

IN THE COURT OF APPEALS OF IOWA

No. 9-361 / 09-0453
Filed May 29, 2009

**IN THE INTEREST OF D.H., Jr.,
Minor Child,**

D.H. Sr., Father,
Appellant,

T.H., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

A father and mother appeal from an order terminating their parental rights.

AFFIRMED ON BOTH APPEALS.

Nancy L. Pietz, Des Moines, for appellant father.

Marc A. Elcock of Elcock Law Firm, P.L.C., Des Moines, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Kevin J. Brownell, Assistant County Attorney, for appellee-State.

Kayla Stratton, Des Moines, for minor child.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

DOYLE, J.

D.H. Sr. is the father and T.H. is the mother of D.H. Jr. (D.H.) born in November 2007. D.H. Sr. and T.H. appeal separately from the juvenile court order terminating their parental rights to their child. Upon our de novo review, we affirm on both appeals.

D.H. first came to the attention of the Iowa Department of Human Services (Department) on November 11, 2007, following concerns that the mother was unable to care for D.H. Additional concerns were raised on March 6, 2008. The family cooperated with services voluntarily.

On May 12, 2008, after being diagnosed with non-organic failure to thrive, D.H. was hospitalized. His weight had decreased by four ounces between his four-month and six-month well-baby check-ups. He gained some weight in the hospital. After returning home, safety services were put in place by the Department to help monitor D.H.'s parents' compliance of the feeding schedule put in place by D.H.'s physician. Beginning May 16, 2008, the parents received daily visits from service workers to ensure D.H.'s safety in the home and to provide parenting instruction. Despite receiving these services, the parents still struggled to meet D.H.'s feeding schedule. The parents did use a chart to keep track of the dates, times, and amounts of food they fed D.H.; however they exhibited difficulty in waking up at night to feed D.H. and in problem solving if they were out of the home at feeding time. While safety services were in place, the mother admitted to a visiting nurse that she had missed some of the feedings and had written them in the chart so the providers working with the family would think that they had not missed any of the feedings.

On May 21, 2008, a pre-removal conference was held, and D.H. was removed from his parents' care after the parents consented to the temporary removal. A petition was filed the same day, alleging D.H. was a child in need of assistance (CINA) under Iowa Code sections 232.2(6)(c)(2) and (n) (2007). A removal hearing was held May 29, 2008. It was found that placement outside the home was necessary because continued placement in the parents' home would be contrary to D.H.'s welfare due to the parents' unresolved mental health issues and inability to parent safely at the time. The parents were ordered to cooperate with "Family, Safety, Risk and Permanency" (FSRP) services and participate with all service providers. The mother was ordered to take all medications as prescribed.

An adjudicatory hearing was held June 17, 2008, and D.H. was found to be a CINA as alleged in the petition. D.H. was continued in the temporary custody of the Department. The court found his continued removal was warranted due to the continuing concerns regarding the parents' unresolved mental health issues and the child's exposure to neglect. The parents were ordered to continue with the previously ordered services and further ordered to participate in Dyadic therapy¹ if found to be appropriate. Visitation was continued.

On July 10, 2008, a dispositional hearing was held during which D.H. was confirmed as a CINA and his custody was continued with the Department for foster care placement. The court again found his continued removal was

¹ The Department's social worker testified Dyadic therapy is a "form of therapy used to help parents form a bond with their child, and help parents better understand their child's cues and meet his needs."

necessary because of the parents' unresolved mental health issues, the child's exposure to abuse and neglect, and the parents' inability to parent this child safely.

A review hearing was held September 9, 2008. The court found placement of D.H. outside the home continued to be necessary for the reasons stated in its previous orders. The State filed a petition for the termination of parental rights on November 21, 2008, and hearing was held February 6, 2009. The court found termination of parental rights was in D.H.'s best interests, and ordered the termination of D.H. Sr.'s and T.H.'s parental rights under Iowa Code sections 232.116(1)(d) and (h).

