

IN THE COURT OF APPEALS OF IOWA

No. 1-724 / 11-1193
Filed November 9, 2011

**IN THE INTEREST OF K.M.,
Minor Child,**

**B.S.M., Father,
Appellant,**

**L.A.M., Mother,
Appellant.**

Appeal from the Iowa District Court for Black Hawk County, Kellyann Lekar, Judge.

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

Mark Milder, Waverly, for appellant father.

Christina Shriver of the Coonrad Law Firm, Hudson, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Steven Halbach, Assistant County Attorney, for appellee State.

Linnea Nicol, Assistant Public Defender, Waterloo, for minor child.

Considered by Sackett, C.J., Tabor, J., and Huitink, S.J.*

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

HUITINK, S.J.**I. Background Facts & Proceedings.**

Brandon and Lynae are the parents of a child who was born in January 2010. The child was removed from the parents' care on June 7, 2010, after she received a serious head injury. The child was diagnosed with a subdural hematoma on the upper right side of her head.¹ The child had previous head injuries for which she had not received medical care. The child's injuries were not consistent with the parents' explanations.

Brandon was charged with child endangerment causing serious injury. As part of the criminal case, an order was entered prohibiting contact between the father and the child. The juvenile court adjudicated the child as a child in need of assistance (CINA) under Iowa Code section 232.2(6)(c)(2) (2009). The dispositional order placed the child with the Iowa Department of Human Services for suitable relative or family foster care placement. The child has been in the care the maternal grandmother.

The parents participated in parenting classes and family safety, risk and permanency services. The parents had psychological evaluations, and mental health counseling was recommended for both parents. The parents remained committed to each other and planned to get married. Lynae stated that even if Brandon had hurt the child she would still allow him to care for her as he is the child's father.

¹ Dr. Donna Alexandria told an employee of the Iowa Department of Human Services the injuries were either from shaking the child or from being hit on a soft surface.

On December 10, 2010, the State filed a petition for termination of the parents' rights. In January 2011, the parents each scheduled an appointment to begin mental health counseling. Brandon filed a motion to continue. The juvenile court determined the proceedings should be continued until April 2011. The court ruled, however, "that no further continuances will be granted without extreme good cause shown." On April 1, 2011, the juvenile court ruled that the no-contact order would be modified to allow for supervised contact between Brandon and the child. Brandon filed a second motion to continue. The court denied this motion.

The case proceeded to a hearing on April 7, 2011. The juvenile court concluded the parents' rights should be terminated under sections 232.116(1)(h) (child is three or younger, CINA, removed at least six months, and cannot be safely returned home) and (i) (child meets definition of CINA, was in imminent danger, and services would not correct conditions).

The court found "each parent suffers from mental health issues, domestic and relationship issues, and each parent lacks parenting skill to provide care for the child." The court noted "[t]he child suffered abuse as a result of the neglect or abuse of one or both of her parents that posed a significant risk to the life of the child and constituted imminent danger." The court concluded termination of the parents' rights was in the child's best interests. Brandon and Lynae have appealed the termination of their parental rights.

II. Standard of Review.

The scope of review in termination cases is *de novo*. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). Clear and convincing evidence is needed to

establish the grounds for termination. *In re T.P.*, 757 N.W.2d 267, 269 (Iowa Ct. App. 2008). 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. Motion to Continue.

The parents claim they should have been given more time to reunite with the child. The father points out that he only began supervised visits with the child about one week before the termination hearing. The parents assert the juvenile court should have deferred permanency because they were not given enough time to put themselves into a position for the child to be returned to their care.

We review a ruling on a motion for continuance on an abuse of discretion standard and will only reverse if injustice will result to the party requesting the continuance. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996). The court's denial of a motion to continue must be unreasonable under the circumstances before we will reverse the court's ruling. *Id.* We conclude the juvenile court did not abuse its discretion in denying the father's motion for a continuance. One continuance had already been granted. Furthermore, the parents were not progressing in services because neither one would accept responsibility for the injuries to their child. It would not be in the child's best interests to delay permanency.

IV. Sufficiency of the Evidence.

The parents also claim there is not clear and convincing evidence in the record to support termination of their parental rights. They assert that they cooperated with services. They also assert that they were hampered in reunification efforts because the department would not accept their explanations

for the injuries to the child. They state that because the department did not accept these explanations, it refused to move forward with reunification. The parents claim they did all that they could under the circumstances.

The child received very serious injuries. When she was taken to the emergency room by the parents on June 6, 2010, she had to be taken by helicopter to the University of Iowa Hospitals in Iowa City for treatment. Physicians found she had suffered possibly three prior injuries to her head. These injuries were not consistent with the parents' statements that the child had fallen out of the father's arms onto a bed, or had fallen off of a couch and/or bed. Medical staff determined the injuries were not accidental. The parents did not take responsibility for the injuries, or provide an adequate explanation as to how they could have occurred.

As the juvenile court found, we are no closer today than we were at the time the child was removed to be able to assure that the child could be safely returned to the parents' care. We conclude the juvenile court properly terminated the parents' rights under sections 232.116(1)(h) and (i). We determine termination of the parents' rights is in the child's best interests.

We affirm the decision of the juvenile court.

AFFIRMED.