IN THE COURT OF APPEALS OF IOWA

No. 3-883 / 13-1182
Filed September 18, 2013

IN THE INTEREST OF Q.A.S.,
Minor Child,

A.S., Mother,
Appellant,

K.S., Father,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Judge.

A mother and a father appeal the termination of their parental rights to a child. **AFFIRMED.**

Tammy L. Banning of Tammy L. Banning, P.L.C., Waterloo, for appellant-mother.

Mark A. Milder, Waverly, for appellant-father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kathleen A. Hahn, Assistant County Attorney, for appellee.

Linnea Nicole of Juvenile Public Defender's Office, Waterloo, attorney and guardian ad litem for minor child.

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

DANILSON, J.

The mother and father of Q.A.S. separately appeal from the termination of their parental rights. We find no error in the waiver of reasonable efforts, nor do we find an abuse of discretion in the court's denial of the father's motion to recuse. The child was born testing positive for drugs, the parents have a history of substance abuse, and they have had their parental rights terminated to three other children.[1] Because there is clear and convincing evidence to support termination pursuant to Iowa Code section 232.116(1)(g) (2013), we affirm.

I. Background Facts and Proceedings.

In a 2012 appeal, we upheld the termination of these parents' rights to Q.A.S.'s sibling, stating in part:

> The parents ask for six more months to reunify with B.S. The father argues that in the closing months of the case, they have started making progress. He claims both parents have completed psychological evaluations and their financial situation is improving. The mother notes in recent months she has voluntarily checked herself into in-patient substance abuse treatment and has engaged in mental health counseling.
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> The parents' eleventh hour attempts to prevent termination by engaging in services do not overcome their years of addiction and instability. *See In re D.M.*, 516 N.W.2d 888, 891 (Iowa 1994) (rejecting efforts of "recent origin" to accept parenting responsibilities). We reject their claims that "additional time could make all of the difference" and B.S. would not be harmed by the delay. These parents have been involved with the DHS for two years and have not addressed the problems that led to the termination of their [rights to] older children in September 2011. Meanwhile, B.S. has been removed from parental custody for half of his life. His foster parents stand ready to adopt him, and the juvenile court acted reasonably in moving him toward that resolution.

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[1] In September 2011, the father had his rights to three children terminated. Two of those children were by this mother, and she had her rights as to those two children terminated. In August 2012, the parents had their rights to another child of theirs terminated.

> . . . .
> . . . The State points out that neither parent argues B.S. could be returned to his or her care at the present time.
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> We find that omission to be telling. Where the juvenile court terminates on more than one ground, we need only find sufficient evidence to affirm based on one of the statutory provisions cited. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Here, we affirm under section 232.116(1)(h). Because an imminent reunion is not a realistic possibility on this record, the State has proved the necessary elements for termination by clear and convincing evidence. B.S. cannot be returned to his parents at this time because their ongoing substance abuse and the continuing dynamics of domestic violence pose a threat to his safety and well-being.

In re B.S., No. 12-1609, 2012 WL 5534169, at *3-4 (Iowa Ct. App. November 15, 2012).

Thus, at the time the mother was pregnant with Q.A.S., the parents had been involved with the department of human services since 2010, the parents' parental rights to B.S. had been terminated, and their rights to three other children had been terminated due to ongoing substance abuse and domestic violence.

Q.A.S. was born in February 2013 testing positive for cocaine and opiates. The parents made some efforts and progress in the month following the child's birth, even providing one negative drug screen. But the mother then began missing substance abuse treatment appointments, and the father did not follow through with mental health services. The parents failed to appear for two drug screens in March.

On April 12, the court waived reasonable efforts prior to obtaining the results of an April 10, 2013 drug screening of both parents. When those results became available, the screens for both parents were positive for cocaine.

The father filed a motion for recusal on April 30, asserting the judge had presided over the previous termination of parental rights for another child of this couple and was no longer impartial, and that the current practice of one family/one judge was essentially unfair. A hearing was held on May 8, after which the court found there was no ground for recusal and denied the motion.

Upon the court's finding that aggravated circumstances existed to waive reasonable efforts, the mother discontinued all services and the father did not engage in services. Neither parent informed the court they were in need of financial assistance.

A termination of parental rights petition was filed and a hearing held on June 13, 2013.

