

IN THE COURT OF APPEALS OF IOWA

No. 9-006 / 08-1936
Filed January 22, 2009

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

**K.L.P. Sr., Father,
Appellant.**

Appeal from the Iowa District Court for Wapello County, William S. Owens,
Associate Juvenile Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Mary Baird Krafka of Krafka Law Office, Ottumwa, for appellant father.

Cynthia Hucks, Ottumwa, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Mark Tremmel, County Attorney, and Seth Harrington,
Assistant County Attorney, for appellee State.

Ryan Mitchell, Ottumwa, for minor children.

Considered by Mahan, P.J., and Miller and Doyle, JJ.

DOYLE, J.

A father appeals from the juvenile court order terminating his parental rights to his children. He contends the juvenile court erred in determining clear and convincing evidence existed in the record to support the termination of his parental rights. Upon our de novo review, we affirm.

I. Background Facts and Proceedings.

K.L.P. Sr. is the father and K.P. is the mother of K.P. Jr., born in April 2004; K.P., born in July 2005; and K.P., born in April 2007.¹ The parents have been married approximately four years and have a stormy, on-again, off-again, relationship. The father has a history of substance abuse.

The two oldest children came to the attention of the Iowa Department of Human Services (Department) in June 2006, after it was reported that they were not being appropriately supervised by their parents, and that the family home was dirty, cluttered, and posed a risk to small children. A safety plan was made, and the parents agreed to participate in voluntary services to insure compliance with the plan. No court action was then requested. After the parents missed several appointments with the voluntary service providers, the State filed a petition on November 29, 2006, asserting the two oldest children were children in need of assistance (CINA).²

On December 12, 2006, it was reported that the father had been using marijuana and the mother had left the children asleep and unattended in her unlocked car while she went into a bar. There were also allegations of ongoing

¹ This appeal concerns only the father's parental rights. The mother has not appealed from the termination of her parental rights.

² The youngest child was not yet born.

domestic violence between the parents and that the parents had unstable and inappropriate housing. The Department established another safety plan to allow the mother to move with the children to a local crisis center, but she did not follow through on that plan. The children were then removed from their parents' custody on December 13, 2006, and placed in foster care. The children were subsequently placed in their paternal grandmother's care. On February 7, 2007, the father's probation/parole officer reported that the father informed her that he had again smoked marijuana.

On February 8, 2007, following a stipulation by the parties, the juvenile court adjudicated the two oldest children CINA and continued their placement with their grandmother. Following a dispositional hearing, the court on March 28, 2007, entered its order finding the children continued to be CINA and continuing the children's placement with their paternal grandmother. Additionally, the court adopted the Department's case permanency plan developed to reunite the parents and the children. To that end, multiple services were offered to the parents, including court-ordered supervision for the family, relative care, family centered services, supervised visitation, skill development services, mental health evaluations and treatment, and family counseling.

In April 2007 the youngest child was born. Because this child had a medical issue at birth, the child was transferred to the University of Iowa Hospitals and Clinics. Thereafter, the child was released to the mother's custody with the understanding she would make contact with a home health aide. After the mother failed to do so, the child was temporarily removed from the mother's care on or about May 4, 2007, and placed with the grandmother and the other

children. A CINA petition regarding this child was filed by the State on May 7, 2007.

On June 26, 2007, a permanency hearing concerning the two eldest children was held. The juvenile court adopted the information contained in the Department's case plan report filed June 18, 2007, which stated the parents had made no progress. Regarding the father, the report stated he had not visited the children at all, he had not attended his psychological exam, he had not cooperated with his probation/parole officer, and he had been discharged unsuccessfully from substance abuse treatment. The report, adopted by the court, required the father to complete a psychological exam, complete another substance abuse evaluation and follow all recommendations, attend parent skill services, attend couples' counseling, and follow all recommendations of his parole officer. The report also asked that parents be given an additional three months to work towards reunification with the children.

On July 5, 2007, the children were removed from their grandmother's care at their grandmother's request, and subsequently placed in foster care. The grandmother felt she could not give the permanency the children needed, and feared the parents were not making progress. On July 6, 2007, following a stipulation by the parties, the juvenile court adjudicated the youngest child CINA and placed the child in foster care.

