

IN THE COURT OF APPEALS OF IOWA

No. 9-514 / 09-0732

Filed July 22, 2009

**IN THE INTEREST OF J.B. and B.T.,
Minor Children,**

**J.A.T., Mother,
Appellant,**

**K.L.T., Father,
Appellant.**

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A mother and father appeal separately from the order terminating their parental rights. **AFFIRMED.**

Emilie J. Roth Richardson of Roth Law Office, P.C., Dubuque, for appellant mother.

Christopher M. Soppe of Blair & Fitzsimmons, P.C., Dubuque, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Ralph Potter, County Attorney, and Jean Becker, Assistant County Attorney, for appellee State.

Mary Kelley, Dubuque, for minor children.

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

DOYLE, J.

A mother and father appeal separately from the order terminating their parental rights. Upon our de novo review, we affirm.

I. Background Facts and Proceedings.

J.T. is the mother of four children. Her parental rights to her two oldest children were terminated in 2001 for neglect. At issue here are her two youngest children: J.B., born in September 2003, and B.T., born in April 2005. K.T. is the father of B.T.¹

In 2006 the Iowa Department of Human Services (Department) became involved with the family following a report that B.T.'s arm was broken while the child was left alone in the child's bedroom. That report led to founded child abuse reports against K.T. and J.T. for failure to provide B.T. proper supervision.

On or about April 2, 2008, the Department once again became involved with the family after the Department received a report that J.B., then age four and a half, had two black eyes and other injuries about J.B.'s head and face. K.T. and J.T. maintained that J.B. had a temper tantrum at J.B.'s bedtime so they put J.B. in J.B.'s bedroom, alone. At that time, the parents did not observe any injuries. The parents stated that they discovered J.B.'s injuries the next morning but were unable to establish how the injuries occurred. The Department's caseworkers did not feel that J.B.'s injuries were consistent with the explanation given by the parents. The caseworkers then went to the family's home unannounced to assess the safety of the child.

¹ J.B.'s father, R.B., does not appeal the termination of his parental rights.

Once at the home, the workers were able to observe bruising around both of J.B.'s eyes, two lacerations, and other bruising on J.B.'s cheek and jaw. One worker also noted several additional concerns, specifically that J.B. was extremely small for the child's age, J.B. was still in diapers, J.B. was unable to verbalize any words or sentences and was unable to identify any body parts, J.B.'s bedroom was barren except for a small toddler bed with no bedding, and there were locks on the outside of the children's bedroom doors. One worker observed that B.T. was locked in B.T.'s bedroom, but the parents stated that J.B. had locked the door, not them.

The caseworkers attempted to develop a safety plan with the parents at that time, but the parents became very defensive and began yelling and screaming that they were not going to cooperate. The parents then instructed the workers to leave the property. Once outside, the workers contacted the court for authorization to remove the children. After authorization for removal was received and law enforcement arrived on scene, the workers discovered that the parents had left through a back door with the children and could not be found. When the workers and law enforcement returned to the home on or about April 3, 2008, the parents were present but the children were not. The parents initially indicated they would not disclose where the children were located; however, after approximately an hour of questioning and threat of pursuing a contempt of court action, the parents advised that the children were located with a relative in another county. The children were then removed from the parents' care and placed in foster care.

On April 7, 2008, the State filed petitions asserting the children to be children in need of assistance (CINA). Thereafter, the juvenile court ordered funding for full mental health-psychological evaluations, parental assessments, and IQ testing of the parents. Following the parents' mental health evaluations, K.T. was diagnosed with generalized anxiety disorder and narcissistic personality disorder with paranoid personality features and histrionic personality features. J.T. was diagnosed with adjustment disorder with anxiety, obsessive compulsive personality disorder with avoidant personality features and paranoid personality features. It was recommended that the parents engage in long-term individual counseling on a weekly basis.

After the children's removal, J.B. was seen by a doctor at the University of Iowa regarding J.B.'s small stature and speech delays. The doctor noted in her deposition that J.B. was growth-delayed in all three parameters—head circumference, weight, and height. The doctor stated that concerns were noted regarding J.B.'s development as early as 2004, but the parents had neglected to follow through with further testing. The doctor noted that J.B.'s speech was that of a nine-to-twelve-month old, although the child was physically four and a half years in age. Based upon her evaluation of J.B. and review of prior reports, the doctor opined that the children had suffered at the least emotional neglect and at the worst, emotional abuse as a result of being locked in barren rooms for extended periods of time and nutritional neglect. The doctor diagnosed J.B. with failure to thrive. Ultimately, all medical and organic causes for failure to thrive were ruled out, leaving environmental conditions in the parents' home as the cause of the diagnosis.

