

IN THE COURT OF APPEALS OF IOWA

No. 9-730 / 09-0946
Filed October 7, 2009

**IN THE INTEREST OF G.T.,
A Minor Child,**

R.P., Mother,
Appellant,

W.R.W., Father,
Appellant.

Appeal from the Iowa District Court for Marion County, Terry L. Wilson,
District Associate Judge.

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

Todd Babich of Babich, Goldman, Cashatt and Renzo, P.C., Des Moines,
for appellant mother.

Meegan Keller of Keller Law Office, Altoona, for appellant father.

Thomas J. Miller, Attorney General, Janet Hoffman, Assistant Attorney
General, Terry Rachels, County Attorney, and Melissa Clarke, Assistant County
Attorney, for appellee-State.

Jane Orlanes, Des Moines, guardian ad litem for minor child.

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

MANSFIELD, J.

Rebecca and William, the parents of G.T., separately appeal a juvenile court order terminating their parental rights pursuant to Iowa Code sections 232.116(1)(e) and (h) (2009). On appeal, both parties assert that termination was improper because the State failed to prove the statutory grounds by clear and convincing evidence. We affirm.

I. Background Facts and Prior Proceedings

Rebecca gave birth to G.T. in November 2007 when she was sixteen. At the time, the identity of the father had not been determined.

The Iowa Department of Human Services (DHS) first became concerned about G.T. in late March 2008 when Rebecca's mother made allegations that Rebecca was unwilling and unable to provide care to G.T. and was abusing drugs and alcohol.¹ As a result of its investigation, the State filed a petition seeking to name G.T. a child in need of assistance (CINA).

On April 2, 2008, an uncontested hearing was held in which G.T. was adjudicated a CINA pursuant to Iowa Code sections 232.2(6)(b), (c)(2), (g) and (n) (2007). William was present at the hearing as one of two possible fathers. In the CINA order, Rebecca was allowed to retain custody of G.T. on condition that she and her son would reside with her mother.

Following the CINA hearing, Rebecca took G.T. and moved to Oklahoma to live with her father.² As a result, on May 14, 2008, the State sought and was granted an order to remove G.T. from Rebecca's care. Upon their return to Iowa,

¹ Rebecca concedes she had been using marijuana.

² Rebecca claims that she did not know she was not allowed to leave Iowa, and that her mother had told her she "talked to somebody, and it was okay to just go ahead and go."

G.T. was placed into foster care in Knoxville, while Rebecca moved in with her sister in Newton. Upon being placed into foster care, G.T. was diagnosed with scabies on his arms and stomach, ear infections in both ears, and red blistered feet. G.T. also had never received immunizations.

DHS initiated reunification efforts with Rebecca by providing services that included substance and mental health evaluations, parenting skills sessions, and supervised visitation. The supervised visitations were provided weekly for one hour. Rebecca was also able to arrange additional visitation time through the foster parents.

Rebecca provided negative drug screens and completed substance abuse and mental health evaluations that did not recommend any services. However, her attendance at parenting sessions and supervised visitations was sporadic due to transportation issues from Newton. Rebecca's attendance did not improve until September 2008 when she moved to Knoxville to live with her grandmother.

In mid-July 2008, a paternity test determined William was the father of G.T. At that time, William was twenty years old and was on parole after being incarcerated for a burglary charge. After discovering that William was G.T.'s father, DHS began to offer him substance abuse evaluations, parenting skills sessions, and weekly supervised visitation. Additional visitation time was offered by the foster parents.

In October 2008, Rebecca learned that she was pregnant with her second child. According to Rebecca, the pregnancy was "a little difficult" and caused her to be "sick to where she could barely walk half the time." Rebecca was

inconsistent in her attendance at parenting skills sessions and supervised visitations with G.T. throughout her pregnancy. She frequently forgot to bring a diaper bag or supplies to those visits. Also, Rebecca acknowledged that she was supposed to go to a GED class once a week, but “had been slacking” and had not done so. Nevertheless, despite the difficulties her pregnancy apparently caused, Rebecca regularly spent time taking care of her seven young nieces and nephews. It was also noted that even when Rebecca attended parenting sessions, she sometimes failed to focus all of her attention on G.T., and on one occasion brought her niece to a supervised visitation.

