IN THE COURT OF APPEALS OF IOWA

No. 1-920 / 11-1315
Filed December 7, 2011

IN THE INTEREST OF N.G. and D.W.,
Minor Children,

B.M.S., Mother,
Appellant,

A.L.G., Father,
Appellant,

D.V., Grandmother,
Appellant.

Appeal from the Iowa District Court for Clinton County, Phil Tabor, District Associate Judge.

A father and grandmother/intervenor appeal from the juvenile court's order terminating parental rights. **AFFIRMED.**

Matthew Noel, Dubuque, for appellant mother.

Nathan W. Tucker, Davenport, for appellant father.

Carrie E. Coyle of Carrie E. Coyle, P.C., Davenport, for appellant/ intervenor grandmother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Mike Wolfe, County Attorney, and Cheryl J. Newport, Assistant County Attorney, for appellee State.

Stephen Haufe, Clinton, for minor children.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ. Tabor, J., takes no part.

DOYLE, J.

A father appeals the termination of his parental rights. Additionally, the maternal grandmother, an intervenor in the case, appeals the juvenile court's failure to place the children in her care. We affirm.

***I. Background Facts and Proceedings*.**

B.S. is the mother of D.W., born in 2003, and N.G., born in 2006. A.G. is the biological father of N.G., and D.W. considered A.G. a father-figure. The parents have a history of domestic violence and had a short relationship. The children lived with their mother, but both children had regular visits with A.G. D.V.K. is the children's maternal grandmother.

The children came to the attention of the Iowa Department of Human Services (Department) in August 2009, after it was reported the children were being denied critical care due to the mother's ongoing drug use. Family safety, risk, and permanency services were offered to the family. The children were voluntarily placed in their maternal grandmother's care in October 2009 after N.G. tested positive for cocaine and benzoylecgonine. The mother provided a sample for urinalysis at that time; however, the mother did not test positive for the same illegal substances for which N.G. tested positive. The mother suggested N.G. tested positive due to the father's drug use, and the father was asked to take a drug test to rule that out. He refused.

A family team meeting was held in January 2010, and both parents attended. The father was again asked to provide a sample for urinalysis and he refused. He later became upset and left the meeting. Another family team meeting was scheduled for March 12, 2010, for the father to "discuss his

participation with services and visitation," but he did not show up for the meeting. In May 2010, the juvenile court adjudicated the children as children in need of assistance (CINA). The court specifically found the father had been uncooperative with services and drug testing.

In June 2010, the father requested visitation with the children, but continued to refuse drug testing. A visit was scheduled for July, but the father later stated he did not want the visit. The father finally submitted to drug testing in August 2010, and he tested positive for cocaine and marijuana. Thereafter, he was arrested on an outstanding warrant for domestic abuse assault. The father then ceased involvement in the case until February 2011.

In August 2010, the maternal grandmother, who also had a history of drug and alcohol abuse but had been sober for thirteen years, relapsed. She voluntarily requested the children be removed from her care and placed in foster care. The children were returned to their mother's care in December 2010.

On February 24, 2011, the father, while incarcerated for convictions for twice violating a no-contact order and third-degree domestic abuse assault, spoke with a service provider. The father expressed that he wanted to get clean and be a father to the children. He was released from jail on March 28, 2011. He contacted the service provider, but he stated he did not have any contact information to provide them at that time.

The children were again removed from the mother's care in April 2011 after they were physically abused by her paramour, and they were placed in foster care. The father did not contact the service provider again until May 2011. He then provided a sample for urinalysis testing and tested positive for marijuana

and cocaine. Visitation was not allowed until the father contacted the Department. Two appointments with the Department were scheduled in June, but the father missed those appointments.

As part of his probation conditions, the father was ordered to complete a substance abuse evaluation and attend a batterer's education program. The father completed his substance abuse evaluation on June 29, 2011, and he tested positive for marijuana after providing a drug screen at the evaluation. The evaluation recommended the father complete an intensive outpatient program, and he was placed on the program's waiting list.

On July 18, 2011, the State filed its petition for termination of the parents' parental rights. A hearing on the State's petition was held in August 2011. The father testified that he had begun participating in the batterer's education program in April 2011, but he still had several months to go. He testified he was still on the waiting list to get into the intensive outpatient program. He admitted the children could not be returned to his care at that time, but requested he be given additional time for reunification, explaining:

> Right now I'm on the right path for changing my life around, of getting myself in order before I could get my kids, because I don't want to see them do no hurt no more, because I know they hurt. You know, they kids. . . . I just want to be there for my kids.

The Department's caseworker testified that the maternal grandmother had expressed she would like to be considered as a placement for the children. However, the Department, the children's guardian ad litem, and the court-appointed special advocate all expressed concerns about placement with the grandmother, due to her relapse, allowing the parents to see the children without

the Department's permission, and inability to get the children to appointments and to provide the children the structure they needed.

