.

First we examine Rita's contention that the State did not prove the grounds for termination by clear and convincing evidence. F.S. was removed from Rita's care at birth. Rita was offered numerous services to work towards reunification, including mental health counseling, parenting classes, and supervised visitation. Rita made some progress by consistently taking her

[3] In September of 2007, prior to the termination hearing, Rita gave birth to another child (M.S.) who was also removed at birth.

medication and regularly attending her mental health counseling appointments. However, Rita did not meet other critical requirements, leaving many concerns about her ability to safely parent F.S. The most recent reports in the record indicate that Rita was unable to progress past supervised visitations because serious parenting deficiencies still existed.

Initially, supervised visitation was set up for both parents at their home. For a short period of time, semi-supervised visits were implemented to give Rita the opportunity to demonstrate she could care for F.S. without constant supervision. However, visitations returned to fully supervised after service providers became concerned about F.S.'s safety during the semi-supervised visits. One concern was that Rita allowed a family member who was a threat to children to move into their home. Furthermore, in November of 2007, the supervised visits were moved from Rita and Lauren's home to the service provider's office after Rita was disruptive during a visit. The caseworker's report stated that Rita is incapable of caring for F.S. on a daily basis and Rita could not assume the care of F.S. either now or in the foreseeable future. Therefore, we affirm the juvenile court's finding that the State proved the grounds for termination of Rita's parental rights by clear and convincing evidence under Iowa Code section 232.116(h). *See In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) ("When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm.").

Rita further asserts the termination of her parental rights is not in the best interests of F.S. F.S. was removed from her parents' care at birth and placed

with her grandparents, where she has remained. F.S. has bonded with her grandparents, who have provided a safe and stable environment. *J.E.*, 723 N.W.2d at 802 (Cady, J., concurring specially) (stating children's safety and their need for a permanent home are the defining elements in a child's best interests). Because of the continuing safety issues, it is clear that Rita cannot care for F.S. either now or in the foreseeable future. Upon our review of the record, we agree that it is in F.S.'s best interest that Rita's parental rights are terminated.

Next we examine Lauren's contention that the State did not prove the grounds for termination by clear and convincing evidence. Lauren was offered numerous services to work towards reunification, including individual therapy, parenting classes, and supervised visitation along with Rita. Additionally, Lauren was also offered visitation at his parents' house, but he chose not to participate. As discussed above, after a short period of semi-supervised visitations at Lauren's home, service providers were concerned about the children's safety and returned to fully supervised visitation. Unfortunately, Lauren was also unable to progress past supervised visitation due to the existence of serious parenting deficiencies.

The DHS caseworkers' reports stated that Lauren was slow to comply with services and he was not motivated to demonstrate he was able to care for his children. Lauren gave excuses to the caseworkers for not participating in the visitation offered at his parents' home, but his behavior indicated that he simply did not make his children his first priority. During supervised visitations, Lauren would not become involved with the children without prompting by the service providers and relied on Rita to do the majority of parenting. Lauren's

participation with in-home services and parenting classes was also a concern as he slept during numerous in-home visits and did not show much improvement in his parenting skills. Although Lauren did make some individual therapy appointments, he was inconsistent in making appointments and did not discuss parenting issues with the therapist. The caseworker's most recent report also stated that Lauren could not adequately supervise the children and he could not assume the care of the children either now or in the foreseeable future. Therefore, we agree with the district court that the State proved the grounds for termination of Lauren's parental rights by clear and convincing evidence under Iowa code section 232.116(1)(h) and (f).

Lauren further asserts the termination of his parental rights was not in the children's best interests. Upon their removal, the children were placed with their paternal grandparents, who have provided a safe and stable environment. *J.E.*, 723 N.W.2d at 802. Additionally, the grandparents have also tended to F.S.'s medical needs and N.S.'s behavioral problems. Because of continuing safety concerns, Lauren cannot assume the care of the children now or in the foreseeable future. Therefore, we agree it is in F.S. and N.S.'s best interests that Lauren's parental rights are terminated.

Finally, Lauren argues the district court should have given him a six-month extension to "erase any questions pertaining to the unknown." We disagree. Although Lauren was offered services for over a year, his participation was minimal and he was not motivated to care for the children. There is no indication that an additional six months would have brought Lauren any closer to reunification with his children. *See J.E.*, 723 N.W.2d at 798 (stating that we look

to the parent's past performance because it may indicate the quality of care the parent is capable of providing in the future). The children need a safe and stable home and have that home with their paternal grandparents. They should not be forced to wait for Lauren to decide he wants to care for them. "At some point, the rights and needs of the children rise above the rights and needs of the parents." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997).

AFFIRMED.