

IN THE COURT OF APPEALS OF IOWA

No. 8-963 / 08-1727
Filed December 17, 2008

**IN THE INTEREST OF R.T. Jr. and A.T.,
Minor Children,**

**R.E.T. Sr., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Karla J. Fultz,
Associate Juvenile Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Jesse A. Macro Jr. of Gaudineer, Comito & George, L.L.P., West Des
Moines, for appellant father.

Victoria Meade, West Des Moines, for mother.

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

Jessica Miskimins of the Youth Law Center, for minor children.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

DOYLE, J.

A father appeals from the juvenile court order terminating his parental rights to his children. Upon our de novo review, we affirm.

I. Background Facts and Proceedings.

Y.H. is the mother of R.T. Jr., born in November 2002, and A.T., born in November 2001.¹ R.E.T. is the biological father of R.T. Jr. A.T.'s biological father is unknown; however, R.E.T. asserts he is A.T.'s equitable father.

The children came to the attention of the Iowa Department of Human Services (Department) in October 2006 after police found the young children wandering the neighborhood without adult supervision. At that time, R.E.T. was incarcerated in prison in Colorado and the children lived with their mother. The mother admitted the children had been wandering the neighborhood for approximately two hours.

The State subsequently filed a petition asserting the children were children in need of assistance (CINA). The mother was offered services, and the children were placed in their mother's custody under Department supervision. However, in January 2007 the children were removed from their mother's custody and placed in foster care after the mother left the children with unapproved caregivers and the mother's location was unknown. Thereafter, R.E.T., who had been released from prison, contacted the Department to request custody of the children.

¹ This appeal concerns only R.E.T.'s parental rights. Y.H. has not appealed from the termination of her parental rights.

On February 5, 2007, the juvenile court adjudicated the children CINA and continued their placement in foster care. The court also ordered that services be provided to R.E.T. and that R.E.T. be given supervised visitation with the children. On March 9, 2007, the juvenile court entered its CINA dispositional order adopting the case permanency plan submitted by the Department, which required R.E.T. to continue to work with in-home services, to follow all recommendations, and to provide urinalysis screens at the Department's discretion at his own expense. At the three-month review hearing on June 7, 2007, the juvenile court entered an order finding that R.E.T. lacked suitable housing and had not accessed services, and consequently that the children were to remain in the custody of the Department for foster care placement.

On July 2, 2007, R.E.T. filed a motion before the juvenile court regarding the drug testing requirement set forth in the case permanency plan. R.E.T. argued that he did not have a substance abuse problem and that any testing was overbearing, unnecessary, and financially oppressive. R.E.T. requested that he not be required to provide urinalysis screens or in the alternative, that he be given a seventy-two hour window to provide the urinalysis screen. In ruling upon R.E.T.'s motion, the juvenile court noted that R.E.T.'s "drug of choice was cocaine and that cocaine has a forty-eight hour window." Consequently, the court ruled R.E.T. was to "provide one random urinalysis screen per month within forty-eight hours of receiving notice."

A second review hearing was held on August 6, 2007. The juvenile court found R.E.T. had not provided urinalysis screens as required. The court ordered that the children's placement in foster care continue, and that R.E.T. provide

urinalysis screens at the Polk County jail at no cost to him. The court also ordered that if R.E.T.'s urinalysis screens were negative, he could have two-hour visits with the children.

In approximately October 2007 the Department received a report that R.E.T. had sexually abused the children, and R.E.T.'s visitation with the children ceased. Ultimately, the report was determined to be unfounded, and the juvenile court found R.E.T. had been denied reasonable efforts for the amount of time his visitation had denied. Consequently, the court extended permanency for twenty-six days.

On February 14, 2008, a permanency hearing was held, and a case permanency plan was presented. R.E.T. testified that he had an opportunity to review the case plan and that he understood what the expectations were of him before the children could be returned to his care, including that he would provide urinalysis screens when requested, he would consistently attend visitation with the children when scheduled, he would work with the in-home worker, he would obtain and maintain stable employment, and he would have appropriate and stable housing for the children. The juvenile court discussed the plan at length with R.E.T., and R.E.T. stated he understood what he needed to do under the plan to get custody of the children. The court then entered an order extending permanency for six months.

R.E.T. has an extensive criminal history. Additionally, from January 28, 2008, to June 2, 2008, R.E.T. was arrested approximately five times. R.E.T. was incarcerated from June 2, 2008, until August 7, 2008, sixty-seven days, and did not have any visitation with his children during this time.

