

IN THE COURT OF APPEALS OF IOWA

No. 2-1107 / 12-1805
Filed January 9, 2013

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

K.W., Mother,
Appellant,

H.N., Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

A mother and father appeal an order terminating parental rights to their son. **AFFIRMED ON BOTH APPEALS.**

Yvonne C. Naanep, Des Moines, for appellant-mother.

Jeremy M. Evans of Sporer & Flanagan, P.L.L.C., Des Moines, for appellant-father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John Sarcone, County Attorney, and Jon Anderson, Assistant County Attorney, for appellee-State.

Erin Mayfield of Youth Law Center, Des Moines, attorney and guardian ad litem for minor child.

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

TABOR, J.

Hasan and Kendra challenge a juvenile court order terminating parental rights to their one-year-old son, K.N. The child has never lived with either parent due to their incarcerations and his special needs. The child instead lived with his paternal uncle, until discord between Hasan and his brother prompted the DHS to transfer K.N. to a foster home. Hasan and Kendra contend the juvenile court erred in finding grounds to terminate parental rights. They also assert it would be in K.N.'s best interest to live with Hasan's sister and preserve the parental bonds.

After reviewing the record de novo, we affirm the termination order. The State met its burden of proof to terminate parental rights under Iowa Code section 232.116(1)(h) (2011). At the time of the termination hearing, K.N. could not be placed in the care of either parent because of their criminal involvement and substance abuse problems. We also find K.N.'s best interests would be served by terminating parental rights and freeing him for possible adoption by his foster family, who has attended to his special needs for the past year. While his paternal aunt appears to be a worthy care giver, she has had limited exposure to K.N. and could be subject to negative pressure from Hasan.

I. Background Facts and Proceedings

Kendra gave birth prematurely to her son K.N. in March 2011. She was married to, but separated from Anthony, K.N.'s legal father. In May 2011, paternity testing confirmed Kendra's paramour, Hasan, is K.N.'s biological father.

Both biological parents have a history of domestic abuse, chemical dependence, and criminality relevant to this appeal. Hasan served a prison

sentence in Georgia for cocaine possession before moving to Iowa. Police charged Kendra with assaulting Hasan on several occasions while she was pregnant with K.N. She also admitted using drugs and consuming alcohol during her pregnancy. Kendra's substance abuse had an impact on her newborn. Three days after his premature birth, K.N. tested positive for THC.¹ About a month after giving birth to K.N., Kendra again assaulted Hasan, this time while Hasan's eleven-year-old daughter was in the house.² Kendra was arrested and charged with domestic assault causing injury³ and remained in jail when K.N. was discharged from the hospital on May 20, 2011.⁴

The juvenile court approved a request from the Department of Human Services (DHS) to place K.N. in the care of his paternal uncle. Following his placement with his paternal uncle, K.N. continued to suffer respiratory issues and faced repeated hospitalizations. To help him breathe, K.N. had a tracheostomy tube, which required frequent cleaning and replacement.

The State filed a petition alleging K.N. to be a child in need of assistance (CINA). The court adjudicated K.N. as a CINA on June 21, 2011. Within one week of K.N.'s CINA adjudication, Hasan was arrested for possession of marijuana. In a subsequent disposition hearing confirming K.N.'s status as a

¹ THC stands for tetrahydrocannabinol, a chemical contained in marijuana.

² Hasan's daughter moved back and forth between her father's home in Iowa and her mother's home in Georgia.

³ This was the fifth occasion that the police were called to the house that day.

⁴ Because of his premature birth, K.N. spent the first two months of his life in the hospital.

CINA, the juvenile court set out steps for the parents to take before K.N. could be returned to their care.⁵

Hasan was arrested again in August 2011 for possession of marijuana with the intent to deliver and possession of crack cocaine with the intent to deliver. He remained in jail through October 2011.

On August 9, 2011 Kendra was transferred from jail to the House of Mercy. One night, after telling staff she was leaving to visit her son, Kendra instead visited Hasan. When she returned, staff found her passed out in her own vomit with a blood alcohol concentration (BAC) of .250. She required hospitalization. She claimed to have had a bad reaction to drinking a single beer. The House of Mercy discharged her from the program for using alcohol and being dishonest. On November 22, she returned to jail. That same month, Hasan was arrested for public intoxication.

Following a December 20, 2011 review hearing, the juvenile court confirmed K.N. to be a CINA. The DHS sought modification of K.N.'s placement because of growing animosity between Hasan and his brother who had been caring for K.N. The court granted the DHS request to place K.N. in foster care.

⁵ In the order, the juvenile court instructed:

Kendra and Hasan will abstain from the use of illegal substances.

Kendra will demonstrate stable mental health by managing her stress, anger and anxiety in appropriate ways.

Hasan will demonstrate an ability to make positive relationship decisions.

[K.N.] will not be exposed to any level of domestic violence.

Hasan and Kendra will demonstrate the ability to make appropriate relationship decision[s] to ensure that [K.N.] is not exposed to any domestic violence. . . .

Kendra will maintain stable housing appropriate for [K.N.] when released from jail and House of Mercy.

Hasan will gain employment.

On January 31, 2012, the State filed a petition to terminate the parental rights of Kendra, Hasan, and Anthony.

