IN THE COURT OF APPEALS OF IOWA

No. 3-1158 / 13-1609
Filed December 18, 2013

IN THE INTEREST OF K.G.,
Minor Child,

R.P., Father,
Appellant.

Appeal from the Iowa District Court for Scott County, Christine Dalton, District Associate Judge.

A father appeals the termination of his parental rights. **AFFIRMED.**

Jean Capdevila, Davenport, for appellant father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, Michael J. Walton, County Attorney, and Julie A. Walton, Assistant County Attorney, for appellee State.

Christine Frederick of Zamora, Taylor, Woods & Frederick, Davenport, attorney and guardian ad litem for minor child.

Considered by Danilson, C.J., and Vaitheswaran and Potterfield, JJ.

POTTERFIELD, J.

The father's parental rights[1] were terminated pursuant to Iowa Code section 232.116(1)(h) (2013). On appeal, he contends there is not clear and convincing evidence the child cannot be returned to him at the present time. Because the father failed to protect his child's siblings when he was in a position to help and must have been aware of their need for protection, there continues to be a risk of harm to the child if returned to his care. We affirm the termination of R.P.'s parental rights.

I. Scope and Standard of Review.

We review termination orders de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). While we are not bound by the juvenile court's findings of fact, we accorded them weight, especially in assessing witness credibility. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We will uphold an order terminating parental rights if the record contains clear and convincing evidence to support the grounds identified in Iowa Code section 232.116(1). *Id.* Evidence is "clear and convincing" if no "serious or substantial doubts" exist as to the legal conclusions that can be drawn from it. *Id.*

II. Background Facts and Proceedings.

Upon our de novo review of the record, we find following.

The child, K.G., was removed from the mother's (Holly's) care immediately after birth in September 2011 due to the August 2011 removal of K.G.'s half-siblings—sister, N.J., age eight; and a brother, age twelve. A prior opinion of this court described the plight of N.J. in the family home:

[1] The mother's parental rights were also terminated and she did not appeal.

This family came to the attention of the Iowa Department of Human Services (DHS) in February 2011, based on allegations of denial of critical care and failure to provide adequate supervision and clothing to N.J. At that time, N.J., born in 2003, was walking to school without appropriate clothing for the cold weather and there were also concerns she was being locked in her room at home. Staff members at N.J.'s elementary school were also concerned about her small size and about reports from N.J. that she was not allowed to eat before or after school. DHS met with the family twice—once in February and once in March of 2011. N.J.'s adoptive mother, Holly, was "hostile and resistant to DHS involvement." In late February 2011, Holly withdrew N.J. from her elementary school and began homeschooling her.

In May 2011, additional information was reported to DHS when N.J. missed medical appointments to check her height and weight, as she was previously diagnosed as "failure to thrive." Holly denied DHS's attempts to have contact with the child. On June 9, 2011, N.J. was examined by a physician; at seven years old she weighed thirty-four pounds and was forty-two inches tall. The diagnosis of "failure to thrive" continued and the physician contacted DHS. Holly was again contacted by DHS but resisted efforts to resolve the situation. A home visit was attempted on August 16, 2011, with Holly refusing to permit DHS worker, Lisa Wischler, to enter the home to see N.J. On August 25, 2011 [a day on which R.P. was in the home], DHS filed an application for order for home visit pursuant to Iowa Code section 232.71B(4) and (5) (2011). The district court granted DHS the authority to enter Holly's home in order to make an assessment of possible child abuse, to evaluate the home environment, and to observe and interview N.J.

Pursuant to this order, Eric Gruenhagen, a Davenport police officer, accompanied DHS workers, Shannon Anderson and Laurie L[u]dman, as well as Cheryl Fullenkamp, the child's guardian ad litem, to Holly's home on August 25, 2011. After twenty minutes of knocking on the doors, and attempting to gain the attention of the occupants, N.J. opened the side door. The condition of the home was described by DHS as follows:

> The home was filthy, smelled strongly of cat and dog urine and feces, and had garbage strewn throughout the home. The garbage was overflowing onto the floor, and there were dirty dishes all over the kitchen, old food on the floor and throughout the home. Additionally, it was discovered that there were locks on the outside of [N.J.'s] door and that there were no furnishings or bedding in her room. The only thing found in [N.J.'s] room was a twin bed frame leaned up against the wall with a deflated air mattress hanging over the frame. [N.J.] was filthy, smelling strongly of

> cat urine. She was wearing dirty clothing and had dirty hands and feet. She also had numerous bruises on her body.
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> Photographs, which corroborated the descriptions above, were taken of N.J. and of the interior of the house. N.J. was removed from Holly's care and taken to Genesis East Hospital for three days of evaluation and treatment.