On July 11, 2008, the State filed a petition to terminate R.E.T.'s parental rights. Following a contested termination hearing, the juvenile court entered an order on October 6, 2008, terminating R.E.T.'s parental rights to the children pursuant to sections Iowa Code section 232.116(1)(b) (abandonment), (d) (child CINA for physical or sexual abuse (or neglect), circumstances continue despite receipt of services), (e) (child CINA, child removed for six months, parent has not maintained significant and meaningful contact with the child), (f) (child four or older, child CINA, removed from home for twelve of last eighteen months, and child cannot be returned home), and (i) (child meets definition of CINA, child was in imminent danger, services would not correct conditions) (2007). R.E.T. appeals.

II. Scope and Standards of Review.

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). The grounds for termination must be supported by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). If the juvenile court terminates parental rights on more than one statutory ground, we need only find the evidence supports termination on one of the grounds cited by the juvenile court to affirm. *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2000). Our primary concern is the best interests of the children in termination proceedings. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). Even when the statutory grounds for termination are met, the decision to terminate parental rights must reflect the children's best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). When we consider the children's best interests, we look to

their long-range as well as immediate best interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997).

III. Discussion.

A. Statutory Grounds.

R.E.T. first contends the State failed to prove the statutory grounds for termination of his parental rights under Iowa Code sections 232.116(1)(b), (d), (e), (f), and (i). Although the juvenile court terminated R.E.T.'s parental rights on more than one statutory ground as stated above, we may affirm if we find clear and convincing evidence to support any of the grounds cited by the district court. *In re R.K.*, 649 N.W.2d at 19. Upon our de novo review, we conclude termination of R.E.T.'s parental rights was warranted under Iowa Code section 232.116(1)(f).

In the present case, despite the offer of services to R.E.T. and the additional six months provided to reunite with R.E.T. his children, the children still cannot be placed in R.E.T.'s care. Although it is true that R.E.T.'s parenting skills have not expressly been called into question by the in-home or Department worker, the fact remains that R.E.T. has continually failed to comply with the case permanency plan ordered by the juvenile court. R.E.T. acknowledged at the permanency hearing that the permanency plan required that he provide urinalysis screens, and R.E.T. stated he would comply with the requirement. When R.E.T. failed to provide the screens as required, the court modified the requirement to accommodate R.E.T.'s financial needs and time constraints, giving him a forty-eight hour window to complete the screens and allowing R.E.T. to provide the screens at the Polk County jail at no charge to him. Yet, R.E.T. failed to provide the screens as required. Additionally, at the time of the termination hearing,

R.E.T. had not secured employment and was still living in his mother's one-bedroom apartment. Due to R.E.T.'s criminal activities, he was unable to continue visitation with the children for over two months. Because the record reveals the children cannot be safely placed in R.E.T.'s care, we conclude clear and convincing evidence supports the juvenile court's decision to terminate R.E.T.'s parental rights under section 232.116(1)(f).²

B. Best Interests.

R.E.T. also contends that termination is not in the children's best interests. Upon our de novo review, we disagree.

Here, the children came to the Department's attention in October 2006, after their mother failed to provide them adequate care. R.E.T. was unable to see that the children received adequate care because he was incarcerated in Colorado. Since his release from prison, he continues to engage in criminal activities and has failed to put his children's needs first. We concur with the juvenile court's conclusion that R.E.T. has been given every opportunity and ample time to provide the children a safe and stable home environment. These children should not have to wait any longer for their father to become a responsible adult.

The children have been placed in a foster-to-adopt home, along with another half-sibling not at issue here, and are doing very well. Thus, there is a strong likelihood that the children will be adopted and remain together. The children deserve stability and permanency, which R.E.T. cannot provide. *See In*

² Because we find termination was proper under this section, we need not address the merits of termination under the other statutory grounds urged by R.E.T.

re C.D., 509 N.W.2d 509, 513 (Iowa Ct. App. 1993). Consequently, we conclude the district court did not err in determining termination is in the children's best interests.

IV. Conclusion.

Because we conclude clear and convincing evidence supports the juvenile court's decision to terminate R.E.T.'s parental rights under section 232.116(1)(f) and the evidence supports the conclusion that termination is in the children's best interests, we affirm the order of the juvenile court terminating R.E.T.'s parental rights.

AFFIRMED.