

IN THE COURT OF APPEALS OF IOWA

No. 8-1072 / 08-1904
Filed February 4, 2009

**IN THE INTEREST OF C.K., Jr. and C.K.,
Minor Children**

C.F.K., Sr., Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Louise Jacobs,
District Associate Judge.

A father appeals the termination of his parental rights. **AFFIRMED.**

David P. Kozlowski, West Des Moines, for appellant father.

Chira Corwin, Des Moines, for appellee mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Cory McClure,
Assistant County Attorney, for appellee State.

M. Kathryn Miller of Juvenile Public Defender's Office, Des Moines, for
minor children.

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

POTTERFIELD, J.

Chad, the father of C.K., Jr. and C.K., appeals the termination of his parental rights.¹ He claims there was insufficient evidence to support the district court's statutory bases for termination and that the termination was not in the best interests of the children. We affirm.

I. Background Facts and Proceedings

Chad and Candi are the parents of C.K., Jr., born in August 2006, and his sister, C.K., born in September 2007. Chad and Candi have never been married. This matter came to the attention of the juvenile court in January 2007 when Chad allegedly slammed Candi's head against a window ledge and then threw her on top of C.K., Jr., who was then five months old. Chad left the apartment. He was later arrested on domestic abuse charges. In the process of his arrest, Chad assaulted two police officers.

A child in need of assistance (CINA) petition was filed March 22, 2007. As part of the CINA pre-trial, the parents were ordered to comply with services and provide drug screens; a no-contact order was entered against Chad. Domestic abuse charges against Chad were dismissed, but he plead guilty to two counts of assault on police officers. Chad was in custody from the time of his arrest in March through sentencing, which occurred on May 29, 2007. At Chad's sentencing, Chad was granted probation and required to reside at the Fort Des Moines Residential Facility.

¹ The mother, Candi, has not appealed the termination of her parental rights to C.K., Jr. and C.K.

C.K., Jr. was adjudicated CINA on April 25, 2007, when he and his mother were living with his maternal grandmother. At the time, Chad was in jail, and the court ordered the no-contact order remain in full force. A disposition hearing was held on May 23, 2007. The court adopted a case permanency plan, which noted that the parents were to demonstrate an understanding of the adverse effect domestic abuse has on children. The no-contact order remained in effect and a psychosocial evaluation was ordered for Chad.

In August 2007, Candi had decided to move in with Chad again. At an August 14, 2007, review hearing, the court placed C.K., Jr. in the custody of the Iowa Department of Human Services (DHS) for placement with his maternal grandmother due to the ongoing domestic violence issues and the parents' lack of insight into the issues that brought the case to the juvenile court. At this time, Chad was ordered to avail himself of therapy services and attend anger management classes.

C.K. was born the following month, in September 2007. A CINA petition was filed almost immediately and she was removed from the parents' care due to exposure to domestic violence and neglect. C.K. was adjudicated CINA on October 24, 2007.

Chad began attending individual counseling on October 8, 2007. His counselor noted they were working on issues including "regaining custody of his children, anger management, and judgment and decision making." His counselor wrote a letter to DHS social worker Lisa Beamon in which he states that during sessions Chad exhibited calm behavior and showed no signs of aggression.

In November 2007, as a requirement of probation, Chad was referred for a substance abuse assessment. The assessment noted that Chad was then living with the children's mother; was "somewhat cooperative"; appeared to "recognize that his [alcohol] use has affected his life in several major aspects," but lacked insight into "the importance of making ongoing lifestyle changes"; and concluded Chad was "a moderate risk to continue engaging in problematic use and behaviors." It was recommended that Chad receive substance abuse treatment.

Chad asked for visitation with his children by motion filed December 7, 2007, noting that he had completed the substance abuse assessment, begun individual therapy, was scheduled for an intake appointment for the batterer's education program (BEP), and had continued to provide random urine samples for drug screening. The juvenile court's schedule did not allow for a contested hearing, but the court ordered Chad to sign the necessary releases so his DHS worker could speak with the necessary parties and further ordered the parties to attempt to resolve any issues about visitation.

At a review hearing in January 2008, the court found that the children should remain outside the parents' custody because the parents needed to gain insight into domestic violence and anger management. The court ordered that Chad should receive visitation at DHS's discretion and that an attachment assessment should be completed. The court also found that drug screens could be administered by Chad's probation officer "if random and frequent."

Chad filed another motion for visitation on March 7, 2008, noting that the attachment assessment ordered by the court was not scheduled until March 18. The motion noted that Chad:

continues his individual counseling . . . he continues to provide clean drug and alcohol screens; he and the child's mother attend joint counseling sessions; he is actively participating in BEP classes; and, he continues to participate in substance abuse counseling.