In re N.T.J., No 11-2073, 2012 WL 1067075, at * 1-2 (Iowa Ct. App. Mar. 28, 2012).

As noted, R.P. was at Holly's residence on August 25, 2011, both before and after the children were removed. A child protective worker who encountered R.P. at about 10:15 p.m. indicated he "had clearly been drinking" and "his speech appeared to be slurred." R.P. stated he had been in the house at noon that day and it was clean then. The worker explained the condition of the home did not happen within three or four hours, the house was in desperate need of cleaning, and the children were not safe in the home.

The findings of the juvenile court in waiving reasonable efforts with respect to N.J. are relevant here because they provide some understanding of N.J.'s physical health in August 2011—a time R.P. was still involved with the mother and was present in the home periodically:

> This child at the time of adjudication was age eight and was severely malnourished. The mother had been denying or withholding food from the child. The child had been locked in a bare room and had to seek permission to go to the bathroom. Any furniture and clothing for the child had been locked away in a closet.
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> . . . From the evidence before the court, the court concludes that N.J. was adjudicated a child in need of assistance upon a finding that the child suffered physical abuse and neglect as a result of acts or omissions of her mother. There exists clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child and/or constituted imminent danger to the

> child. This child was malnourished to the point of starvation. Her weight was below the fifth percentile. The report from Bettina Howell describes physical impairments and physical and functional developmental delays due to the abuse, neglect, confinement, and restraint applied by the mother to this child or at the mother's direction. This child was treated as badly as if she was a prisoner of war.

R.P.'s paternity of K.G.[2] was established in November 2011, at which time he began to receive visitation. Several areas of concern regarding R.P. were noted. First, he had lived with the mother and her children during the end of 2010 through February or March 2011, and continued to be involved with the family thereafter. DHS concluded the condition of the home and N.J.'s poor health and hygiene were such that R.P. must have been aware of them, yet he did nothing to protect the children. Other evidence in this record supports DHS's conclusion: during his psychological evaluation, R.P. reported Holly had been physically and emotionally abusive to him and K.G.'s siblings; and the twelve-year-old boy reported R.P. participated in locking N.J. in her room.

Second, a March 2012 substance abuse evaluation resulted in a recommendation that R.P. participate in extended outpatient treatment based on R.P.'s reports of his own drinking behavior and DHS's reported concerns.[3] R.P. was scheduled to begin group treatment in April and attended an intake appointment. However, he did not follow through with substance abuse treatment, informing the counselor he did not need services. At a family team meeting in June 2012, R.P. stated he wanted a second opinion regarding the

[2] R.P. is not related to K.G.'s siblings removed from the mother in August 2011.

[3] DHS received a report that R.P. may have a problem with alcohol. During a supervised visit on January 31, 2012, a worker detected the odor of an alcoholic beverage on R.P.'s breath. As a result, R.P. was asked to complete an evaluation, which he did on March 15, 2012.

need for treatment because DHS had suggested to the first evaluator personal knowledge that R.P. had an ongoing drinking problem. R.P. did get another evaluation some nine months later on March 20, 2013 (after the termination trial began), which resulted in a report that no treatment was recommended. However, R.P. would not consent to a release of information for DHS to speak with the evaluator.

Third, a March 2012 psychological evaluation was conducted and ongoing mental health treatment was recommended. R.P. has not participated in treatment.

Fourth, a February 2012 child protective assessment was initiated when N.J. alleged R.P. had sexual contact with her. After appeal, R.P. was found to have denied critical care—failure to provide adequate supervision. DHS continued to express concern, however.

Prior to a permanency hearing, which was held on August 16, 2012, R.P. was visiting with K.G. three times a week for a total of five hours. R.P. continued to work and formed a relationship with a woman approved for visits with K.G. But after the permanency hearing, the case plan goal was changed to termination of parental rights,[4] and his visits were decreased to once per week.

