

IN THE COURT OF APPEALS OF IOWA

No. 1-180 / 10-1788

Filed April 13, 2011

**IN THE INTEREST OF M.A., C.A., D.S., D.H., and K.A.,
Minor Children,**

T.A.A., Father of M.A., C.A., and K.A.,
Appellant.

Appeal from the Iowa District Court for Polk County, Constance Cohen,
Associate Juvenile Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Steven E. Clarke of Pargulski, Hauser & Clarke, Des Moines, for appellant
father of M.A., C.A., and K.A.

Jeffery Wright, Des Moines, for mother.

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

Charles Fuson of the Youth Law Center, Des Moines, for minor children.

Considered by Vogel, P.J., and Doyle and Tabor, JJ.

TABOR, J.

Pointing to his completion of a substance abuse evaluation and treatment program, a father appeals the juvenile court order terminating his parental rights to three children.¹ The juvenile court record shows the latest treatment did little to counter the father's long history of illegal drug use. In his own testimony at the termination hearing, the father called the treatment program, "a bunch of nothing" and questioned whether it "did much for [him] at all." Because the father still suffers from chronic and severe substance abuse problems and has shown a lack of motivation and follow-through in his efforts to reunite with his children, we affirm the termination of parental rights.

I. Background Facts and Proceedings

The Department of Human Services (DHS) became involved with the family in February 2010 when the youngest child, M.A., tested positive for methamphetamine at birth. The juvenile court removed the newborn, as well as her two-year-old brother, C.A., and their eight-year-old half sister, K.A.²

The father, Troy, has been using methamphetamine and marijuana since he was eighteen years old. He is now thirty-six. Troy participated in inpatient substance abuse treatment in 2002 and 2003 when he was incarcerated. During the course of this juvenile case, he tested positive for methamphetamine on three occasions: February 23, 2010; April 5, 2010; and June 7, 2010. He missed

¹ In the same order, the juvenile court terminated the mother's parental rights to two of these three children, as well two other children she had conceived with a different father. The mother does not join in this appeal.

² K.A.'s biological mother was deceased. The girl was being raised by her biological father, Troy, and his wife, Amanda. Authorities also removed Amanda's two other children, ages four and six. Their father also was deceased and they are not the subject of this appeal.

numerous drug screens required by the DHS, despite being told that all failures to report for testing would be counted as positive tests. The juvenile court ordered both parents to provide a "hair stat" test following the September 14, 2010 permanency hearing. The mother's September 16, 2010 test measured extremely high for methamphetamine. The father's test was negative for methamphetamine, but positive for marijuana. Troy testified that he uses marijuana to improve his appetite.

The juvenile court ordered Troy to complete a substance abuse evaluation in February 2010, but he did not complete one until April 2010. Despite a recommendation that he undergo an intensive outpatient treatment program, he instead participated in a relapse prevention program, which he did not begin until July 2010.

The State filed its petition to terminate parental rights on September 13, 2010. The juvenile court held a hearing on October 14, 2010. Despite being informed about the time scheduled for the termination hearing, the parents both arrived twenty-five minutes late.

Troy testified, minimizing his need for substance abuse treatment: "I just need to tell myself I need to be off the stuff. A person who wants to quit doing drugs doesn't need help." Troy also questioned the efficacy of his relapse treatment: "I can't really tell you it did much for me. It was a bunch of nothing. I did it because I was supposed to." He then dismissed the significance of his continued use of illegal drugs, even while the termination case was pending: "I smoked a little bit of weed. That was it."

Troy admitted that he had not been involved with therapy sessions for his daughter K.A., who was dealing with grief from the death of her biological mother and loss issues based on her removal from the home of Troy and Amanda. He responded to cross examination: “Why haven’t I chosen not to be involved in the therapy? Well, I guess that’s on me.” He then blamed his lack of a driver’s license for his inability to attend the appointments, but did not address why he could not use public transportation and the bus tokens provided by DHS.

The juvenile court terminated Troy’s parental rights in an order issued October 21, 2010. The court based its termination on Iowa Code sections 232.116(1) (d)³ and (l)⁴ (2009) for all three children, as well as section 232.116(h)⁵ for the two younger children. The father appeals from that order.

³ Parental rights may be terminated where the court finds:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, . . . ;

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

Iowa Code § 232.116(1)(d).

⁴ Termination may be had where the court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child’s parents for placement pursuant to section 232.102.

(2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent’s prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child’s age and need for a permanent home.

Iowa Code § 232.116(1)(l).

⁵ The court may terminate where it finds that all of the following have occurred:

(1) The child is three years of age or younger.

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

II. Standard of Review

We review termination of parental rights proceedings de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We give weight to the juvenile court's findings of fact, especially when they evaluate witness credibility, but we are not bound by them. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). We will uphold an order terminating parental rights if clear and convincing evidence supports the grounds under Iowa Code section 232.116. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). Evidence is “clear and convincing” when there are no “serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.” *Id.*

III. Analysis

A. Clear and convincing evidence supported the statutory grounds for termination.

Troy challenges all three grounds for termination. When the juvenile court terminates on more than one statutory ground, we may affirm by finding clear and convincing evidence under any one of the sections cited. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). In this case, we conclude that the State offered clear and convincing evidence in support of all three grounds.

