IN THE COURT OF APPEALS OF IOWA

No. 2-1109 / 12-2024
Filed February 13, 2013

IN THE INTEREST OF J.L.,
Minor Child,

THOMAS D. LONERGAN,
Guardian ad Litem,
Appellant.

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

The guardian ad litem appeals from the juvenile court order dismissing the petition to terminate parental rights. **REVERSED.**

Thomas D. Lonergan of Mayer, Lonergan & Rolfes, Clinton, appellant pro se.

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

Lucy Valainis, Davenport, for appellee-mother.

J. David Zimmerman, Clinton, for appellee-father.

Considered by Doyle, P.J., and Mullins and Bower, JJ. Tabor, J., takes no part.

BOWER, J.

The guardian ad litem appeals from the juvenile court order dismissing the petition to terminate the parental rights of J.L.'s mother and father. He contends the court erred in making its determination solely based on evidence of the parents' conduct only through June 2012 when the termination hearing was held in September and October 2012. He argues clear and convincing evidence supports termination.

Because the State has proved the grounds for terminating the parents' rights by clear and convincing evidence and termination is in the child's best interest, we reverse the order denying the termination petition.

I. Background Facts and Proceedings.

J.L. was born in August 2011 and removed the following day because the mother had prior involvement with the Department of Human Services (DHS) involving another child. Her parental rights to that child were terminated in September 2011. J.L. was placed in foster care and was adjudicated a child in need of assistance (CINA) on September 28, 2011.

Both the mother and the father have been diagnosed with ADHD, bipolar disorder, and depression. The father also has a history of substance abuse and anger management problems. The parents were offered mental health services and services to help improve their parenting skills.

By June 2012, the parents were living in a two-bedroom apartment. They had progressed to three five-hour, partially-supervised visits with the child per week. The plan was to extend the visits to eight hours. In the May 11, 2012

case progress report, the DHS worker noted the parents "are ready for reunification."

On June 11, 2012, the child stopped breathing while in the parents' care and was taken to the hospital. The child had lost consciousness a month earlier and was also taken to the hospital. Following the June 11, 2012 episode, the parents did not have visitation with the child for three weeks. Afterward, the parents were only allowed to visit the child separately.

The State filed a petition to terminate both parents' rights to the child on September 20, 2012. The termination hearing was held on September 25, 2012, and October 8, 2012. In its October 17, 2012 order, the juvenile court denied the petition. It found that reunification was imminent prior to the June 11, 2012 incident, and that the incident "changed the entire case." The court determined that incidents of bruising and injury to the child occurred in the parents' care, in foster care, and in day care, but noted that there was no assessment or investigation of the similar incidents in foster care or day care. The court then stated:

> In reviewing the testimony and evidence presented, the Court cannot find a change of circumstances from these parents in June of 2012 when the report was that reunification was imminent and the situation today other than the fact that the parents have not been allowed to have joint visitation and it would appear to the Court that many of the services that were effectively being provided prior to the June incident were not being provided after the June incident. The Court believes that the permanency plan in this case has been family reunification and should continue to be family reunification. The Court is also fully aware that this cannot occur overnight and that a family reunification plan needs to be established and followed in this matter.

The guardian ad litem appeals, arguing the juvenile court erred in failing to consider evidence of the parents' performance following the June 11, 2012 incident. The guardian ad litem contends the risk of adjudicatory harm still exists, and that the grounds for termination were proved by clear and convincing evidence.

II. Scope and Standard of Review.

We review termination of parental rights proceedings de novo. *In re A.B.*, 815 N.W.2d 764, 773 (Iowa 2012). While we are not bound by the juvenile court's fact-findings, we do give them weight, especially when assessing witness credibility. *Id.*

The grounds for termination under section 232.116 (2011) must be proved by clear and convincing evidence. *In re C.A.V.*, 787 N.W.2d 96, 100 (Iowa Ct. App. 2010). Evidence is "clear and convincing" where there lacks "serious or substantial doubt as to the correctness or conclusions of law drawn from the evidence." *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010).

III. Analysis.

Iowa Code section 232.116 (2011) follows a three-step analysis for termination of parental rights. *In re P.L.*, 778 N.W.2d 22, 40 (Iowa 2010). First, we must determine whether the ground for termination under section 232.116(1) has been established. *Id.* If so, we then decide whether termination is in the child's best interest, giving "primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child." Iowa Code

§ 232.116(2); *P.L.*, 778 N.W.2d at 40. The final step is to consider if any of the exceptions set forth in section 232.116(3) weigh against termination of parental rights. *Id.* at 41.