Following the determination that he was G.T.’s father, William attended his supervised visitations and interacted appropriately with G.T. However, in October 2008, William admitted to DHS that he had been using marijuana. William was later unsuccessfully discharged from his substance abuse program for not going to appointments. In addition, on January 18, 2009, William was arrested for sexual assault. Although the charge was eventually dismissed, William was incarcerated until early March. During his incarceration, William had no interaction with G.T.

The State filed a petition to terminate Rebecca’s and William’s parental rights on February 20, 2009. Hearings were continued until June 4, 2009, because Rebecca went into labor and gave birth to another child.

At the termination hearing, testimony was presented that G.T. exhibited signs of attachment disorder, although this condition had been diagnosed by a play therapist, not a psychologist. This condition was going to require G.T.’s primary caregiver to attend six hours of training to learn how to deal with G.T.’s

needs and behavior related to the disorder. This initial training would then be followed by one-hour weekly play therapy sessions for both G.T. and his primary caregiver. In addition to the therapy, G.T.'s primary caregiver would need to show G.T. significant attention at all times.

Rebecca and William both testified at the hearing and repeatedly affirmed that they would be willing and able to care for G.T. immediately.

Rebecca stated that she had improved in her parenting and interaction with G.T., and that the living situation at her grandmother's was a safe and suitable environment for both G.T. and herself. A DHS worker agreed that the housing at her grandmother's was suitable. However, Rebecca also testified to a long-term goal of moving to Oklahoma to be with her father because it would provide her a fresh start with greater job opportunities and financial and emotional support.

William also testified that he had fulfilled all of his responsibilities within the case plan, including participating in regular supervised visitation since his release from custody in March 2009. By the time of the termination hearing, William had been living in his own apartment for four weeks, had resumed substance abuse treatment within the past two weeks, and had been employed for six weeks. William's position was at his father's janitorial business where he worked for twenty to thirty hours a week receiving minimum wage. Notably, William is in considerable debt due to fines, fees, and court costs. He testified, for example, that his cell phone was about to be cut off. It was also noted that since his release from incarceration William had not been coming to visits with G.T. with diapers or other needed supplies.

On June 17, 2009, the court ordered Rebecca's and William's parental rights to be terminated. Both parties have appealed.

II. Scope and Standard of Review

We review termination of parental rights proceedings de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We give weight to the juvenile court's factual findings, but are not bound by them. *Id.* The State must prove the grounds for termination by clear and convincing evidence. *Id.* "Clear and convincing evidence" means there are no serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

III. Analysis

When the juvenile court terminates parental rights on more than one statutory ground, we need to find termination was proper under only one ground to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). From our de novo review of the record, we find clear and convincing evidence that termination was proper under Iowa Code section 232.116(1)(h) (2009).

It is undisputed that the first three elements of section 232.116(1)(h) were met. At the time of the termination, G.T. was nineteen months old, had been adjudicated a CINA pursuant to section 232.96, and had been out of both Rebecca's and William's care for over twelve months with no trial periods at home. The only disputed issue is the fourth and final element, i.e., whether the State proved by clear and convincing evidence that at the time of the termination hearing G.T. could not be returned to either Rebecca's or William's custody. See Iowa Code § 232.116(1)(h)(4). Under this element, "[t]he threat of probable harm

will justify termination, and the perceived harm need not be the one that supported the child's initial removal from the home." *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992). If any of the definitional grounds of a CINA are met, such that the child cannot presently be returned to the parent's custody, that is enough to terminate. *Id.* at 815. The record in this matter supports a finding that G.T. could not be returned to Rebecca or William without being subjected to a threat of neglect. See Iowa Code § 232.2(6)(b).

