IN THE COURT OF APPEALS OF IOWA

No. 3-161 and 3-162 / 13-0073 and 13-0097
Filed March 13, 2013

IN THE INTEREST OF T.S. and B.R.,
Minor Children,

L.S., Father of T.S.,
Appellant,

W.R., Father of B.R.,
Appellant.

Appeal from the Iowa District Court for Linn County, Barbara H. Liesveld, District Associate Judge.

Two incarcerated fathers appeal the termination of their parental rights to their children. **AFFIRMED ON BOTH APPEALS.**

Kara L. McFadden of Allen, Vernon & Hoskins, P.L.C., Marion, for appellant L.S.

John J. Bishop, Cedar Rapids, for appellant W.R.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Jerry Vander Sanden, County Attorney, and Kelly J. Kaufman, Assistant County Attorney, for appellee.

Kelly Steele, Cedar Rapids, for mother.

Cynthia Finley, Cedar Rapids, attorney and guardian ad litem for minor children.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

TABOR, J.

The juvenile court ordered half-brothers B.R. and T.S. to be removed from their mother's care in January 2012, after T.S. tested positive for cocaine at birth. The boys have been in foster care ever since. At the time of the hearing on the State's petition to terminate parental rights, both fathers were incarcerated and unable to care for their sons. The juvenile court terminated the parental rights of both fathers and the mother. The fathers now appeal.[1]

Having reviewed the entire record, we agree with the juvenile court's conclusion that the children cannot presently be placed with their fathers, and it is not in the children's best interests to wait longer for permanency. Accordingly, we affirm the termination of parental rights.

I. Background Facts and Proceedings

The Department of Human Services (DHS) has been involved with this family dating back to 2005, when B.R. was one year old. At that time B.R. and two older brothers were temporarily removed from the care of their mother, Trena, because she used crack cocaine in their presence. The DHS also confirmed incidents of child abuse against Trena in 2006 and 2007.

William is the father of two of Trena's sons.[2] Trena and William had a fourteen-year relationship, punctuated by domestic violence, substance abuse, and intermittent separations. Because of William's own involvement with illicit drugs and criminal activity he could not provide a safe home for B.R. William

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[1] On our own motion, we consolidate their appeals: *In re B.R.*, No. 13-0097, and *In re T.S.*, No. 13-0073. The mother does not challenge the termination of her parental rights.
[2] Their older son was arrested at age fourteen for two counts of attempted murder.

acknowledged: "I had a bad behavior pattern." Since 2007, William has been in federal prison for a drug conviction. He does not expect to be released until 2015. William participated in the termination hearing by telephone from Petersburg, Virginia.

In 2010, another DHS assessment determined Trena denied B.R. critical care by failing to ensure he took his tuberculosis (TB) medication, risking that he could become more seriously ill by developing drug-resistant TB.

In January 2012, Trena gave birth to T.S.; both mother and baby tested positive for cocaine at the hospital. Trena admitted using cocaine during the first six months of the pregnancy, and the day before T.S. was born. The juvenile court adjudicated both T.S. and B.R. as children in need of assistance (CINA) on January 9, 2012.

T.S.'s father, Leondo, spent four years in a relationship with Trena. Leondo has an extensive criminal history, including convictions for assault, possession of a controlled substance, burglary, theft, interference with official acts, and harassment. Leondo was serving his burglary sentence at a residential facility in Cedar Rapids at the time of the CINA adjudication. Except for one visit with T.S., he did not participate in the DHS case permanency plan. During the pendency of the CINA case, Leondo was twice charged with escape from the residential facility. He participated in the termination hearing by telephone from the Iowa Medical & Classification Center at Oakdale.

The State filed its petition to terminate parental rights on September 7, 2012. The juvenile court heard testimony on November 5, 2012, and issued its

order on December 27, 2012. The court terminated William's rights over B.R., relying on Iowa Code sections 232.116(1)(b), (e), and (f) (2011) and terminated Leondo's rights over T.S., citing sections 232.116(1)(b), (e), and (h). William and Leondo contest the juvenile court's order.

