

IN THE COURT OF APPEALS OF IOWA

No. 9-250 / 09-0095
Filed April 22, 2009

**IN THE INTEREST OF A.S.,
Minor Child,**

T.S., Father,
Appellant.

Appeal from the Iowa District Court for Scott County, Christine Dalton,
District Associate Judge.

A father appeals from the order terminating his parental rights to his child.

AFFIRMED.

Patrick J. Kelly, Bettendorf, for appellant.

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

Jack Dusthimer, Davenport, for mother.

Dana Copell, Davenport, attorney and guardian ad litem for minor child.

Considered by Sackett, C.J., and Potterfield and Mansfield, JJ.

SACKETT, C.J.

A father appeals from the order terminating his parental rights to one of his children.¹ He contends there was insufficient evidence to support the court's decision and termination is not in the child's best interest. We affirm.

Scope and Standards of Review. Our review of termination proceedings is de novo. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002). We review the facts and the law and adjudicate rights anew. *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999). We give weight to the juvenile court's factual findings, especially concerning the credibility of witnesses, but are not bound by them. *In re E.H. III*, 578 N.W.2d 243, 248 (Iowa 1998).

The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978); *Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35 (1972). When the juvenile court terminates a parent's rights, we affirm if clear and convincing evidence supports the termination under any of the cited statutory provisions. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The State has the burden of proving the allegations by clear and convincing evidence. "Clear and convincing evidence" is evidence leaving "no serious or substantial doubt about the correctness of the conclusion drawn from it." *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002).

The issue of whether to sever the biological ties between parent and child legally is an issue of grave importance with serious repercussions to the child as

¹ The mother did not appeal from the termination of her parental rights.

well as the biological parents. See *In re R.B.*, 493 N.W.2d 897, 899 (Iowa Ct. App. 1992). The goals of a child-in-need-of-assistance proceeding are to improve parenting skills and to maintain the parent-child relationship. A parent does not have an unlimited amount of time, however, in which to correct deficiencies. *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997). We have repeatedly followed the principle that the statutory time line must be followed and children should not be forced to wait endlessly for their parents to grow up. See *In re M.Z.*, 481 N.W.2d 532, 536 (Iowa Ct. App. 1991). We have also indicated that a good predictor of the future conduct of a parent is to look at the parent's past conduct. See *In re C.C.*, 538 N.W.2d 664, 666 (Iowa Ct. App. 1995).

Background. The child was born on January 20, 2008. On March 1, the mother abandoned the child at a hospital in Illinois for treatment of a broken arm. The injury was not accidental. The Illinois Department of Children and Family Services investigated. It allowed the paternal grandmother to take the child home from the hospital. It approved the grandmother as custodian and established a safety plan that prohibited unsupervised contact between the child and either parent. Because the grandmother resides in Iowa, the Iowa Department of Human Services also investigated and filed an ex parte application for temporary removal. The court placed the child in the temporary care and custody of the grandmother. Following an uncontested hearing on the removal application on March 27, the court placed the child in the grandmother's custody subject to supervision by the department. Although the father had been

released from prison on March 4, he was not present or represented by counsel at the hearing. On May 27, following an uncontested adjudicatory hearing on May 20, which the father attended, the court found the parties stipulated the child was in need of assistance as set forth in Iowa Code sections 232.2(6)(b) and (c)(2) (2007). The court placed the child in the custody of the department for placement with the grandmother.

Following a dispositional hearing on July 29, which the father did not attend, the court found:

[The father] was to meet with the workers for parenting skills and visitation. To date he rarely visits the child in [the grandmother's] home and has not engaged in services. He requested paternity testing but failed to attend the scheduled testing. It is hoped that he will reschedule. He has expressed no interest in being the child's permanent caretaker.

The court adopted and approved the case plan. It ordered that the child remain placed in the custody of the paternal grandmother, subject to supervision by the department and supervised visitation rights of the mother.

On August 26 the court held a contested permanency hearing, which the father did not attend. The court found:

Due to the child's age and the parents' lack of meaningful participation in any of the services offered to them as well as their lack of consistent contact with their child, the permanency hearing was scheduled for August 26, 2008.