The court again ordered the parties to attempt to resolve the visitation issue. The attachment assessment was completed in March. The assessment recognized there was a bond between Chad and C.K., Jr. and recommended supervised visitation. Chad began having weekly, one-hour supervised visits in April 2008.

A June 2008 report from DHS worker Lisa Cain indicated Chad had been very slow to follow through with many recommended services. She noted several violations of Chad's probation (missed drug screenings) had occurred and a probation violation hearing was scheduled. She also noted Chad had not attended the batterer's education services (he had missed five sessions), had not complied with the recommendations of his first substance abuse evaluation and was unsuccessfully discharged from a substance abuse program. She also noted he was slow to follow through with the recommendations of his second substance abuse evaluation to participate in specific services. Ms. Cain stated that Chad denied any domestic violence occurred between him and the children's mother. She expressed concern about the minimization of domestic violence and noted that Chad and the children's mother had not attended couple's counseling in March or April.

A petition for termination of parental rights was filed on July 7, 2008. A hearing was held on July 28, 2008, at which testimony was received and exhibits entered. Chad's testimony made it clear that he had been discharged from

substance abuse treatment and anger management classes for attendance shortcomings. He excused those attendance problems as being due to time constraints, transportation issues, scheduling difficulties, and other matters. Chad testified he was on the waiting list to re-start BEP classes and that he was required to reschedule his substance abuse treatment program due to conflicts with the facilitator. Chad testified he had not consumed alcohol since March 10, 2007. He testified he was putting forth effort and making progress and wanted the children to come home. He also testified that outside of visitation there were no services he had requested that had not been provided.

Chad's couple's counselor testified, as did Chad's individual therapist. The couple's counselor was not aware of the history of domestic abuse. She testified that she had been told that it was a misunderstanding that led to the domestic abuse charge against Chad. The individual therapist testified he had seen Chad three times in four months. He stated Chad was forthcoming about his legal issues, however, he also testified that Chad had not ever indicated he was the perpetrator of the January 2007 incident.

Rebecca Robinett was the person who prepared Chad's attachment assessment. She testified that her report was very positive. She noted that at the time of the assessment—March 2008—Chad was participating in individual and couple's counseling, BEP, and substance abuse services and that all were reporting he was making progress. She testified she thought it important for Chad to have supervised visitation as long as all involved felt Chad was abstaining from any kind of violence. She testified C.K., Jr. displayed "undeniable affection and certainly no fear" of Chad when they greeted each

other. She also testified that C.K., Jr. could not presently be returned to Chad—it was “too early.” She stated that the interaction between Chad and C.K., Jr. was very positive and appropriate and that her only concern was that Chad “didn’t really know how to help [C.K., Jr.] along.” Ms. Robinett was asked if she saw any harm if the court granted six more months for reunification purposes. She responded:

It’s really difficult to comment because certainly permanency is very important for a child’s continued healthy attachment. So if we can presume all goes well, and that both parents are compliant with all the expectations from DHS, then certainly that would be a favorable reunion. But I can’t predict if that will be done successfully.

She also stated that it could be detrimental if over those six months’ termination of parental rights was still being considered.

Social worker Cheryl DuPuy testified she had been supervising visits since April 2008 and that generally, those visits were favorable. She noted a few concerns. She also testified she had asked Candi if she was pregnant during one visit and was told, no, she had two hernias and was awaiting a time to have surgery. She testified the children were doing well in their current placement and the relatives desired permanent placement of the children with them.

A review order was filed after the July hearing. The court noted that Chad had recently completed the attachment assessment and that the “risk of domestic violence [was] not fully resolved.” The juvenile court ordered additional parenting education and visitation and lifted the no-contact order between Chad and the children. The court also noted that the State had filed a termination of parental

rights petition and that the hearing on the petition had commenced that date, but would continue in September.

In her August 2008 on-going report of services, Ms. DuPuy made notations that the parents were doing well during supervised visits with the children. She noted they were “nurturing and attentive” and she observed that Chad had “more of a positive attitude” and “kept his focus on the children instead of other people and what they were or were not doing.” With respect to current or potential risks, Ms. DuPuy wrote:

This worker sees the current or potential risk for [C.K., Jr. and C.K.] would be the history of lack of follow through of necessary services with both parents. It is of utmost importance that both parents participate in substance abuse services to ensure sobriety which would allow them to provide the necessary safety and security for the children. In addition, domestic violence education is important to gain a better understanding of the impact on children which will also ensure their safety and security.

