

IN THE COURT OF APPEALS OF IOWA

No. 9-507 / 09-0680
Filed July 2, 2009

**IN THE INTEREST OF L.T. and N.T.,
Minor Children,**

**K.J.T., Mother,
Appellant,**

**L.W.T., Father,
Appellant.**

Appeal from the Iowa District Court for Black Hawk County, Daniel Block,
District Associate Judge.

A mother and father appeal from the juvenile court order terminating their
parental rights to two children. **AFFIRMED ON BOTH APPEALS.**

Michael H. Bandy of Bandy Law Office, Waterloo, for appellant mother.

Tammy L. Banning of Tammy L. Banning, P.L.C., Waterloo, for appellant
father.

Thomas J. Miller, Attorney General, Kathryn S. Miller-Todd, Assistant
Attorney General, Thomas J. Ferguson, County Attorney, and Kathleen Hahn,
Assistant County Attorney, for appellee.

Timothy Baldwin, Waterloo, attorney and guardian ad litem for minor
children.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

SACKETT, C.J.

Krista and Lance, the parents of Logan and Natasha, appeal from the juvenile court order terminating their parental rights. Krista contends the court erred in terminating her parental rights. Lance contends the court erred in finding clear and convincing evidence supports the statutory grounds for termination cited by the court. We affirm on both appeals.

I. Background Facts and Proceedings.

The children came to the attention of the Iowa Department of Human Services in April of 2008, when the department received information that caused concerns of possible drug use by the parents, inadequate supervision of the children, domestic violence, and physical violence. A child abuse investigation resulted in an April 29 confirmed report for “denial of critical care—failure to provide proper supervision,” and the parents’ placement on the child abuse registry. The court ordered the children removed in late April and found them to be in need of assistance as defined in Iowa Code section 232.2(6)(n) (2007)¹, in mid-May. The court placed the children in the department’s custody for relative placement. The court continued the relative placement in its July dispositional order. In early October, the parents and department agreed to modify the children’s placement to place them with another relative.

Following a permanency hearing in late October, the court found that returning the children to the parents at that time remained contrary to the welfare of the children “because of the parents’ history of lack of safe and stable

¹ A child is in need of assistance if not receiving adequate care because of a parent’s “mental capacity or condition, imprisonment, or drug or alcohol abuse.”

residence, mental illness, domestic violence, and other instability and supervision concerns.” However, the court deferred permanency for an additional six months, finding “a substantial likelihood exists that with continued efforts by the parents, the children can be returned to their parents’ care” within that time.

Following a final permanency hearing in mid-December, the court issued its permanency order on December 22. The court detailed all the reasonable efforts made by the department and the services offered to the parents. It found:

Despite the offer and receipt of these services, the parents have not initiated themselves in services, have not complied with requests for random drug testing, have not maintained safe and suitable housing for themselves or the children, and have not demonstrated their ability to meet the needs for the children. Further, the parents continue to maintain a chaotic and unstable lifestyle.

The court directed the State to file petitions to terminate both parents’ rights to the children.

In January of 2009 the State petitioned to terminate both parents’ rights under Iowa Code sections 232.116(1)(e), (h), and (k) (2009). A contested hearing was held in February, and the court issued its order on April 30, terminating both parents’ rights under sections 232.116(1)(e) and (h). The court found clear and convincing evidence supported both statutory grounds and termination was in the best interests of the children. Both parents appeal.

II. Scope and Standards of Review.

Our review of termination-of-parental-rights proceedings is de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). 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 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 the cited statutory provision. *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. *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). "Clear and convincing evidence" is evidence leaving "no serious or substantial doubt about the correctness of the conclusion drawn from it." *Id.* (quoting *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa Ct. App. 1983)). If the juvenile court terminates parental rights on multiple statutory grounds, we may affirm if any ground is supported by clear and convincing evidence. See *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

III. Merits.

A. Father. The father contends the court erred in finding "sufficient grounds" exist to terminate his parental rights. He asserts the "evidence verified" that he maintained significant and meaningful contact with the children, that the children could be returned to his custody, and that they could be returned to parental custody within a reasonable time.

From our review of the record, we find clear and convincing evidence that

the children could not be returned to the father's care at the time of the termination hearing. See Iowa Code § 232.116(1)(h). The picture the father paints of himself and the family's circumstances in his petition on appeal is not supported by the record. The parents had no appropriate residence where the children could stay. The parents were staying with friends in the friends' apartment, but without the knowledge or consent of the landlord. They have to sneak into the apartment to avoid the landlord finding out. The father had not provided drug screens when requested, and one specimen was diluted. Until shortly before the termination proceedings, the father was not consistent in exercising visitation. The domestic violence between the father and mother was still a concern. Dan Gates, a counselor who worked with the couple, stopped seeing them and stated:

I do not believe that couples counseling is effective or even safe for them at this time. They each have many mental health problems that they are not addressing at the present time and *this makes it likely that domestic violence will return and be worse. This makes it very dangerous for the children* and I would not subject them to that danger.

(Emphasis added.) Children cannot be returned to a parent's care if to do so would subject them to some harm that would support finding them in need of assistance. See Iowa Code §§ 232.116(1)(h)(4); 232.102(5)(a)(2). A threat of probable harm will justify terminating parental rights, and the perceived harm need not be the same as the one that supported the child's removal. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992). Accordingly, we affirm the termination of the father's parental rights under section 232.116(1)(h).

B. Mother. The mother contends summarily that “the district court erred in terminating” her parental rights.² Her statement of material facts relates that the children “were initially removed from the home of their mother due to concerns involving possible parental drug abuse, a lack of parental supervision of the children, domestic violence in the home, physical abuse, and unsanitary conditions in the home.” In addition, “During the termination hearing, evidence was presented as set out on pages 3-4 of the court’s termination order of April 30, 2009.” The only legal authority cited stands for the general propositions that our review is de novo, we are not bound by the court’s findings, and our primary concern is the children’s best interests.

From our review of the record, we find clear and convincing evidence supports terminating the mother’s parental rights on both statutory grounds cited by the court. We agree with the court’s conclusion concerning best interests. We affirm the termination of the mother’s parental rights.

AFFIRMED ON BOTH APPEALS.

² The Iowa Rule of Appellate Procedure 6.751 instructions for completing the petition Form 4 provide: “The issue statement should be concise in nature *setting forth specific legal questions. General conclusions, such as ‘the trial court’s ruling is not supported by law or the facts’ are not acceptable.*” (Emphasis added.) The mother’s issue statement is an even-less-detailed general conclusion than the example in the instructions. It provides no guidance for our review.