

IN THE COURT OF APPEALS OF IOWA

No. 8-135 / 08-0038
Filed March 14, 2008

IN THE INTEREST OF D.O., Minor Child,

T.H.O., Father,
Appellant.

Appeal from the Iowa District Court for Clinton County, Arlen J. VanZee,
District Associate Judge.

A father appeals from a juvenile court order terminating his parental rights.

AFFIRMED.

Jeffrey L. Farwell of Farwell & Bruhn, Clinton, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Michael Walton, County Attorney, and Cheryl J. Newport,
Assistant County Attorney, for appellee.

Neil Kroeger, LeClaire, for mother.

Christine Frederick, Davenport, guardian ad litem for minor child.

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

MILLER, J.

Thomas is the father of Deyonna, who was twenty-three months of age at the time of an early December 2007 termination of parental rights hearing. In a December 2007 order the juvenile court terminated Thomas's parental rights to Deyonna pursuant to Iowa Code section 232.116(1)(h) (2007) (child three or younger; adjudicated a child in need of assistance (CINA); removed from physical custody of parents six of last twelve months, or last six months and any trial period at home less than thirty days; cannot be returned to parents at present time without being a CINA). The order also terminated the parental rights of Deyonna's mother, Lisa, and she has not appealed. Thomas appeals. We affirm.

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).

Deyonna was born in January 2006. She tested positive for marijuana at birth. Deyonna has numerous problems and is accurately described as a "special needs" child. She was born with a diaphragmatic hernia, requiring surgery shortly after her birth. She was born with heart problems and has had heart surgery to repair a valve. Deyonna has had a shunt placed in her head to relieve pressure from fluid building up on her brain. She has been diagnosed as mildly mentally retarded. Deyonna suffers from a chromosome abnormality, and is not only handicapped but is also severely developmentally delayed. Although

Deyonna's parents contend otherwise, the record demonstrates that they do not fully understand or appreciate the full nature and extent of her many medical problems and related needs.

Services to the family began in March 2006. Deyonna was removed from her parents in February 2007, after again testing positive for marijuana. She has thereafter remained in the legal custody of the Iowa Department of Human Services (DHS), placed in family foster care. Deyonna was adjudicated a CINA in April 2007.

Thomas claims the grounds for termination of his parental rights were not proved by clear and convincing evidence, and more specifically claims that the juvenile court erred in finding Deyonna could not be returned to his custody. The first three of the four elements of section 232.116(1)(h) were clearly proved; based on the following facts we conclude the fourth element was also proved by clear and convincing evidence.

At the time of the termination hearing Thomas and Lisa had received or been offered numerous services for almost two years. Initial concerns centered on their substance abuse, as each tested positive for marijuana at the time of Deyonna's birth. Additional concerns thereafter included Thomas's and Lisa's lack of stable housing, their lack of stable employment, and Lisa's mental health problems.

Between June 6, 2006, and the termination hearing Thomas was tested for marijuana use on numerous occasions. On all but one occasion he tested positive, including a positive test less than two weeks before the termination hearing. Thomas acknowledges using marijuana regularly throughout the June

2006 to December 2007 period, including as recently as one and one-half weeks before the termination hearing. He had twice been unsuccessfully discharged from outpatient substance abuse treatment.

Thomas was apparently employed at the time of the termination hearing and he and Lisa had rented a house. However, his and Lisa's lack of steady, ongoing employment had previously prevented them from having and maintaining stable housing and they had at times been homeless or living with friends. Thomas has not visited Deyonna since early July 2007, six months before the termination hearing.

Thomas and Lisa have never been married, but continue to maintain a relationship. Their relationship appears chaotic and unstable. Any prospect, however doubtful, of returning Deyonna to Thomas is dimmed by his relationship and residence with Lisa. She apparently continues her longstanding substance abuse, having twice been unsuccessfully discharged from outpatient substance abuse treatment during these proceedings, and having tested at a high level for marijuana use less than two weeks before the termination hearing. Lisa also fails or refuses to participate in recommended therapy sessions for her multiple diagnoses of mental problems. In his testimony at the termination hearing Thomas quite frankly acknowledged that before Deyonna could come home unresolved transportation issues, drug abuse issues, Lisa's mental health issues, and the parties' relationship issues would have to be dealt with.

We conclude that at the time of the termination hearing Deyonna could not be returned to Thomas without being subject to neglect or abuse that would cause her to remain a CINA.

Thomas also states as an issue: “The perceived superior parenting ability of foster parent as compared to that of natural parents is not entitled to great weight.” He points to the juvenile court’s reference to reports and mentions by service providers of progress Deyonna had made while in foster care and evidence of changes in her behavior since entering foster care. Although the exact nature of the juvenile court error he attempts to assert is unclear, we believe Thomas is claiming that the juvenile court placed undue emphasis on the parenting ability of Deyonna’s foster parents.

The juvenile court did make the following findings:

Despite Deyonna’s profound medical needs and her fragile condition, she is doing well with her foster parents where all of her basic needs are being met and she is getting all of the medical attention that she needs on a regular basis because of the attention and diligence on the part of the foster parents. The foster parents are interested in providing Deyonna with continuing care into the future and are willing to provide permanency for her.

. . . .
[Deyonna’s] best opportunity for growth and development will be realized in the stable environment she now enjoys.

We believe that in making these findings the juvenile court was simply contrasting Deyonna’s current situation in which her foster parents were fully cognizant of and focused on her problems and needs, they were actively attending to them, and Deyonna was making progress, with Deyonna’s situation when earlier with Thomas and Lisa, leading to its conclusion that termination was in Deyonna’s best interest. We conclude the juvenile court did not place undue or improper weight on the parenting abilities of the foster parents.

We conclude, as the juvenile court did, that termination of Thomas’s parental rights is in Deyonna’s best interest.

AFFIRMED.