II. Standard of Review

We perform a de novo review of juvenile court orders terminating parental rights. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). While they are not binding on us, we give weight to the juvenile court's findings of fact, especially in assessing the credibility of witnesses. *Id.* We will uphold a termination order if the record contains clear and convincing evidence of the grounds alleged under Iowa Code section 232.116. *Id.* Evidence is "clear and convincing" when there are no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.*

Termination cases follow a three-step analysis. *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). First, the juvenile court must determine if the petitioning party has established a ground for termination under section 232.116(1). *Id.* Second, the court must apply the best-interest framework set out in section 232.116(2). *Id.* Third, if the best-interest framework supports termination, the court still must consider if any factors in section 232.116(3) preclude termination of parental rights. *Id.*

III. Analysis

A. Grounds for Terminating Leondo's Parental Rights

In his petition on appeal, Leondo challenges all three statutory grounds for termination cited by the juvenile court. When the juvenile court bases its termination decision on more than one subdivision of section 232.116(1), we may affirm by finding clear and convincing evidence in support of any one of the identified provisions. *In re R.K.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

We find clear and convincing evidence supported termination under section 232.116(1)(h). The juvenile court correctly determined that T.S. was younger than three years of age, had been adjudicated a CINA, was out of the home for more than six months, and could not be placed in his father's care. Leondo was incarcerated at the time of the termination hearing and was not presently able to care for his son. Incarceration does not justify an inability to carry on the duties of parenting. *See generally In re M.M.S.*, 502 N.W.2d 4, 8 (Iowa 1993).

B. Best Interests of the Children

Leondo and William both argue termination was not in the best interests of their children.

Leondo cites no legal authority, but appears to invoke Iowa Code section 232.116(3)(c) based on his allegedly close relationship with his other children. We reject this claim. Section 232.116(3)(c)'s reference to the "parent-child relationship" means the parent's bond with the child at issue in the termination

case. Leondo cannot claim a meaningful relationship with T.S., having seen the child only once in his life.

William asserts in his petition on appeal that he had a "strong relationship" with B.R. before he went to prison in 2007. He contends B.R. should have been placed in a guardianship with an aunt or uncle until William was released from prison.

Nothing in the record suggests it would be in B.R.'s best interest to maintain his legal tie to William. B.R., who was eight years old at time of termination, had not lived with his father for six years. Even before William went to prison, he was unable to provide a home for his son. In William's own words:

> I couldn't do that because . . . I was also committing crimes as—I was breaking the law by selling drugs myself. So I would not put my child in my house because of my behavior that I was doing on the street. So I never brought my kid to my apartment where I live. They never been there cuz I used to have peoples over—coming over there to my crib, to where I live. And having my kids in a place like that, in a setting like that, it's not something that I do, you know. You know, my kids never been to my house, never.

William also acknowledged at the hearing that he had no contact with B.R. for the past year. In fact, William testified he did not remember when his son's birthday was.

Moreover, William's plan for a guardianship for B.R. was sketchy; William testified only that he had spoken to one of his brothers who said he would "try to take over the challenge if he could." Even when an appropriate family member has been firmly identified, placement with a relative under a permanency order is not legally preferable to termination of parental rights. *See In re L.M.F.*, 490 N.W.2d 66, 67 (Iowa Ct. App. 1992). The State has an important interest in

providing children with a “stable, loving homelife . . . as soon as possible.” *See P.L.*, 778 N.W.2d at 38.

The juvenile court expressly considered Iowa Code sections 232.116(2) and (3) and concluded the children’s safety, long-term nurturing and growth, and physical, mental, and emotional needs were best served by terminating the rights of their mother and their fathers. The court noted the foster family wanted to adopt B.R. and T.S. The court reasoned: “The boys are together. It is important that they remain together.” Indeed, the record showed that despite their age difference, the boys enjoyed a close relationship. We agree with the juvenile court that their best interest is served by keeping them together for possible adoption by their foster family. *See In re A.M.S.*, 419 N.W.2d 723, 734 (Iowa 1988) (noting siblings should not be separated without good and compelling reasons).

AFFIRMED.