The termination of parental rights trial began on February 13, 2013, but could not be completed. Continuances related to the mother's health resulted in the trial reconvening on September 5, 2013. At that time, R.P. presented the testimony of Dr. Derek Grimmell to rebut the claim that he had unreasonably

[4] R.P. fired his attorney at the beginning of the permanency hearing and represented himself for the remainder of the hearing.

failed to obtain a psychosexual evaluation. Dr. Grimmell testified there was a lack of scientific guidelines defining a psychosexual evaluation. He also testified psychosexual evaluations, which are intended to determine the risk that a perpetrator will reoffend, are not helpful where there has been no criminal adjudication that a person is an offender, or no physical evidence establishes that sexual abuse has occurred. Dr. Grimmell acknowledged he had not treated or evaluated R.P.

On September 20, 2013, the juvenile court terminated R.P.'s parental rights to K.G. pursuant to Iowa Code section 232.116(1)(h).

R.P. now appeals, contending there is not clear and convincing evidence the child could not be returned to him at present. He also contends the juvenile court should have addressed his motion to dismiss in which he asserted that other statutory grounds alleged by the State were not warranted.

III. Discussion.

Termination of parental rights is proper under section 232.116(1)(h) where the State proves the following elements by clear and convincing evidence:

> (1) The child is three years of age or younger.
> (2) The child has been adjudicated a child in need of assistance (CINA) 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.

There is no dispute the child is under three years of age, has been adjudicated a CINA, and has been removed from her parents' care since her

birth—far in excess of the statutory period. The father contends, however, the State offered insufficient evidence to show K.G. could not be placed in his custody at the present time.

Our supreme court has previously said "'our statutory termination provisions are preventative as well as remedial.' *In re L.L.*, 459 N.W.2d 489, 494 (Iowa 1990). They are designed to prevent probable harm to the child and the State is not required to wait until actual harm has occurred before moving to terminate a parent's rights." *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

When this matter went to trial in February 2013, the State had clearly met its burden to prove the child could not be returned to R.P. without risk of harm. R.P. was in the household with K.G.'s siblings in 2010 and 2011. While the record indicates he moved out of the house in February or March 2011, he was in the house thereafter—by his own statement to police—two weeks before and on the day of the children's removal in August 2011. R.P. reported to the psychological evaluator and to police that the mother of K.G. was physically and emotionally abusive toward K.G.'s siblings—he did nothing to protect them. There is also a child abuse assessment finding R.P. failed to provide critical care.

We acknowledge that during supervised visits R.P. was not a safety risk to his child. However, R.P. did not follow through with recommended substance abuse or mental health treatment. This prevented him from moving beyond supervised visits. We find clear and convincing evidence K.G. would be at risk of harm if placed in R.P.'s custody at present.

Having found section 232.116(1)(h) satisfied, we must still determine whether terminating R.P.'s parental rights is in the child's best interests. *See D.W.*, 791 N.W.2d at 708.

> In deciding whether to terminate parental rights based on a particular ground, we must give primary consideration to "the child's safety, . . . the best placement for furthering the long-term nurturing and growth of the child, and . . . the physical, mental, and emotional condition and needs of the child." Iowa Code § 232.116(2). . . . [W]e may consider whether the child has been placed into a foster family, the extent to which the child has been integrated into the family, and whether the foster family is able and willing to adopt the child. *Id*. § 232.116(2)(b). Additional factors are identified under the statute to further assess the integration of the child into the foster family.

D.W., 791 N.W.2d at 708.

K.G. has been with the same foster family for more than two years. She is fully integrated into that family and the family is willing and able to adopt her. Termination of R.P.'s parental rights and adoption will best provide K.G. with the permanency she needs and deserves. No compelling interest weighs in favor of preserving the father's parental rights. *See* Iowa Code § 232.116(3). We affirm the termination order.[5]

AFFIRMED.

[5] Because we find grounds for termination under section 232.116(1)(h), we need not address the father's claim that allegations under other subparagraphs should be dismissed. *See D.W.*, 791 N.W.2d at 707 ("On appeal, we may affirm the juvenile court's termination order on any ground that we find supported by clear and convincing evidence.").