The parents both expressed that if their parental rights were terminated, they would like the children to be placed with the grandmother. The grandmother testified she had been sober for seven and a half months and had been attending NA and AA. She had gained employment and had gotten a newer, more reliable vehicle. She was living in an apartment that would allow the children to be placed with her. She was addressing her mental health issues and taking prescribed medications.

On August 10, 2011, the court entered its ruling terminating the father's parental rights pursuant to Iowa Code section 232.116(1)(f) and (i)(2011).[1] The court placed the children in the custody and guardianship of the Department for placement in an appropriate pre-adoptive home.

The father and the maternal grandmother now appeal.

II. Scope and Standards of Review.

We review the juvenile court's decision to terminate parental rights de novo. *See In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). The State must prove grounds for termination by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). In considering whether to terminate, our primary considerations are the children's safety; the physical, mental, and emotional condition and needs of the children; and the placement that best provides for the

[1] The mother's parental rights were also terminated but are not at issue in this appeal.

long-term nurturing and growth of the children. Iowa Code § 232.116(2); *P.L.*, 778 N.W.2d at 37.

***III. Discussion*.**

On appeal, the father contends he should have been given additional time for reunification rather than terminating his parental rights. The grandmother argues the juvenile court erred in failing to place the children in her care. We address their arguments in turn

***A. Father*.**

We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Termination is appropriate under section 232.116(1)(f) where:

> (1) The child is four years of age or older.
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
> (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

Here, the father does not dispute that the children could not be returned to his custody at the time of the termination hearing. Rather, he contends he should have been given additional time for reunification. We disagree.

While the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," this patience has been built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). The legislature incorporated a twelve-month limitation for children

adjudicated CINA aged four and older. Iowa Code § 232.116(1)(f)(1), (3). Our supreme court has stated that "the legislature, in cases meeting the conditions of [the Iowa Code], has made a categorical determination that the needs of a child are promoted by termination of parental rights." *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990) (discussing Iowa Code § 232.116(1)(e)). The public policy of the state having been legislatively set, we are obligated to heed the statutory time periods for reunification.

Here, the children were first removed from their mother's care in October 2009. At that time, the father refused to provide a drug screen, even though his child tested positive for cocaine. He did not participate in services for most of the case, even though he tested positive for illegal substances, including cocaine, numerous times. He only began participating in substance abuse treatment and batterer's education after he was ordered to do so to prevent his probation being revoked, well over a year after the children came to the attention of the Department.

"A parent cannot wait until the eve of termination, after the statutory time periods for reunification have passed, to begin to express an interest in parenting." *C.B.*, 611 N.W.2d at 495. Moreover:

> 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.

P.L., 778 N.W.2d at 41. Children are not equipped with pause buttons. "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). "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), *overruled on other grounds by P.L.*, 778 N.W.2d at 33. "When the statutory time standards found in section 232.116 are approaching, and a parent has made only minimal progress, the child deserves to have the time standards followed by having termination of parental rights promptly pursued." *Id*.

Under the circumstances presented, it is clear the children could not be safely returned to the father's care at the time of the hearing. Delaying termination further, given the father's overall lack of progress and participation, is not in the children's best interests. *See* Iowa Code § 232.116(2) (considering child's safety; long-term nurturing and growth; and physical, mental and emotional condition and needs). The father has been unable to correct the deficiencies that led to the children's CINA adjudication. Accordingly, we agree with the juvenile court that termination of the father's parental rights was proper under Iowa Code section 232.116(1)(f).

***B. Maternal Grandmother*.**

The grandmother also challenges the juvenile court's ruling. She does not appear to dispute the termination of the parents' parental rights. Rather, she finds error with the court's failure to place the children with her following termination of the parent's parental rights. We disagree.

Iowa Code section 232.117(3) lists the options for placement of children if the court terminates parental rights. The juvenile court has the authority to place the children with the Department, a suitable child-placing agency, or a relative or suitable person. *Id*. § 232.117(3). "There is no statutory preference for a

relative. The paramount concern is the best interest of the children." *In re R.J.*, 495 N.W.2d 114, 117 (Iowa Ct. App. 1992).

Here, given the numerous concerns about the grandmother's ability to care for the children, we find no error in the juvenile court's placement of the children in the care of the Department. We note the court ordered the children be placed in the legal custody of the Department for placement in an appropriate pre-adoptive home, which can include a relative. *See*, *e.g.*, Iowa Code § 232.117(3)(c) (providing that relative may be considered for guardianship and custody if the court terminates the parental rights of the child's parents). The court did not preclude placement with the grandmother. Accordingly, we affirm.

AFFIRMED.