Both D.H. Sr. and T.H. appeal. They each contend there is not sufficient evidence to support the termination of their parental rights under either of the statutory grounds cited by the juvenile court and that termination is not in the best interests of their child. Additionally, D.H. Sr. asserts the juvenile court erred in failing to grant him an additional six months to work toward reunification.

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). Although we give weight to the juvenile court's findings of fact, we are not bound by them. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). The grounds for termination must be supported by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Evidence is clear and convincing when it leaves 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).

When the juvenile court terminates parental rights on more than one statutory ground, we only need to find grounds to terminate under one of the

sections cited by the court in order to affirm the court's ruling. *In re S.R.*, 600 N.W. 2d 63, 64 (Iowa Ct. App. 1999). In this case, we choose to focus our attention on section 232.116(1)(h) as the basis for termination.

Both parents contend the juvenile court erred in finding there was clear and convincing evidence the child could not be returned to their care at the time of the termination hearing. Their claim implicates only the fourth element of section 232.116(1)(h). This element is proved when the evidence shows the children cannot be returned to the parent without remaining a CINA. *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa Ct. App. 1995). The threat of probable harm will justify termination of parental rights, and the perceived harm need not be the one that supported the children's removal from the home. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992).

The records in this case are extensive, and the evidence shows the following: D.H. Sr. and T.H. received and participated in numerous provided services. They received FSRP services from Mid-Iowa Family Therapy Clinic. D.H. Sr. completed a fatherhood parenting class through the YMCA, and also worked with his adult case manager through Community Support Advocates, and with supported community living services through Easter Seals. He also had a reading tutor through the Drake University Adult Literacy Program. Both parents completed an anger management program at Eyerly Ball. The family participated in an attachment assessment at Orchard Place Guidance Center. The assessment did not have significant relational concerns regarding the father's bond with D.H., but it did express concerns that he "may not be able to adequately meet [D.H.'s] needs without another person giving him directions

such as when to feed and change [D.H.].” The assessment regarding the mother’s relationship with D.H. stated that “[T.H.’s] difficulty reading [D.H.’s] cues as well as [D.H.’s] reaction to [T.H.] after the separation period may indicate that [D.H.] does not have a healthy attachment to [T.H.].” It was recommended T.H. participate in Dyadic therapy, but she did not do so.

Parent education was provided weekly during supervised visits from Visiting Nurse Services. The parents stated they did not agree with the parenting educator’s instructions and stated they were only doing what she suggested because “they had to.”

Both parents participated in psychological assessments. The father has an IQ of 68, the extremely low range. The assessment shows his limitations in a number of adaptive skill areas and that he will require and benefit from supports, services, and some degree of supervision in a number of essential life-skill areas. The mother was diagnosed with adjustment disorder with disturbance of mood and conduct and mild mental retardation. Both psychological assessments posed concerns about the parents’ abilities to parent a child safely.

Since D.H.’s removal from the home, his parents received frequent supervised visits with him. Visitation did not progress beyond the supervised stage. These visits allowed an opportunity for the FSRP providers to coach the parents regarding D.H.’s care and for the parents to continue to build their bond with their son. The reports from these contacts indicate D.H. did not always respond well to his mother as she was not able to tell what D.H. wanted. It was also noted that during the visits the mother would tell the father what to do to meet D.H.’s needs. The father was primarily responsible for physical tasks such

as getting diapers and bottles, cleaning, and meal preparation. It was noted that this demonstrated good teamwork, but was concerning because neither parent was able to demonstrate the ability to parent independently.

Throughout this family's involvement with the Department, there have been concerns about the parents' ability to follow direction and to recognize D.H.'s cues and respond appropriately to them. The lengthy FSRP reports express concerns about the parents' ability to care for D.H. safely, issues repeated from one report to another, indicating a general lack of progress.

