IN THE COURT OF APPEALS OF IOWA

No. 2-1201 / 12-1688
Filed January 9, 2013

IN THE INTEREST OF J.B. AND A.B.,
Minor Children,

D.B., Father,
Appellant,

M.B., Mother,
Appellant.

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

A mother and a father separately appeal the district court's order terminating their parental rights. **AFFIRMED ON BOTH APPEALS.**

Charles Elles, Bettendorf, for appellant father.

Martha Cox, Bettendorf, for appellant mother.

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

Lucy Valainis, Davenport, attorney and guardian ad litem for minor children.

Considered by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ. Tabor, J., takes no part.

VOGEL, J.

A mother, Mary, and a father, Dale, separately appeal the district court's order terminating their parental rights to their children, A.B., born 2009, and J.B., born 2010.[1] Both parents' parental rights were terminated pursuant to Iowa Code section 232.116(1)(h) (2011) (child three or younger, adjudicated child in need of assistance (CINA), removed from home for six of last twelve months, and child cannot be returned home). Dale claims the statutory requirements for termination were not proved by clear and convincing evidence and termination is not in the children's best interests. In addition to the grounds the father appeals on, Mary claims the district court erred in terminating her rights claiming she was not offered sufficient services to help facilitate the safe return of the children to her care.[2]

We review termination of parental rights actions de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). Although we are not bound by them, we give weight to the district court's findings of fact, especially when considering credibility of witnesses. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence. *See* Iowa Code § 232.116. "Clear and convincing evidence" means there are no serious or substantial doubts as to the correctness or conclusions of law drawn

[1] A third child, D.B., was born one week before day one of the termination hearing. The termination hearing was held in conjunction with a removal hearing for D.B.

[2] Mary also argues on appeal the juvenile court erred by concluding a permanency order was not required. The hearing, held on August 14 and August 30, 2012 was both a contested permanency hearing and a hearing on termination. The court filed a permanency order on September 4, 2012, finding that due to the order on termination a permanency order was not required. As we affirm the district court, we agree a permanency order was unnecessary.

from the evidence. *C.B.*, 611 N.W.2d at 492.

The children were removed from the home in August 2011 and were both adjudicated as CINA on September 27, 2011. They have remained in foster care without any trial periods at home since their removal. They were removed and adjudicated CINA due to exposure to marijuana, lack of supervision, concerns over both parents' mental health, and possible domestic violence. The parents were offered many services including substance abuse counseling, mental health therapy, and various other Family Safety, Risk, and Permanency (FSRP) services.

I. Mother

Mary seemed to be making progress towards reunification, with extended unsupervised visitation with the children; however, she became pregnant again in November or December 2011, and is not certain of who the father is. When she met a new boyfriend over the internet and moved to Illinois with him, things took a drastic turn for the worse.

In March 2012, there was a founded report of child abuse against Mary, though Mary was quick to provide excuses for her actions. There was also a denial of critical care report in May because her residence was so cluttered it was unsafe for the children. The report was unfounded only because the children were not present when the observations were made; they were to visit that evening. The Department of Human Services (DHS) worker testified it was not just that the residence was unsafe on that particular occasion, but rather it was concerning that Mary lacked the insight after many months of services to keep her residence safe for the children to be present.

Further accelerating Mary's downward spiral was her decision to move to Illinois to live with her new boyfriend. She decided to move despite months of conversations with DHS and other service providers informing her that she would be moving away from their jurisdiction and they would no longer be able to provide services to her. The DHS caseworker was concerned about Mary's mental health as she had only attended two therapy sessions since July 2012 and none from March until July. The testimony regarding whether Mary was taking her medication was greatly conflicted, but medication was only one part of her mental health treatment, and it is clear she failed to attend therapy sessions. On our de novo review, we find there was clear and convincing evidence the statutory requirements of section 232.116(1)(h) are met, and the children cannot be returned to Mary's care.

Mary also claims the considerations in section 232.116(3) should militate against termination. The State argues that error was not preserved. Assuming for the sake of argument it was preserved, we find these considerations are not sufficient to maintain Mary's parental rights. Mary has failed to show a close bond with the children when she knowingly left the state with the understanding that visitation would not be possible in her new residence.

Mary also argues she was not provided reasonable services to enable reunification with her children. *See* Iowa Code § 232.102(7) (requiring DHS to "make every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interests of the child."). Mary claims the Illinois authorities refused to provide services because of the pending juvenile matter in Iowa, and Iowa DHS refused to provide services to her in Illinois. Mary moved

from the homeless shelter she was residing at to Rock Island, Illinois, on May 18, 2012, even though DHS had told her multiple times it would not be able to provide reunification services to her there. No visitation with the children was to be held in Illinois, though at a June 26 permanency hearing, Mary made a request for services in her Illinois home.[3] Mary continued to participate in supervised visitation in Iowa. Of great concern was one of Mary's own witnesses testified Mary brought the children to Illinois, though she was not authorized to do so. Her disregard for the directions of DHS and her service providers further demonstrated that Mary put a higher priority on her own activities than being focused on working through services offered so she could be reunited with her children.

II. Father

According to a DHS report to the court, "Dale states he wants his children returned to him, but has done nothing to assure DHS or the providers of services to him that he would be able to parent the children and keep them safe." Dale's participation in mental health services was sporadic at best. He was not taking his prescribed medications. He does not have full-time employment or a permanent residence of his own. He did not take advantage of the services offered to him or maintaining contact with the DHS worker. The district court specifically found his testimony to the contrary was not credible. He blames others for his failures, he has not addressed his substance abuse issues, and he

[3] The DHS worker testified she did not request the interstate compact earlier because Mary had repeatedly told DHS she would stay in Iowa until this juvenile case was closed. The permanency court ordered that the State of Illinois shall conduct ICPC expedited safety inspection of Mary's new home. This interstate compact was accepted in August.

has only attended nine out of forty-five possible therapy sessions. The district court was correct in finding the children cannot be safely returned to his care. *See In re T.C.*, 489 N.W.2d 53, 55 (Iowa Ct. App 1992) (finding a parent's failure to admit and address his psychological and substance abuse problems constituted a failure to cooperate in correcting the circumstances that led to the adjudication).

III. Best Interests

Our primary concern is the best interests of the child. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). In seeking out those best interests, we look to the child's long-range as well as immediate interests. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). "This requires considering what the future holds for the child if returned to the parents. When making this decision, we look to the parents' past performance because it may indicate the quality of care the parent is capable of providing in the future." *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997).

One worker testified Mary cannot give attention to all three children at once. The parents have failed to acquire the skills necessary to parent these children safely. The children are in a pre-adoptive foster home, are young, and deserve stability now, not in the future. "Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). A child need not endlessly await the maturity of his or her natural parent. *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). The well-reasoned decision of the district court, finding the statutory grounds for termination were

proven, the parents were provided reasonable services, and the children's best interests are served by terminating both parents' rights, is affirmed.

AFFIRMED ON BOTH APPEALS.