On August 8, 2008, the juvenile court adjudicated J.B. and B.T. to be children in need of assistance (CINA). To reunify the family, the court, in its August 22, 2008 disposition order, granted the parents visitation with the children and ordered the parents to cooperate with family, safety, risk, and permanency services, including parenting assessment and education. The court further ordered that the parents follow through with the recommendations of their mental health evaluations and authorized funds for the parents' ongoing treatment. The court ordered the parents to participate with Crossroads and the children's therapy, to remove the locks from the children's doors, and to properly furnish the rooms in an age-appropriate manner, including bedding, blankets, and age-appropriate toys and/or games.

A review hearing was held on February 23, 2009. It was reported that the parents had made little, if any, progress since the onset of the case. On March 23, 2009, the State filed petitions for the termination of the parents' parental rights. In an order filed April 30, 2009, the juvenile court terminated the parents' parental rights to J.B. and B.T. pursuant to Iowa Code section 232.116(1)(f) (2009) (child is four years or older, has been adjudicated CINA, has been removed from parent's custody for at least twelve of eighteen months, and cannot be returned to custody of parent).

The father and mother appeal separately.

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). 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). Our primary concern in termination cases is the best interests of the child. *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007).

III. Discussion.

A. Grounds for Termination and Additional Time.

The parents first contend the statutory grounds for termination were not satisfied. The parents do not dispute the first three elements of Iowa Code section 232.116(1)(f) have been established. Instead, they both contend the fourth element of section 232.116(1)(f), that there is clear and convincing evidence the children cannot be returned to the parents' custody as provided in section 232.102, has not been proved by the State. The mother also contends she should have been given additional time to remedy the situation for which the children were removed. We disagree.

Here, the children were removed in April 2008. Since that time, multiple services have been offered to the parents, including supervised visitation, family, safety, risk, and permanency services, mental health evaluations and services, referrals to Crossroads, Hillcrest Mental Health Center, and family team meetings. Despite the offer of services, the record reveals that the parents have made little to no progress towards reunification with the children. The parents' participation in services and visitations with the children has been sporadic. When attending the visits, K.T. regularly slept. Although the mother showed

some progress in preparing meals for the children without being prompted during visits, the supervisors continued to have to prompt the parents to interact and play with the children and to change diapers or attend to the children's toileting needs, among other things. The visits never progressed to unsupervised due to the parents requiring continual prompting to parent the children.

Additionally, the parents have shown little insight into their children's medical needs. Insight for the future can only be gained from the parents' past actions. *In re R.L.F.*, 437 N.W.2d 599, 601 (Iowa Ct. App. 1989). The record reveals that the parents were advised of concerns in J.B.'s delays in 2004 yet did not follow-up upon those concerns. The parents were also informed in 2006 that J.B. had an elevated lead level, requiring medical follow-ups, yet failed to take J.B. for all of the necessary follow-ups. Although J.B. was still in diapers, extremely small in stature, and unable to speak at four and half years of age, the parents did not seek medical attention for J.B. J.B. was diagnosed with failure to thrive. B.T. also has developmental delays. However, the parents continue to have zero insight on how their parenting has caused the children to have significant development and physical delays. It is vital that the parents acknowledge and recognize the abuse before any meaningful change can occur. *In re H.R.K.*, 433 N.W.2d 46, 50 (Iowa Ct. App. 1988). Additionally, both parents have medical conditions of their own and have had poor follow through with their own follow-up and preventative care, requiring frequent emergency care treatment. Both parents have been diagnosed with mental health issues, yet J.T. failed to continue treatment and K.T. failed to enter therapy at all.

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. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). 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). The children are flourishing in foster care. J.B. is potty-trained and both children’s speech has improved. Both children have gained weight and are more outgoing and engaging. The foster parents are willing to adopt the children. The evidence here simply does not support the conclusion that the children can be returned to the parents’ care at the present time or with additional time without exposing the children to significant risk of abuse or neglect. Consequently, we agree with the juvenile court’s finding clear and convincing evidence existed in the record to support the termination of the parents’ parental rights.

B. Parent/Child Relationship.

Additionally, citing Iowa Code section 232.116(3)(c), the father claims the juvenile court erred in terminating his parental rights to B.T. due to the closeness of the parent-child relationship. It does not appear that any section 232.116(3) issues were either raised by the father in the termination proceedings or addressed by the juvenile court in its order terminating his parental rights. See *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994) (“As a general rule, an issue not presented in the juvenile court may not be raised for the first time on appeal.”). Consequently, the father has not preserved error on this claim, and we do not address it any further.

IV. Conclusion.

Because the evidence here simply does not support the conclusion that the children can be returned to the parents' care at the present time or with additional time without exposing the children to significant risk of abuse or neglect, we agree with the juvenile court's finding clear and convincing evidence existed in the record to support the termination of the parents' parental rights. Additionally, because we conclude the father has not preserved error on his claim that the juvenile court erred in terminating his parental rights to B.T. due to the closeness of the parent-child relationship, we do not address it any further.

AFFIRMED.