

IN THE COURT OF APPEALS OF IOWA

No. 8-642 / 08-1119
Filed August 27, 2008

**IN THE INTEREST OF C.K.L.,
Minor Child,**

F.L., Father,
Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Mark J. Eveloff, District Associate Judge.

A father appeals the termination of his parental rights to his daughter.

AFFIRMED.

William McGinn, Council Bluffs, for appellant father.

Roberta Megal, Council Bluffs, for appellee mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Matthew Wilber, County Attorney, and Dawn Landon, Assistant County Attorney, for appellee State.

Scott Strait, Council Bluffs, for minor child.

Considered by Huitink, P.J., and Mahan and Vaitheswaran, JJ.

VAITHESWARAN, J.

Frank appeals the termination of his parental rights to his daughter Candace, born in 1998. He maintains (1) the circumstances that led to the adjudication did not exist at the time of the termination hearing and (2) termination was not in the child's best interests.

I. The district court terminated Frank's parental rights to Candace on several grounds. Frank only challenges one of them: Iowa Code section 232.116(1)(d) (2007). We could affirm the termination based on the unchallenged grounds. See Iowa R. App. P. 6.14(1)(c) ("Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue."); *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."). However, we elect to proceed to the merits of the challenged ground.

Section 232.116(1)(d) requires the State to prove the child was previously adjudicated a child in need of assistance and "[s]ubsequent 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."

Our de novo review of the record reveals the following facts. Candace, who was almost ten years old at the time of the termination decision, had been in and out of foster care since the age of two. Both parents failed to maintain a safe and sanitary home for the children, and Frank also had a long history of abusing alcohol.

In late 2004, Candace was removed from her mother's care after the Department of Human Services discovered that she was living in a filthy motel room without appropriate food and clothing. Frank acknowledged that he and Candace's mother had previously been arrested for failing to maintain appropriate housing but stated he now did not live with Candace's mother, maintained a clean and safe home, and wished to have Candace placed with him. The Department conducted a study of Frank's home, provided substance abuse treatment services, and placed Candace with Frank for a brief period in 2005.

In 2006, the Department discovered that Frank had been taking a medication prescribed for his son. By this time, Candace was back with her mother, who was struggling with her own issues. The Department continued affording Frank services to address his addictions. The Department also facilitated visitation. Frank again participated in these services and seriously undertook to have Candace placed with him. In August 2007, the district court ordered Candace moved to his home.

Less than two months after this placement, a Department employee learned that Frank had been binge drinking for approximately two weeks. His home was in serious disarray, with empty bottles of alcohol and food on the floor, broken furniture in the living room, and what looked like a vomit stain on a wall. Candace was removed from his care.

The Department once again made efforts to have Candace returned to Frank's home. It facilitated temporary home visits and dropped in during those visits to ensure Candace's safety. On one of those occasions, a Department

employee found Frank reeking of alcohol. Candace was not in the apartment. The worker later noticed her coming out of an apartment some distance away. She stated her father had been drinking and, when she could not wake him up, she went to a friend's house. Frank later told an acquaintance that he planned to drink himself to death.

A week later, Frank checked himself into an inpatient treatment program. Although he testified that he attempted to maintain contact with the Department, Department employees and service providers disputed this assertion. They stated he did not furnish a release of information that would have allowed the Department to assess his progress in treatment and he did not make arrangements to visit Candace. One State witness testified she would have facilitated two visits per week had Frank contacted her. Another reported that Frank took seven days to return a call from her about a possible visit. Meanwhile, Candace remained hopeful that her father would start seeing her every Sunday.

At the time of the termination hearing, Frank testified he had been sober for five months but was not yet ready to have Candace returned to his care. He stated, "Right now, it's probably best that Candace stays where she is so I can have time to prove myself again, because I went backwards. I relapsed and when you get out of relapse you can't just say I'm okay, because I'm not okay."

Based on Frank's testimony and our de novo review of the remaining record, we conclude the State satisfied its burden of proving the elements of Iowa Code section 232.116(1)(d).

II. The ultimate consideration in a termination of parental rights proceeding is the best interests of the child. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). A close bond between parent and child may warrant deferral of the termination decision. Iowa Code § 232.116(3)(c).

The Department conceded that Candace shared a close bond with her parents. An employee reported that she was “a sweet little girl” and was “very attached to both of her parents.” The Department also noted that Candace desperately wanted to return to the care of one of her parents and the prospect of remaining in foster care was rendering her emotionally fragile. Viewed in a vacuum, these facts might have warranted deferral of termination. The record as a whole, however, reveals that Frank squandered several opportunities to reunify with his daughter and the substance abuse issues that precipitated Candace’s removal from his care were still present. For these reasons, we affirm the termination of Frank’s parental rights to Candace.

AFFIRMED.