Although the parents received and participated in numerous services since D.H.'s removal from their home, they were not able to translate the information they learned into action when parenting D.H. during supervised visits. They generally responded positively to worker redirection to parent D.H. appropriately, but required the same redirections over and over as they did not implement "advice from workers for whatever reason beyond at that moment the redirection is given." T.H. showed a lot of continued frustration with some of D.H.'s behavior (perceived disobedience), and numerous inappropriate interactions between T.H. and D.H. were observed. T.H. stated there was no need for Department involvement and frequently became angry and defensive, stating she "knew how to be a mother"² and blamed the situation on others. Due to concerns about the parents' lack of ability to follow through with the skills they were taught during visits, the family interaction time was not able to progress beyond fully supervised visits.

² D.H. is her second child. Her older child is being raised by a relative out of state.

The FSRP reports repeatedly express concerns about the condition of the parents' apartment. The state of cleanliness varied greatly from visit to visit. The living room was generally safe for visits, but the bedrooms, bathroom, and kitchen were usually heavily cluttered or too dirty to allow D.H. to be in them. Additionally, the parents struggled with their own hygiene. The father was observed wearing the same t-shirt for multiple visits in a row, the mother's hair was often uncombed and looked greasy, and workers often noticed a bad body odor during visits. The clothing worn by the parents was often dirty with stains.

D.H. was removed from the home due to his parents' inability to meet his basic needs and care for him safely. See Iowa Code §§ 232.2(6)(c)(2), (n). A review of the record indicates the parents' general lack of progress puts D.H. at the risk of these issues continuing if returned to his parents' care. See *id.* § 232.116(1)(h). While we recognize a parent's mental disability standing alone is not a sufficient reason for termination, it is a proper factor to be considered in determining the parent's ability to perform essential parenting functions. *In re T.T.*, 541 N.W.2d 552, 556 (Iowa Ct. App. 1994). Termination is necessary when the disabled parent lacks the capacity to meet the child's present needs as well as the capacity to adapt to the child's future needs. *In re A.M.S.*, 419 N.W.2d 723, 734 (Iowa 1988).

At trial, a Department social worker testified D.H.'s parents still had a difficult time in meeting his needs

though they are able to show during a supervised visit time that they can feed him, which was the major issue that led to removal. They still need a lot of prompting, and like I said before, have not been receptive to the parenting skill education. And when we have a case that hasn't progressed past supervised visits, it would be

very hard to recommend that the child be allowed to live in their home unsupervised.

She further testified these issues would not be resolved in a short period of time because the parents had been receiving and participating with services since May 2008 and made very little progress. She concluded that another six months would make no difference. She also opined that the parents would not be able to do a better job separately, stating, "I do think that each parent has separate skills that individually could benefit [D.H.]. However, I don't believe that either of them has a full skill set that it takes to safely parent him, if that makes sense."

The juvenile court found it very sad that although the parents did all they were capable of doing to regain custody of their son, they could not, separately or jointly, either now or in the foreseeable future, safely assume his care and custody. Very sad indeed. There is no dispute that the parents truly love D.H. Both have made sincere efforts to facilitate D.H.'s return to their home. Unfortunately, even after being provided months of intensive services, serious health and safety concerns persisted. The evidence does not support the conclusion that additional time would allow D.H. to be returned to his parents, separately or jointly. See *In re C.D.*, 524 N.W.2d 432, 435 (Iowa Ct. App. 1994) (recognizing the law demands patience to allow parents to remedy their deficiencies, but that time must be limited because the delay may be translated into intolerable hardship for the child). Although we commend the parents' efforts, our overriding concern in reaching our decision is the best interests of the child, not the parents. See *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994) ("Even

if the statutory requirements for termination are met, the decision to terminate must still be in the best interest of the children.”).

“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). D.H. has thrived in his pre-adoptive foster home. He has developed a bond with the foster family. From our de novo review of the record, we agree with the juvenile court’s finding that the evidence was clear and convincing that termination of parental rights was in D.H.’s best interests. See *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997) (“In assessing the best interests of the child, we evaluate the child’s long-range as well as immediate best interests.”). The juvenile court correctly determined that no reasonable extension of time would alleviate the concerns noted. Accordingly, we affirm the juvenile court’s decision to terminate the parental rights of D.H. Sr. and T.H.

AFFIRMED ON BOTH APPEALS.