The court terminated the parental rights of the mother and the father pursuant to Iowa Code section 232.116(1)(g) and (*l*).[2]

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[2] Section 232.116(1), in pertinent part, states the court "may order the termination" of parental rights "on any of the following grounds":

> g. The court finds that all of the following have occurred:
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> (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
>
> (2) The court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family or a court of competent jurisdiction in another state has entered an order involuntarily terminating parental rights with respect to another child who is a member of the same family.
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> (3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.
>
> (4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.
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> . . . .
>
> *l.* The court finds that all of the following have occurred:
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> (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

The parents separately appeal. The mother and father each contend the court erred in finding aggravated circumstances existed to waive reasonable efforts. The mother also contends there is insufficient evidence concerning section 232.116(1) subparagraphs (g)(3) and (4), and (*l*)(3) to support termination. The father asserts the court abused its discretion in denying his motion to recuse, and erred in refusing his request to defer permanency. He also contends there is insufficient evidence to support the statutory grounds for termination.

II. Scope and Standard of Review.

We conduct a de novo review of termination of parental rights proceedings. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). Although we are not bound by the juvenile court's findings of fact, we do give them weight, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under section 232.116. *Id*. Evidence is considered "clear and convincing" when there are no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id*.

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(2) The parent has a severe substance-related disorder and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

III. Analysis.

A. *Waiving Reasonable Efforts*. The State is required to make reasonable efforts to have children returned home. *See* Iowa Code § 232.102(5), (10). The goal of a child in need of assistance proceeding is to improve parenting skills and maintain the parent-child relationship. *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997). However, reasonable efforts can be waived in limited specified circumstances set forth in Iowa Code section 232.102(12). This section provides as follows:

> If the court determines by clear and convincing evidence that aggravated circumstances exist, with written findings of fact based upon evidence in the record, the court may waive the requirement for making reasonable efforts. The existence of aggravated circumstances is indicated by any of the following:
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> . . . .
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> c. The parent's parental rights have been terminated under section 232.116 with respect to another child who is a member of the same family, and there is clear and convincing evidence to show that the offer or receipt of services would not be likely within a reasonable period of time to correct the conditions which led to the child's removal.

Iowa Code § 232.102(12)(c).

In its finding of aggravated circumstances, the court wrote:

> The most telling evidence in this case is that contained under the section "Parental Capabilities" in the department's report of April 3, 2013. The parents expressed a strong desire to do "anything possible" to reunify with their daughter. Notwithstanding that protestation, since March 7, 2013, the parents' progress has "been inconsistent, at best." They no-showed for their drug screenings in March. They claimed excuses, but the fact is that there were no random drug screens between February 26, 2013, and April 10, 2013. [The mother] has been inconsistent in attending her drug treatment. Her substance abuse counselor expressed concerns that "[the father] continues to control [the mother]." When [the mother] has cancelled appointments, [the father] makes the calls. He informed the substance abuse

> counselor, among other things, that [the mother] needed to stay home and take care of him rather than go to her drug treatment. With respect to mental health treatment, [the father] reported that his mental health evaluation recommended no further treatment. To the contrary, the evaluator recommended individual psychotherapy. An individual appointment for [the father] was set up that he did not attend.
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> The court concurs with the child's guardian ad litem that the behavior of the parents shows a continuing pattern of unamenability to services, lack of follow through in the important areas of drug treatment and mental health treatment, and a continuing dysfunctional relationship that prevents them from focusing on their child while they seek to fulfill each other's needs.
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> The attorney for the father requested that the court defer any decision as to aggravated circumstances until the results of yesterday's drug screen are available. The court declines to do so. These parents drug test when they want to. They no-show when they want to.
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> This child was born drug-affected, testing positive for cocaine and opiates. This is yet another example of these parents fulfilling their own needs while neglecting the needs of their child. These parents' parental rights have been terminated under Iowa Code section 232.116 with respect to another child who is a member of the same family, and the evidence before the court is clear and convincing to show that the offer and receipt of services would not be likely within a reasonable period of time to correct the conditions which led to the child's removal.

These findings are supported by the record, and we adopt them as our own.

The mother and father's parental rights to three children were terminated in 2011 and their parental rights to another child were terminated in 2012. The parents have received services since 2010, yet Q.A.S. was born testing positive for drugs in February 2013. The parents provided one negative drug screen about two weeks after the child's birth, and then failed to appear for two drug screens in March. As noted, the mother also began missing substance abuse appointments, and the father did not follow through with mental health services. Under the circumstances, the court could assume prior habits were again at play.

See In re S.N., 579 N.W.2d 338, 341 (Iowa Ct. App. 1998) ("We have also indicated that a good prediction of the future conduct of a parent is to look at the past conduct. Thus, in considering the impact of a drug addiction, we must consider the treatment history of the parent to gauge the likelihood the parent will be in a position to parent the child in the foreseeable future." (internal citation omitted)).