September 4, 2008 notations were also generally favorable. Two visits were missed in the first week of September. Under “potential risks,” Ms. DuPuy reports that the underlying conditions of mental health—domestic violence, depression, co-dependency, and substance abuse—continue to be potential risks to the children. She notes that Chad “restarted back into his treatment, however, was again dismissed from the program. In addition, it is this worker’s understanding that he has not followed through with dropping UA’s on a consistent basis.”

The visits have been observed as being positive, interacting, nurturing, and loving. However, if both parents continue to not follow through with the recommended services, the risk of getting back into an unhealthy pattern is greater. This unhealthy pattern would contribute to parenting unsuccessfully and put the children at risk of harm.

Hearing on the termination petition continued on September 11, 2008. Chad again testified. He had been discharged from a substance abuse program for failing to attend. He had not provided any drug screens. Several visits with the children had been cancelled. He had attended one session with the couple's therapist since the last hearing. There had been a probation violation hearing. He had not yet re-started batterer's education. He was asked "under the threat of contempt, penalty of perjury" whether Candi had a baby since the last hearing in July, to which he responded, "No."

Candi also testified. At first, she denied having had another baby since the last hearing. She testified that in her opinion Chad did not need the batterer's education program and she denied that Chad and she had a volatile relationship that put the children at risk. She later testified that she was seeing an individual counselor and she was working on "anger management, stress management, communications skills, safety plans just in case a domestic abuse or domestic violence issue did occur between me and [Chad] and I have a safety plan ready." She also later admitted that she gave birth to another child on August 30, 2008. She was arrested at the conclusion of the hearing on theft charges.

The guardian ad litem for the children recommended that the State's termination petition be granted.

On November 10, 2008, the juvenile court ordered the termination of the parents' right as to C.K., Jr. and C.K. Chad's parental rights were terminated under Iowa Code sections 232.116(1)(e) and (h) (2007).

On appeal, Chad contends the State failed to prove by clear and convincing evidence that (1) he had not made reasonable efforts to resume care

of his children; (2) the children could not be returned to his care; and (3) termination is in the children's best interests.

II. Standard of Review

We review the termination of parental rights *de novo*. *In re D.G.*, 704 N.W.2d 454, 457 (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.*

III. Merits

Statutory Grounds for Termination. In order to affirm a termination of parental rights, we need only find grounds sufficient to terminate under one of the statutory grounds listed by the district court. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Because we find there were statutory grounds to terminate his parental rights under section 232.116(1)(h), we do not address whether Chad had not maintained "significant and meaningful contact" as defined by section 232.116(1)(e).

Section 232.116(1)(h) provides that parental rights can be terminated if the State proves by clear and convincing evidence that the child is three years of age or younger; that the child has been adjudicated CINA; that the child has been removed from the physical custody of the child's parents for at least six of the last twelve months or for at least six consecutive months; and there is clear and convincing evidence the child cannot be returned to the custody of the parents at the present time. Chad argues only that there is not clear and

convincing evidence that the children cannot be returned to his custody at the present time.

Chad contends the juvenile court is simply dissatisfied with the pace of his progress and argues that DHS did not make reasonable efforts at reunification. We find the record does not support his contention. Chad has known what was expected of him since the inception of this case in early 2007. Anger management, domestic violence, and substance abuse have been concerns since the beginning. The juvenile court recognized that “Chad appeared, at times, to be making progress.” Unfortunately, “Chad had difficulty actually successfully meeting and completing court expectations and probation requirements.” The court observed that Chad “always has a reason for his non-completion of tasks” and it is never “his ‘fault’, but is the result of some factor purportedly beyond his control or responsibility.” The juvenile court expressed concern about Chad’s failure to accept any responsibility and his minimization of the seriousness of the situation. We find clear and convincing support in this record for the juvenile court’s findings and concerns.

The record is clear that the children currently cannot be returned to Chad’s care. This court has often recognized that a parent’s past performance is indicative of the quality of care the parent will provide in the future. *See, e.g., In re J.E.*, 723 N.W.2d 729, 798 (Iowa 2006). We applaud Chad’s recent attempts to address some of the issues of domestic violence and anger management. However, the children cannot be expected to continue to wait for him. “The crucial days of childhood cannot be suspended while the parents experiment with

ways to face up to their own problems.” *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987).

Best Interests of the Children. Chad argues that the closeness of his relationship with C.K., Jr. precludes termination. A strong bond between parent and child is a special circumstance that may mitigate against termination when the statutory grounds have been satisfied. *In re S.O.*, 483 N.W.2d 602, 604 (Iowa 1992). Nonetheless, these children have been out of the parents’ custody for most of C.K., Jr.’s life and all of C.K.’s life. They are strongly bonded with their grandparents with whom they have lived for more than a year. Their safety and need for a permanent home are now the primary concerns. We conclude termination of parental rights is in their best interests. We therefore affirm.

AFFIRMED.