In April 2012, Hasan was charged with forgery. That same month, Kendra gave birth to another child, also fathered by Hasan. Because their second child was born premature, he remained in the neonatal intensive care unit as of the date of the termination hearing. The next month Hasan was charged with operating while intoxicated (OWI); a preliminary breath test registered his BAC at .246.

On May 16, 2012, the juvenile court held a termination hearing and received exhibits from Hasan, Kendra, and the State. The court took telephonic testimony from Kendra, and in-person testimony from Hasan's mother and sister. During closing arguments, K.N.'s guardian ad litem agreed termination was appropriate. On September 20, 2012, the court terminated the parental rights of Hasan and Kendra under sections 232.116(1)(d), 232.116(1)(e), 232.116(1)(h), and 232.116(1)(l).⁶ Both biological parents appeal.

II. Scope and Standard of Review

We review proceedings terminating parental rights de novo. *In re T.D.E.*, 796 N.W.2d 447, 453 (Iowa Ct. App. 2011). While we give weight to the findings of the juvenile court, especially when considering witness credibility, we are not bound by them. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We follow the three-step termination framework set out in *In re P.L.*, 778 N.W.2d 33, 39 (Iowa

⁶ The court terminated Anthony's rights based on abandonment. See Iowa Code § 232.116(1)(b). He does not appeal.

2010). The child's best interest is our paramount concern in termination proceedings. *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011).

III. Analysis

On appeal, Hasan and Kendra both contend the State did not prove the grounds for termination by clear and convincing evidence. The juvenile court relied on four statutory provisions in ordering termination. See Iowa Code §§ 232.116(1)(e), 232.116(1)(d), 232.116(1)(h), 232.116(1)(l). When the juvenile court terminates parental rights on multiple grounds, we may affirm the order on any basis supported by the record. *In re A.B.*, 815 N.W.2d 764, 774 (Iowa 2012).

We opt to affirm based on section 232.116(1)(h). That provision permits terminating parental rights if the court finds 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.
- (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.

Clear and convincing evidence supports each element. At the time of the termination order, K.N. was eighteen months old. He was adjudicated as a CINA when he was one month old and never lived with Hasan or Kendra. At the termination hearing, the parents did not assert K.N. could be presently placed in their care. They both asked for an extension of six months to work toward reunification.

Satisfied that statutory grounds for termination exist, we must next determine whether severing the parental bonds is in the child's best interest.

See *A.B.*, 815 N.W.2d at 776. We primarily consider the child's safety, the best placement for furthering his long-term nurturing and growth, and his physical, mental, and emotional condition and needs. See Iowa Code § 232.116(2). The best-interest test also measures whether the parents' ability to care for the child is impeded by their mental condition or their imprisonment for a felony. *Id.* We also consider whether the child has become integrated into a foster family and if the foster family is willing to adopt. *Id.*

We realize that severing ties between a child and his parents is an issue of grave importance causing serious repercussions to the family. See *In re D.A.W.*, 552 N.W.2d 901, 903 (Iowa Ct. App. 1996). But we cannot ask a child to wait indefinitely for parents to provide a stable home, especially when the child is of such a young age. *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010).

Hasan and Kendra argue K.N.'s welfare would be best served by placing him in the custody of his paternal aunt. Hasan asserts placing K.N. with Hasan's sister would allow him to continue strengthening the bond with his son.

The State counters that it is in K.N.'s best interest to remain with his foster family, who has expressed a desire to adopt him. The State emphasizes that the possibility that K.N. could live with his paternal aunt does not overcome the necessity of terminating the parental rights of Hasan and Kendra.

Given their track record of criminality and substance abuse, we do not see these parents as being able to provide a stable home for K.N. at any point in the foreseeable future. See *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998) (finding no reasonable assurance of reunification between child and parent with

drug addiction). Their histories of incarceration have taken precious time away from their parenting. See *In re M.M.S.*, 502 N.W.2d 4, 8 (Iowa 1993) (finding parent cannot use incarceration to justify lack of relationship with child). We do not find relative placement as a fitting substitute for termination in this case. See *In re C.K.*, 558 N.W.2d 170, 174 (Iowa 1997) (“An appropriate determination to terminate a parent-child relationship is not to be countermanded by the ability and willingness of a family relative to take the child.”).

At the termination hearing, the guardian ad litem stated K.N.’s foster family was prepared to adopt him. Since January 2012, they have handled his special medical needs. While the aunt has experience in raising her many nieces and nephews, she has had limited exposure to K.N. and was not yet trained to assist with his medical care. We agree with the juvenile court’s conclusion that given K.N.’s age and health issues, it is not in his best interest to “gamble with his security and try an unproved new family placement.”

We are also mindful that the DHS discontinued K.N.’s previous placement with his paternal uncle because Hasan undermined that arrangement. We share the juvenile court’s concern that those family dynamics might lead to similar problems if K.N. is placed with the paternal aunt.

As the final step of our review, we examine the factors in section 232.116(3). See *P.L.*, 778 N.W.2d at 39. We do not see any basis there to forego termination. Because K.N.’s interests are best served by terminating the rights of his biological parents, we affirm the juvenile court’s order.

AFFIRMED ON BOTH APPEALS.