

IN THE COURT OF APPEALS OF IOWA

No. 1-915 / 11-1301
Filed December 21, 2011

**IN THE INTEREST OF S.G.,
Minor Child,**

L.G., Mother,
Appellant,

E.G., Father,
Appellant.

Appeal from the Iowa District Court for Clay County, Donald J. Bormann,
District Associate Judge.

A mother and father separately appeal from a juvenile court ruling
terminating their parental rights. **AFFIRMED.**

Michael H. Johnson, Spirit Lake, for appellant-mother.

Austin P. Fiala, Spencer, for appellant-father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Michael J. Houchins, County Attorney, and Kristi Busse, Assistant
County Attorney, for appellee.

James Hastings, Okoboji, attorney and guardian ad litem for minor child.

Considered by Danilson, P.J., and Tabor and Mullins, JJ.

MULLINS, J.

A mother and father separately appeal from a juvenile court ruling terminating their parental rights to S.G. (born September 2008) under Iowa Code section 232.116(1)(h) (2009). Both parents argue the State failed to prove the statutory grounds for termination. The mother also argues that termination was not in the child's best interests, while the father argues termination was not appropriate due to the closeness of the parent-child relationship. We affirm.

I. Backgrounds Facts and Proceedings.

While the mother was pregnant with S.G., concerns were raised that she was not capable of taking care of herself and her unborn child and had tested positive for marijuana. The mother has been diagnosed with mild mental retardation and receives intellectual disability waiver services and social security disability through a representative payee. The concerns resulted in the mother being court-committed to an assisted living facility in May 2008.

Immediately following S.G.'s birth in September 2008, the Iowa Department of Human Services (DHS) initiated a child in need of assistance (CINA) assessment. During the assessment, DHS expressed concerns with the mother's mental ability to care for the child, substance and alcohol abuse by the mother and the father, and the history of domestic abuse within the home. The mother and the father signed a voluntary placement agreement placing S.G. into family foster care upon his discharge from the hospital. On November 7, 2008, the mother and the father stipulated to S.G. being adjudicated a CINA under Iowa Code section 232.2(6)(n) (2007).

Following adjudication, the parents successfully engaged in several services. Both completed parenting classes, and the father completed a domestic abuse class. The parents also attended AA meetings, and the father went to substance abuse treatments. However, visitation progress was limited due to lingering concerns over the parents' alcohol abuse and continuing concerns over the ability of the parents to provide adequate care for the child. Despite claiming sobriety, the parents were found with alcohol in their home or on their breath on four occasions from July until September 2009. As a result, in October 2009, the father was admitted to inpatient treatment for one month. Following his successful discharge, the father again tested positive for alcohol in January 2010.

In October 2009, the State filed a petition to terminate parental rights. In a ruling filed June 25, 2010, the juvenile court denied the State's request finding the statutory grounds had not been shown by sufficient evidence. The court further encouraged DHS to expand visitation to better assess the mother and the father's ability to parent. Following the ruling, DHS progressively increased the amount and duration of visits, and eventually progressed to semi-supervised and overnight visitations.

On October 19, 2010, the DHS case manager made an unannounced visit to the parents' apartment during a visit. The worker knocked at the door for about four to five minutes but despite being able to hear the TV and a dog barking, no one answered. When the worker was about to leave, the mother came down the hall. The mother unlocked and opened the door where the

worker observed S.G. to be seated in a chair in front of the TV eating a sandwich and holding a fork. When the worker raised the concern that the child had been left alone, the mother stated that she had simply run out to her car to retrieve the child's sippy cup. This incident was reported to central intake and a founded child abuse report was subsequently issued.

While the child abuse assessment was being investigated, DHS requested the mother and the father undergo a urinalysis before progressing to unsupervised weekend visitation. However, the mother showed up over an hour late to the test, and the father did not show up at all. The parents subsequently admitted to relapsing on alcohol. In addition, concerns were raised that the parents were drinking while gambling at a nearby casino.

On November 30, 2010, the State filed a second petition for the termination of parental rights. Hearings were held on May 17 and June 23, 2011.

At the hearing, the State introduced documentation showing the mother's and father's player's club cards at the nearby casino. The documents showed that the mother and the father did not gamble very much in 2007 and 2008. However, from 2009 until May 2011, the parents' play progressively increased. Specifically, from February 17 until March 16, 2011, the parents went to the casino fourteen times. During these visits, the parents stayed at the casino for several hours, often into the early morning hours. The documents further showed that despite the parents having limited finances, the father lost \$7620.41 in 2010 and \$3773.56 up to May 2011 while the mother lost \$7129.00 in 2010 and \$4681.24 up to May 2011. The father testified that not all of the playing and

losses were attributable to him because he let friends use his card on occasion in order to gain points and promotions. However, the juvenile court found this testimony to be “unrealistic and unconvincing.” The juvenile court further found that the parents had “substituted a gambling addiction for their drinking addiction.”