The parents continued to receive services and began working once more towards reunification. On November 20, 2007, a permanency review hearing was held, and the juvenile court adopted the information contained in the Department's case plan report dated November 15, 2007. The report stated that

the parents had progressed to unsupervised visits. However, the report stated that father had been arrested for public intoxication on October 15, 2007. As a result, the report stated the father was in jail until he was placed in the Mount Pleasant Treatment Center for Substance Abuse. At the time of the report, the father was in treatment. Among other things, the report recommended the father graduate from the treatment program and follow all aftercare recommendations, and that the parents be given an additional three months to work towards reunification with their children.

On February 18, 2008, the Department filed an updated case plan report. The report stated that since the previous report, the parents had made progress towards reunification until approximately January 2008, when domestic issues and substance abuse issues resurfaced. The report stated the father had been drinking again and had admitted to smoking marijuana again. Additionally, the report stated the father was unsuccessfully discharged from SIEDA substance abuse services and, although several alternative substance abuse services had been recommended to the father, the father refused the services because he felt they wouldn't work for him. The Department then recommended the parents' parental rights to the children be terminated because the father refused to commit to his sobriety and because of the continuing domestic issues between the parents.

On September 8, 2008, the State filed a petition to terminate the parents' parental rights.³ A contested termination hearing was held on October 10, 2008. There, the father testified he had quit abusing substances, including alcohol, "cold turkey," and had been sober for over three months. He further testified that he had obtained employment, he had suitable housing for the children, and he was willing to participate in couples' counseling.

On November 14, 2008, the juvenile court entered an order terminating the parents' parental rights to the two youngest children pursuant to Iowa Code section 232.116(1)(h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home) (2007). The order also terminated the parents' parental rights to the oldest child pursuant to section 232.116(1)(f) (child four or older, child CINA, removed from home for twelve of last eighteen months, and child cannot be returned home).

The father 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). 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

³ The State filed a petition to terminate the parents' parental rights on March 26, 2008. However, this petition was dismissed on September 8, 2008, based upon the legal grounds alleged.

rights must reflect the children's best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994).

III. Discussion.

On appeal, the father contends the juvenile court erred in determining clear and convincing evidence existed in the record to support the termination of his parental rights. Ultimately, the father contends there was not clear and convincing evidence supporting the fact that the children could not be returned to his care. Upon our de novo review, we affirm the judgment of the juvenile court.

Here, the two oldest children came to the Department's attention in June 2006. Since that time, multiple services were offered to the father. The father was offered supervised visitation, though his visitation with the children was inconsistent. The father did not attend his psychological exam as required. Despite the parents' domestic issues, he refused to participate in couples' counseling until the termination hearing, over two years after the Department became involved in this case. He was unsuccessfully discharged from substance abuse treatment, and, despite his history of substance abuse, he refused to participate in any further treatment. He continued to abuse substances throughout the pendency of the case until he purportedly quit "cold turkey" in July 2008.

Insight for the future can only be gained from the father's past actions. *In re R.L.F.*, 437 N.W.2d 599, 600-01 (Iowa Ct. App. 1989). While we do not minimize the father's recent progress and the efforts he has made to recover his children, his progress is simply too little, too late. "A parent cannot wait until the eve of termination, after the statutory time periods for reunification have expired,

to begin to express an interest in parenting.” *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000). While the law requires a “full measure of patience with troubled parents who attempt to remedy a lack of parenting skills,” this patience has been built into the statutory scheme of chapter 232. *Id.* at 494. Children should not be forced to endlessly await the maturity of a natural parent. *Id.* At some point, the rights and needs of the children rise above the rights and needs of the parent. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997).

It is apparent that serious concerns still exist regarding the father’s ability to provide adequate care for the children. The children deserve stability and permanency, which the father has not and cannot provide. See *In re C.D.*, 509 N.W.2d 509, 513 (Iowa Ct. App. 1993). The evidence here simply does not support the conclusion that additional time would allow the children to be returned to the father’s care. Consequently, we agree with the juvenile court’s finding clear and convincing evidence existed in the record to support the termination of his parental rights.

IV. Conclusion.

Because we conclude clear and convincing evidence existed in the record to support the termination of the father’s parental rights, we affirm the juvenile court’s decision to terminate the father’s parental rights.

AFFIRMED.