The child cannot be placed with her mother or father at this time. . . . Despite having free access to the child in [the grandmother's] home, neither parent has consistent weekly contact with [the child]. Even when they lived within the home with the child present, neither cared for the child, nor has either parent supported the child financially. . . .

The father also "pops in and out" of [the child's] life. He has not attended any services despite frequent invitation. He also has an unstable living situation. He is content to have his mother raise [the child]. Unfortunately, there is a question as to [the child's]

paternity. [The father] is ordered to submit to paternity testing. He has failed to appear for two appointments scheduled at his convenience. A third appointment is set for August 28th.

[The child] does not have the time to wait while her parents grow up, become responsible, and learn to care for her. She is only eight months old and needs to bond to her parents now. The evidence also demonstrates that the parents have not meaningfully engaged in services offered to them. Both have struggled with maintaining stable housing. Both failed to attend weekly visitation with their daughter.

The court continued the child's placement with the grandmother and ordered that a hearing be set to consider termination of both parents' parental rights.

On September 29, the State petitioned to terminate both parents' parental rights under Iowa Code sections 232.116(1)(b), (e), (h), and (k). The court held a contested hearing on December 30. The court found:

To date, the father has attended only four parenting sessions. He's not called to schedule any visits and only sporadically visited the child until recently. The father has failed to enroll in the [batterer's education program]. He requested paternity testing and failed to attend several scheduled appointments until being contacted by the guardian ad litem and advised he was court ordered to participate in testing. Testing results, identifying him as the father, were given to him in September 2008. The father renewed his interest in the case only after being served with the termination petition in October 2008. His recent actions do not ensure the child can be returned to his custody presently or in the near future. The father's testimony was inconsistent and less than credible. He claimed that he had no idea he was required to complete [a batterer's education program], attend parenting classes, or support his child. These were specifically ordered and detailed in the case plan dated 7-22-08 He admitted being present at the family team meeting in June 2008 where his needs were discussed. . . . [H]e is supporting himself, his unemployed girlfriend, a vehicle, and three children for whom he pays child support, on a reported income of \$6,000.00 yearly gross. . . .

The father . . . claims to see his daughter every day. However, this is not consistent with reports from the service providers . . . or the caretaker. . . . It is also interesting that he has only been seen in the home on a few occasions. He was observed

to be staying there when between homes and offered little help parenting [the child]. He also claims he is supporting the child. It is unknown where the money for this support is coming from, but it seems to consist of providing pampers, food, and clothes when [the grandmother] asks and presents at Christmas. He provided no documents of child support to [the grandmother]. [She] had reported in the past receiving no financial support from her son. [She] has also reported no emotional support or regular visitation for [the child] from her son.

The court terminated the father's parental rights under sections 232.116(1)(e) and (h).

Clear and Convincing Evidence. The father contends "there was insufficient evidence" to support terminating his parental rights. His entire statement of material facts as they relate to the issues on appeal was:

Evidence was produced at the hearing on the petition to terminate parental rights that supported termination. However, there was contradictory evidence supporting dismissal.

The court gave insufficient weight to the evidence, including the father's testimony, indicating the father's intense interest in his child and the significant efforts the father had made to act as parent and to follow the case plan.

On our de novo review, giving appropriate weight to the court's credibility findings concerning the father, we find clear and convincing evidence supports both statutory grounds for termination cited by the court. We affirm the termination of his parental rights under sections 232.116(1)(e) and (h).

Best Interest. The father also contends termination of his parental rights was not in the best interest of the child. "In deciding what is best for the child we look to the child's long-range as well as immediate interests." *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990). "So we necessarily consider what the future holds for the child if returned to the parent." *Id.* at 493-94. "In making this decision we look to the parent's past performance because it may indicate the quality of care

the parent is capable of providing in the future.” *Id.* at 494. “A child’s safety and the need for a permanent home are now the primary concerns when determining a child’s best interests.” *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially). “It is simply not in the best interests of children to continue to keep them in temporary foster homes while the natural parents get their lives together.” *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). We agree with the juvenile court.

AFFIRMED.