The DHS case manager also testified that throughout the case, DHS has had concerns with the parents’ truthfulness regarding their alcohol abuse. The case manager stated, “Never once have [the parents] said I have relapsed. It was always no, I don’t drink, and then we find evidence that they had and then they remember, then they were always going to tell us.” The juvenile court agreed, finding the parents “were not truthful [about their drinking] and that they only admitted to drinking once it was discovered that they had been drinking.”

Furthermore, evidence showed that just prior to the second hearing, S.G. sustained a sunburn severe enough to cause blistering on his cheek while in the parents’ care during an extended visit.

On August 5, 2011, the juvenile court entered an order terminating the mother’s and the father’s parental rights under Iowa Code section 232.116(1)(h) (2009). The mother and the father separately appeal.

II. Standard of Review.

We review termination of parental rights proceedings de novo. *In re H.S.*, ___ N.W.2d ___, ___ (Iowa 2011). Although we are not bound by them, we give weight to the factual determinations of the juvenile court, especially when considering the credibility of witnesses. *Id.*

III. Analysis.

The parents both argue that the State failed to prove the statutory ground by clear and convincing evidence. The only element challenged is whether the State sufficiently showed that S.G. could not presently be returned to the custody of the parents. Iowa Code § 232.116(1)(h)(4).

S.G. was removed shortly after his birth, in part, due to concerns over the parents' alcohol abuse. Despite attending treatment and AA meetings, the parents have been unable to maintain sobriety. In addition, they have only admitted to relapsing after being caught, which shows a lack of insight and acceptance of responsibility. "Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting." *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). The parents' alcohol abuse prevents them from providing S.G. with a safe and stable home. *Id.* In addition, the evidence shows that the parents have complemented their alcohol abuse with a gambling addiction. This addiction has exacerbated the family's limited finances, and seriously affects the parents' ability to meet S.G.'s needs.

After a lengthy review of the testimony of various care professionals, the juvenile court concluded: "It is scary to this Court to think what might happen if these parents had unsupervised care of this child twenty-four hours a day and seven days a week." In addition to the alcohol abuse and gambling activities, the mother's mental disability and the parents' overall lack of candor were part of the

evidence presented by the State. This case involves not a single event, but multiple events showing limited progress despite two and a half years of services. The State has met its burden of proof for the statutory ground.

The mother also argues that termination was not in the child's best interests. In determining a child's best interests, we "give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing growth of the child, and to the physical, mental, and emotional condition and needs of the child." *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010) (quoting Iowa Code § 232.116(2)).

S.G. was removed from parental care shortly after his birth, and by the time of the second termination proceedings, he had been removed for over two and a half years. "We have long recognized that the best interests of a child are often not served by requiring the child to stay in 'parentless limbo.'" *In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990). "At some point, the rights and needs of the child rise above the rights and needs of the parents." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). S.G. deserves permanency. Further, throughout the proceedings, the mother has shown a lack of insight and ability to recognize risks to her young child. The record shows that the mother lacks the capacity to meet the child's present needs as well as the capacity to adapt to the child's future needs. *In re T.O.*, 470 N.W.2d 8, 11 (Iowa 1991) ("[M]ental disability, standing alone, is not a sufficient reason for the termination of the parent-child relationship, it is a contributing factor to the inability to perform the duties of a parent."); see also Iowa Code § 232.116(2)(a) (allowing a court to consider

whether the parent's ability to provide for the child's needs is affected by the parent's mental capacity). Due to the mother's relapses and her lack of progress towards recognizing and meeting S.G.'s needs, we find termination is in the child's best interests.

The father also argues that termination would be detrimental to S.G. due to the closeness of the parent-child relationship. Iowa Code § 232.116(3)(c). The father testified that he is bonded with S.G., but currently only has visits with him every other Sunday due to his relapses and work schedule. In addition, his alcohol and gambling addictions as well as his lack of candor are significant concerns limiting his ability to provide for S.G.'s developing needs. *In re D.W.*, 791 N.W.2d 703, 709 (Iowa 2010). We do not find clear and convincing evidence establishes this exception to termination.

IV. Conclusion.

For the foregoing reasons, we affirm the ruling of the juvenile court terminating the mother and the father's parental rights to S.G.

AFFIRMED.