

IN THE COURT OF APPEALS OF IOWA

No. 1-692 / 11-1202
Filed October 5, 2011

**IN THE INTEREST OF K.T. and D.C.,
Minor Children,**

**R.W.B., Father,
Appellant.**

Appeal from the Iowa District Court for Muscatine County, Mark J. Smith,
Judge.

A father appeals from a juvenile court order terminating his parental rights
to two children. **AFFIRMED.**

Stephen W. Newport of Newport & Newport, P.L.C., Davenport, for
appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
County Attorney, Alan Osterman, County Attorney, and Korie L. Shippee,
Assistant County Attorney, for appellee.

Esther Dean, Muscatine, for appellee-mother.

Jeffrey L. Powell of Tindal Law Office, P.L.C., Washington, guardian ad
litem for minor children.

Considered by Vogel, P.J., Potterfield, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MILLER, S.J.

Robert is the father, and Stephanie the mother, of K.T. and D.C. (“the children”), who were born in April 2006 and March 2010 respectively. K.T. and D.C. were thus five years of age and one year of age respectively at the time of a July 2011 termination of parental rights hearing. Robert appeals from a July 2011 juvenile court order terminating his parental rights to the children. (The order also terminated Stephanie’s parental rights, and she has not appealed.) We affirm.

The Iowa Department of Human Services (DHS) became involved with this family in August 2009¹ when Stephanie left K.T. with an inappropriate caretaker. The relationship between Robert and Stephanie had been plagued by domestic violence. Voluntary services were offered and began. D.C. was born in March 2010 and voluntary services continued.

Stephanie to some extent participated in the voluntary services. Robert had minimal involvement in those services.

Stephanie continued to expose the children to unsafe people, and ongoing domestic violence between Robert and Stephanie was reported. As of August 2010 Stephanie had alleged that Robert had again assaulted her and she secured a “no contact” order of protection, consented to by Robert. Robert was reported to have “under developed parenting skills and . . . an anger management problem.”

¹ As discussed below, the DHS had been involved with Robert and Stephanie and an earlier child of theirs in 2003-04.

In September 2010 the children were removed from parental custody and placed in the custody of a maternal aunt, and a child in need of assistance (CINA) petition was filed. In November 2010 the children were adjudicated CINA and continued in the custody of the maternal aunt. Following a dispositional hearing, a January 2011 order maintained the children in the custody of their maternal aunt, subject to supervision by the DHS. The dispositional order noted that K.T. engaged in unstable and aggressive behavior and engaged in sexually inappropriate behavior at school.

On March 1, 2011, custody of the children was changed to their maternal grandmother, subject to DHS supervision. The State filed a petition for termination of parental rights in May 2011. The children remained with their maternal grandmother at the time of the July 2011 termination hearing. The juvenile court terminated Robert's parental rights to both children pursuant to Iowa Code section 232.116(1)(g) (2011) and his rights to D.C. pursuant to section 232.116(1)(h). Robert appeals.

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

In re C.B., 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

Robert asserts the juvenile court erred in terminating his parental rights rather than placing the children in the guardianship of their maternal

grandmother. He cites Iowa Code section 232.116(3)(a) in support of his argument.

As the result of an earlier relationship, Robert fathered two children. One is seventeen years of age, and Robert's parental rights to that child have been terminated. The other is seven years of age, and Robert rarely has contact with that child.

Robert and Stephanie had another child before K.T. and D.C. Several of the same issues that led to DHS involvement in the present CINA cases, including but not limited to domestic violence and other assaultive behavior and a lack of parenting skills, resulted in that child's adjudication as a CINA and subsequent termination of parental rights in 2004.

Despite the fact that Robert and Stephanie had been married for many years and together most of that time, during the CINA cases underlying the present termination proceeding Robert questioned whether he was K.T.'s father, and he had no contact with K.T. for several months until paternity testing proved him to be K.T.'s father. Robert similarly questioned whether he was D.C.'s father, and had no contact with him for a period of time, until paternity testing proved he was D.C.'s father. Robert attempted to justify his lack of contact with K.T. by stating he was unsure the no contact order acquired by Stephanie would allow him to be with K.T. That order, however, did not go into effect until August 2010, some six months after Robert's absence from K.T.'s life from the fall of 2009 until February 2010.

Robert has an extensive criminal history, including some thirty to forty arrests. During the underlying CINA proceedings, Robert underwent a psychological evaluation. He reported to the evaluator his estimate that he had spent some eight years in jail and about three and one-half years in prison.