The petition to terminate parental rights alleges termination is warranted under Iowa Code sections 232.116(1)(d), (g), (h), and (i). Termination is appropriate under section 232.116(1)(h) where the State proves by clear and convincing evidence the following:

> (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.
> (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

The first three elements have unquestioningly been shown. The question is whether the child cannot be returned to the parents.

The juvenile court found no evidence these parents have caused an injury to the child. However, our statutory termination provisions are preventative as well as remedial. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). They are designed to prevent probable harm to the child. *Id.* The State is not required to wait until actual harm has occurred before moving to terminate a parent's rights. *Id.* Deferring to the juvenile court's finding that the child has not suffered injury while in the parents' care, the question is whether there is a risk of harm to the child due to abuse or neglect.

The juvenile court found that although there was no evidence the parents harmed the child on June 11, 2012, the episode where the child stopped breathing led the DHS to enact changes to the parents' visitation, which was the catalyst to "change the entire case." The court then stated it found no change in circumstances from the June 2012 report that reunification was imminent, save for the discontinuation of joint visitation and some services. While the June 11, 2012 incident did change the case, the evidence leading up to that date does not support reunification.

Erin Hosette, the Family Resources care coordinator, testified that the case was "a roller coaster ride" with the parents making improvements and then regressing. Every time the parents got close to reunifying with the child, they regressed. While the parents did better when they were on their medication, they were not consistent in taking it due to lack of insurance. When not on their medication, the parents would become "extremely defensive, aggressive, and volatile" toward their DHS worker and "frustrated and distressed" when the child would cry. Although the parents were provided assistance in obtaining insurance, they did not follow through with completing the necessary paperwork and the service providers were left to do it for them. The father testified he was last off his medications in either May or June of 2012. He also testified that the police were called to his home four or five times in 2012 for fighting with the mother or because he was suicidal.

Even accepting that the parents were not responsible for the June 11, 2012 incident, their reaction to it also raises concerns about their ability to safely

care for the child. Instead of calling 911 when the child stopped breathing, the father went to the neighbor's house to see if they could get a ride to the hospital. It took approximately thirty minutes for the parents to get the child to the hospital following the incident, when the hospital is approximately five minutes away.

After June 11, 2012, the relationship between the parents seemed to decline, according to Hosette. The parents' scores on the parenting assessment were worse during the summer of 2012 than they were at the start of the case. They missed a number of visits with the child in August and September 2012.

Carena Clark, a supervisor for the DHS, testified the parents had showed very little follow through and very little ability to recognize the child's needs or to prioritize the child's needs over their own wants or desires. She testified:

> [W]e still continually see that they haven't internalized any of the information or minimal information that's been provided to them; that we still don't see them even able to independently care for themselves. They're not able to maintain their own housing. They're not able to maintain employment. They're dependent upon others for transportation. While I recognize that [the mother] can drive, they don't have a vehicle available without being dependent upon somebody else. Historically, they haven't demonstrated significant improvement in their parenting since the inception of the case.

Upon our de novo review of the evidence, we find the child cannot be safely returned to the parents' custody. The State has proved the grounds for termination by clear and convincing evidence.

The next question is whether termination of parental rights is in the child's best interest. We find clear and convincing evidence supports this finding. Clark testified that she did not believe it was in the child's best interest to continue with the case plan. Nor did she believe more time would make a difference, noting

the mother had been participating in services prior to August 2011 because her older child had been adjudicated CINA. Clark testified the child needed permanency and a safe home, and termination would be in the child's best interest due to the child's need for permanency.

While the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," this patience is built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). This is because patience on behalf of a parent can quickly translate into intolerable hardship for the child. *In re R.J.*, 436 N.W.2d 630, 636 (Iowa 1989). "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). Throughout the course of this case and for the child's entire life, the child has been placed in the same foster home. The foster family was willing to adopt and the child has bonded with them. Given the importance of establishing child custody quickly so the children are not suffering indefinitely in parentless limbo, *id.*, we find termination is in the child's best interest.

Finally, we find none of the factors in section 232.116(3) weigh against termination of the parents' rights. Because the State has met its burden of providing clear and convincing evidence for termination, we reverse the juvenile court's order and terminate the parents' rights pursuant to section 232.116(1)(h).

REVERSED.