Section 232.116(1)(d). The circumstances that existed when the children were removed persisted despite Troy's receipt of services offered by the DHS.

(3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

Iowa Code § 232.116(1)(h).

For example, Troy completed a parenting class on May 24, 2010, but tested positive for methamphetamine two weeks after the class ended. He also failed to participate in therapy sessions or medical appointments with his children. Although Troy attended visitations on a regular basis until July 2010, after that he missed five sessions with the children. The juvenile court noted:

It is disheartening to document the lack of motivation and follow through that these parents have shown in their efforts toward reunification. Neither parent believed that their excuses for missing visits were insufficient when they were blatantly so.

Termination was proper under section 232.116(1)(d).

Section 232.116(1)(h). The State also offered clear and convincing proof to the juvenile court that termination as to M.A. and C.A. was proper under section 232.116(1)(h). Troy argues on appeal that because he completed substance abuse treatment and parenting classes, and had appropriate housing for the children, they could be returned home at the time of the termination hearing. We reject this argument. Troy did not place a high priority on providing a drug-free home for the children. Although Troy did not test positive for methamphetamine in September 2010, Amanda's hair stat test taken on the same date did reveal a high level of methamphetamine, at time when the couple was still living together. Troy tested positive for marijuana use, a result for which he was unapologetic at the termination hearing.

Moreover, Troy's testimony at hearing did not instill confidence that a return of the children to the parental home could be accomplished at the present time. When asked by his own attorney if he would be "able and ready to take the children home today," Troy responded: "If I had to, yes." Given the continued

use of drugs by the parents, the children could not have been returned home at the time of the October 2010 hearing.

Section 232.116(1)(l). The termination record additionally supported the juvenile court's finding that (1) Troy has a severe, chronic substance abuse problem that presents a danger to the children and (2) that his prognosis indicates that the children will not be able to be returned to his custody within a reasonable period of time considering their ages and need for a permanent home. See Iowa Code § 232.116(1)(l); see also *In re J.K.*, 495 N.W.2d 108, 113 (Iowa 1993) (finding parent's attempts at treatment had fallen short). Troy has been using methamphetamine and marijuana for almost two decades. He tested positive for methamphetamine multiple times after the children were removed from his home and missed several other testing dates. Yet he testified at the termination hearing that he didn't think he really needed any treatment: "I just need to tell myself I need to be off this stuff." He was not concerned about testing positive for marijuana within a month of the termination hearing. The father's mindset did not reflect a sincere commitment to overcoming his substance abuse problems nor to providing a drug-free environment for his young children.

B. Termination was in the children's best interests.

A court considering termination of parental rights must perform its best-interests-of-the-child analysis by placing priority on three factors: (1) a child's safety, (2) the best placement for furthering the long-term nurturing and growth of the child, and (3) the physical, mental, and emotional condition and needs of the child. Iowa Code § 232.116(2); *P.L.*, 778 N.W.2d at 41 (noting it is "well-settled

law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child”).

The long-term growth and physical, mental and emotional health of these children would be best served by termination of the father’s parental rights. Too much uncertainty flows from the father’s long-history of substance abuse. His poor insight into his need for treatment does not provide much reassurance that he will permanently adopt a healthier lifestyle. Likewise, Troy’s lack of motivation to be sure that the children obtain the therapy they need does not bode well for their long-term health in his custody.

By contrast, the children are thriving in the care of their grandparents. The grandparents consistently meet all of the children’s physical and developmental needs. For instance, they have been vigilant about M.A. wearing a special helmet fitted for her by the doctor to treat her misshapen head, a condition she has had since birth. They enrolled C.A. in therapy to improve his speech and they make sure that K.A.’s counseling remains on track. The grandparents plan to adopt the children. We agree with the juvenile court’s conclusion that the optimal permanency plan for these children must start with the termination of the father’s parental rights. See *In re B.K.K.*, 500 N.W.2d 54, 57 (Iowa 1993) (finding termination of parental rights was appropriate where adoption by grandparents was likely possibility).

C. The Juvenile Court properly rejected the factors weighing against termination in section 232.116(3).

Troy contends the juvenile court should have exercised its discretion not to terminate his parental rights because the children are in the care of their paternal grandparents. See Iowa Code § 232.116(3). We disagree with this contention. In this case, placement with the grandparents does not persuade us that the children should have to wait longer for a permanent home. Troy procrastinated in getting the drug treatment he needed and did not embrace the treatment he did receive. He has not stepped up to help his parents ensure that the children receive the necessary therapy and treatment for their positive physical, intellectual, and emotional development. We do not believe that the relative placement is a strong counterweight to termination under these circumstances.

The State proved the grounds for termination in sections 232.116(1)(d), (h) and (l); termination is in the children's best interests as set out in section 232.116(2); and their placement with grandparents is not a sufficient countervailing factor section 232.116(3) to merit denying the termination petition. We affirm.

AFFIRMED.