Robert has had a long-term, serious substance abuse problem, including long-term addiction to methamphetamine. He reported that he had lacked sobriety from 1993 to 2004. Maintaining strict sobriety is extremely important to his well-being. Robert has apparently avoided use of illegal drugs since his release from prison in about March 2009. He does, however, continue to go to bars and drink beer, and sees that behavior as presenting no problem despite his susceptibility to addiction to chemical substances.

Court orders required Robert to participate in parenting classes. He has done so, if somewhat reluctantly, as he does not think he needs any help with parenting skills. Robert has been faithful in attending scheduled visits with the children. He has, however, been unable to learn, or unwilling to apply, the information presented during the parenting classes. Robert is unable or unwilling to deal with and appropriately control K.T.'s "meltdowns" and other misbehavior. He is unable to manage the care of both K.T. and D.C. at the same time.

Of major concern is Robert's extensive history of assaultive behavior and anger management problems. Many of his arrests and incarcerations have been for assaults, including serious assaults. For many years he engaged in domestic violence directed at Stephanie. Robert has assaulted Stephanie's father and

Stephanie's brother. He was imprisoned from early 2006 to 2009 for a serious assault.

Robert's psychological evaluation notes that he continues to demonstrate a potential for anger problems and resulting explosive behavior. K.T. reported that Robert spanked her with a spatula in March 2011. Robert denies he did so. A May 2011 juvenile court review order includes findings that during a then-recent visit Robert had been very aggressive toward K.T., yelled at K.T., was physical to K.T., and punched the seat of a car next to K.T. Robert's visitations, which had progressed to semi-supervised, reverted to fully supervised visitations thereafter.

Robert has been verbally abusive and assaultive toward DHS personnel and service providers during the underlying CINA proceedings, some of such behavior occurring as recently as April 2011. Beginning in April 2011 the DHS and service providers have recommended that he participate in anger management treatment and have referred him to such services at least twice. Robert has refused to participate, stating a belief that he has no anger management problem.

Robert was released from his most recent incarceration in March 2009. He has been offered services since the beginning of DHS involvement in September 2009. Robert has accepted few of the offered and available services, and has made only minimal progress toward developing an ability to parent properly.

During a great deal of the time since March 2009 Robert has been unemployed.² He continues to lack a stable residence, staying most of the time at the home of his stepfather, and staying part of the time with various friends. He believes he would “probably” be able to provide a home for the children “within a year or so.”

Robert now urges that the juvenile court erred by not placing the children in a guardianship with their maternal grandmother. However, during the CINA proceedings he objected to the children being placed in her custody, arguing they should instead be placed in foster care.

Iowa Code section 232.116(3)(a), relied on by Robert, provides that (even when grounds for termination have otherwise been proved) the court need not terminate parental rights if “a relative has legal custody of the child.” Here a relative, the children’s maternal grandmother, did have legal custody of them at the time of the termination hearing.

At the time of the termination hearing D.C. had been removed from the parents for ten of the sixteen months of D.C.’s life. D.C. needed a permanent home. K.T. suffered from detachment and behavioral disorders. K.T. needed direction, control, consistency, and permanency, which Robert was unable or unwilling to provide. The DHS case manager opined that the children needed permanency, and that termination of parental rights would better provide for it and benefit the children than would a guardianship with the grandmother.

² At the termination hearing he reported he had been working the prior two weeks, about eighteen to twenty hours per week.

The juvenile court carefully addressed the issue pursued by Robert on appeal. It noted his lack of stable housing and lack of a history of stable employment. The court noted and discussed K.T.'s issues, need for a stable household, and need for consistent care to deal with emotional outbursts and provide appropriate discipline. It noted the evidence that Robert would not be able to assume custody of the children for at least one year.

The juvenile court must use its best judgment in determining whether a factor such as contained in section 232.116(3)(a) is to be applied. *In re P.L.*, 778 N.W.2d 33, 41 (Iowa 2010). Placement with a relative under a permanency order is not legally preferable to termination of parental rights. *In re L.M.F.*, 490 N.W.2d 66, 67-68 (Iowa Ct. App. 1992). Upon our de novo review of the issue presented, for the reasons stated by the juvenile court and the facts set forth in the evidence summarized above, we agree with the juvenile court that the section 232.116(3)(a) exception should not preclude the otherwise appropriate termination of parental rights in this case. We therefore affirm the judgment of the juvenile court.

AFFIRMED.