Rebecca and William both argue that they have shown substantial progress in their parenting skills and in meeting case permanency plan expectations. Indeed, both Rebecca and William appear to be showing signs of increased maturity. Also, it is not disputed that both parents have genuine affection for G.T. However, the record nonetheless demonstrates that G.T. cannot be returned to either of them at this time.

Rebecca was not an appropriate caregiver for G.T. when he was in her custody. G.T. came back from Oklahoma with unaddressed medical problems. More recently, it appears to us, as it appeared to the juvenile court, that Rebecca has not given G.T. the priority he needs or fully comprehends his needs. Rebecca was inconsistent in her visitations with G.T. throughout the pendency of this action. While she blames the inconsistencies on her second pregnancy, her own testimony revealed that she was able to regularly care for many nieces and nephews during this time. For example, in January 2009, Rebecca didn't play with G.T. during a visit explaining that she "was 'wore out' from watching five children the day before." Unfortunately, it appears that Rebecca placed the interests of children who were not her own ahead of the interests of G.T. During

some visits that took place, Rebecca would spend more time talking to William or care providers than engaging with G.T. Additionally, despite substantial evidence in the record that G.T. suffers from an attachment disorder, Rebecca denied any such problems. As she put it, “I don’t really understand the whole thing because I don’t think he has problems personally. He’s a normal child.”

There are also serious concerns over Rebecca’s ability to provide for G.T. Rebecca is unemployed and has made only minimal progress towards gaining her GED. She receives a limited amount of financial support from her father who remains in Oklahoma. Furthermore, Rebecca has just given birth to a second child who will undoubtedly require her time and attention. We do not make these observations to cast blame on Rebecca, who is only seventeen, but to point out some of the barriers that still existed at the time of the hearing to a successful reunification with G.T. Rebecca claims that as “a young mother, [she] will learn on the job how best to raise G.T.” We have held that we cannot gamble with a child’s future, and that a child must not be made to wait their mother’s maturity. *In re D.W.*, 385 N.W.2d 570, 575 (Iowa 1986). “The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.” *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987).

While William has been recently fulfilling the requirements of his case permanency plan, the evidence showed that the progress came after the petition for termination was filed. William’s own father acknowledged at the termination hearing that most of William’s progress had occurred in the last four to six weeks. “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.” *C.B.*,

611 N.W.2d at 495. Furthermore, several concerns remain pertaining to William's ability to provide for G.T. William has significant debt, yet he works less than full-time and only at minimum wage. William also suffered a relapse in substance abuse and was unsuccessfully discharged from his substance abuse program. Although no evidence was presented to show any substance abuse since the relapse, he did not restart substance abuse treatments until two weeks before the termination hearing. This is an insufficient amount of time to show that he can remain drug-free.

In determining whether to terminate parental rights, we also consider "the physical, mental, and emotional condition and needs of the child." Iowa Code § 232.116(2). G.T. particularly needs a stable and secure home because he has symptoms of attachment disorder. With this condition, moving G.T. from his current pre-adoptive placement would increase the danger for emotional harm. Rebecca acknowledged this when she suggested a transition of G.T. back into her care (a transition that could take a "[c]ouple months").

Q. Why do you believe it's best to transition him into your custody? A. Because I don't want it to like traumatize him because he's been with them for so long. It can confuse him.

Thus, at the time of the termination hearing, there was clear and convincing evidence that G.T. could not be returned to the care of Rebecca or William at the present time.

In addition to meeting the statutory requirements, the termination must still be in the best interests of the child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). This case had been ongoing for approximately fourteen months at the time of the termination hearing. "[P]atience with parents can soon translate into

intolerable hardship for their children.” A.C., 415 N.W.2d at 613. “Children simply cannot wait for responsible parenting.” *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). After careful consideration, based on the entire record that we have previously summarized, we conclude it is in G.T.’s best interests to terminate the parental rights of Rebecca and William.

For the foregoing reasons, we affirm the juvenile court’s decision terminating Rebecca’s and William’s parental rights to G.T. We express our appreciation for the vigorous and effective legal representation that both parents have received. This helps to insure that the arguments are fully developed both in the juvenile court and before us.

AFFIRMED.