B. Motion to Recuse. The burden of showing grounds for recusal is on the party seeking recusal. *In re S.D.*, 671 N.W.2d 522, 528 (Iowa Ct. App. 2003). "This burden is substantial and we will not overturn the trial judge's decision absent an abuse of discretion." *Id*. An appearance of impropriety is not sufficient. *In re C.W.*, 522 N.W.2d 113, 117 (Iowa Ct. App. 1994).

"We review a court's decision to recuse or not to recuse itself for an abuse of discretion." *Taylor v. State*, 632 N.W.2d 891, 893 (Iowa 2001). "An abuse of discretion is found when the trial court has clearly exercised its discretion on untenable grounds or acted unreasonably." *In re Marriage of Wagner*, 604 N.W.2d 605, 608 (Iowa 2000).

In Iowa Code section 602.1606(a), "A judicial officer is disqualified from acting in a proceeding . . . if . . . [t]he judicial officer has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." The court stated it had no bias or prejudice for or against any party, and had no personal knowledge of facts in dispute. As was the case in *State v. Smith*, 282 N.W.2d 138, 142 (Iowa 1979), the father relies "on past judicial encounters" with the presiding judge. In *Smith*, the court ruled,

> To whatever extent these experiences educated trial court on defendant's character, it provides no basis for prejudice requiring a different judge. "The alleged bias and prejudice to be disqualifying must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case."

Smith, 282 N.W.2d at 142 (citations omitted). Here, any knowledge gained from having presided in the earlier termination proceeding did not require disqualification.

The father asserts, "The parents' dismal performance in prior juvenile court cases probably caused a fair amount of skepticism by the Court." He argues the one judge/one family system deprived the parents of "the feeling of a fresh start."

The parents' prior conduct and loss of parental rights would be relevant in any event. *See In re E.J.R.*, 400 N.W.2d 531, 532 (Iowa 1987) ("[O]ur prior decisions have consistently held that evidence meeting the test of relevancy and materiality required in a [CINA] proceeding may be similarly admitted and relied upon in a termination proceeding to the extent of its probative value."); *see also In re A.M.H.*, 516 N.W.2d 867, 873 (Iowa 1994) (holding the court may take judicial notice of the pleadings and exhibits from previous CINA adjudications); *In re Z.T.D.*, 478 N.W.2d 426, 428 (Iowa Ct. App. 1991) (noting the court's responsibility to consider the parenting abilities and character of any person in the child's home who may have a caretaker role in the child's life); *In re H.R.K.*, 433 N.W.2d 46, 48 (Iowa Ct. App. 1988) (holding judicial notice is not limited to the evidence, but includes any part of the CINA record). We find no abuse of discretion in the court's denial of the father's motion to recuse.

C. *Statutory Grounds for Termination*. When the juvenile court terminates parental rights on more than one statutory ground, we may affirm the juvenile court's order on any ground we find supported by the record. *D.W.*, 791 N.W.2d at 707. Section 232.116(1)(g) provides that termination may be ordered when there is clear and convincing evidence a child has been adjudicated a child in need of assistance, the court has previously terminated parental rights with respect to another child who is a member of the same family, "the parent continues to lack the ability or willingness to respond to services which would correct the situation," and "an additional period of rehabilitation would not correct the situation." The parents argue they have the ability and willingness to respond to services and were unreasonably denied additional time to do so. Unfortunately, the record does not support their assertions.

> We have repeatedly followed the principle that the statutory time line must be followed and children should not be forced to wait for their parent to grow up. We have also indicated that a good prediction of the future conduct of a parent is to look at the past conduct. Thus, in considering the impact of a drug addiction, we must consider the treatment history of the parent to gauge the likelihood the parent will be in a position to parent the child in the foreseeable future. Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting.

In re N.F., 579 N.W.2d 338, 341 (Iowa Ct. App. 1998) (citations omitted).

Despite having recently lost their rights to a child, and despite having been provided services for years, their child, Q.A.S., was born drug-affected and found to be a child in need of assistance. The parents tested positive for cocaine on the date of the dispositional hearing. Thereafter, they discontinued any efforts to

address their substance abuse, mental health, and domestic violence concerns. As observed by the district court in its ruling finding aggravated circumstances, "the behavior of the parents shows a continuing pattern of unamenability to services, lack of follow through in the important areas of drug treatment and mental health treatment, and a continuing dysfunctional relationship that prevents them from focusing on their child while they seek to fulfill each other's needs." We find clear and convincing evidence supporting the termination of their parental rights under section 232.116(1)(g).

Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of section 232.116(2). *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010). In determining the best interests, this court's primary considerations are "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." *Id*. Here, we agree with the district court that the child's best interests are served by termination of the parents' parental rights and adoption. Moreover, neither parent asserts a pertinent factor in section 232.116(3) precludes termination.

We therefore affirm the termination of each parent's parental rights to Q.A.S.

AFFIRMED.