

IN THE COURT OF APPEALS OF IOWA

No. 8-693 / 08-0982
Filed August 27, 2008

**IN THE INTEREST OF D.F.L.,
Minor Child,**

J.L., Father,
Appellant,

K.M., Mother,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Associate Juvenile Judge.

A father and mother appeal from the order terminating their parental rights. **AFFIRMED.**

Jason Gann, Sioux City, for appellant father.

Stephanie Forker Parry of Forker & Parry, Sioux City, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Patrick Jennings, County Attorney, and D.L. Dawson, Assistant County Attorney, for appellee State.

Lesley Rynell of the Juvenile Law Center, Sioux City, for minor child.

Considered by Huitink, P.J., and Vogel and Eisenhauer, JJ.

HUITINK, P.J.

K.M., mother, and J.L., father, appeal from the juvenile court's decision terminating their parental rights with respect to D.L.

I. Background Facts and Proceedings.

D.L. was born in October 2006. He was removed from parental care one week after his birth, after testing positive for methamphetamines. The report listed K.M. responsible for the presence of illegal drugs in his body. J.L. was also tested and found positive for methamphetamine, amphetamine, and marijuana. D.L. was adjudicated a child in need of assistance (CINA) on November 30, 2006, pursuant to Iowa Code section 232.2(6)(b) (2005), (parent has physically abused or neglected child, or is imminently likely to abuse or neglect), (c)(2) (child is likely to suffer harm due to parent's failure to exercise care in supervising child), (n) (parent's drug or alcohol abuse results in child not receiving adequate care), and (o) (illegal drugs found in child's body as a consequence of parent's action or omission). After a trial home visit in February 2007, D.L. was returned to his parents' custody on April 25, 2007. Three days later, J.L. tested at a level of intoxication while K.M. was present. On July 20, 2007, D.L. was again removed, due to J.L.'s habitual drug and alcohol abuse and both parents' failure to cooperate with in-home service providers or consistently provide drug tests. Nearly thirteen months later, D.L. has never been returned to the parents' custody, and visits remain supervised.

Following the removal of D.L., both parents were offered services intended to facilitate D.L.'s return to the parents' custody. The provided services included drug testing, inpatient substance abuse treatment, chemical dependency

evaluations, outpatient treatment, individual counseling at Catholic Charities, a family team meeting, and in-home services from the Boys & Girls Home. On February 8, 2008, the court held a permanency hearing as these services proved unavailing and the substance abuse and parenting issues necessitating D.L.'s adjudication remained unresolved. Both parents reportedly completed treatment, but neither provided consistent drug tests as required by the case plan. Both have repeatedly missed drug tests and those they did provide were often diluted. Following a year of treatment, J.L. has still failed to maintain sobriety, and K.M. has failed to consistently provide negative drug tests.

As a result, on March 14, 2008, the State filed a petition to terminate K.M.'s and J.L.'s parental rights with respect to D.L. on multiple grounds. Following a hearing on the merits of the State's petition, the juvenile court terminated K.M.'s and J.L.'s parental rights pursuant to Iowa Code sections 232.116(1)(d) (2007) (child CINA for physical or sexual abuse (or neglect), circumstances continued despite receipt of services), (g) (child CINA, parental rights of another child terminated, parent lacks ability or willingness to respond to services, additional rehabilitation would not correct situation), (h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home), (i) (child CINA based on physical or sexual abuse, abuse poses imminent danger to child, additional services would not correct the conditions that led to abuse), and (l) (child CINA, parent has substance abuse problem, child cannot be returned within a reasonable time).

On appeal, K.M. and J.L. challenge the sufficiency of the evidence supporting the juvenile court's decision terminating their parental rights.

II. Standard of Review.

The scope of review in termination cases is de novo. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). The grounds for termination must be established by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). If the juvenile court terminates parental rights on more than one statutory ground, we need only find that the evidence supports termination on one of the grounds cited by the juvenile court to affirm. *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2000). Our primary concern is the best interests of the child. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997).

III. Merits.

As noted earlier, the juvenile court terminated K.M.'s and J.L.'s parental rights pursuant to Iowa Code section 232.116(1)(I). To terminate on this ground, we must find: (1) D.L. was adjudicated a child in need of assistance, and his custody has been transferred for out-of-home placement; (2) K.M. and J.L. have severe, chronic substance abuse problems and present a danger to themselves or others as evidenced by prior acts; (3) there is clear and convincing evidence that both K.M.'s and J.L.'s prognoses indicate that D.L. will not be able to be returned to parental custody within a reasonable period of time considering D.L.'s age and need for a permanent home. *Id.*

"When the issue is a parent's drug addiction, we must consider the treatment history of the parent to gauge the likelihood that the parent will be in a position to parent the child in the foreseeable future." *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). "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.” *Id.*

There is no dispute concerning the requisite CINA adjudication and out-of-home placement. The record includes abundant evidence indicating both K.M. and J.L. suffered from a chronic and severe substance abuse problem at the time of D.L.’s removal from parental custody and subsequent adjudication. The record also includes numerous reports from case workers establishing that both K.M. and J.L. have continued substance abuse problems evidenced by positive drug tests subsequent to D.L.’s removal. They are sporadic in attending scheduled drug tests, and in those in which they do show up, they often provide diluted tests. Moreover, there is evidence that K.M. continued to reside with J.L. while he consistently abused alcohol, and she left D.L. in his care. Under these circumstances, we find K.M.’s and J.L.’s chronic substance abuse and unsuccessful treatment efforts present a danger to themselves, as well as D.L. *See In re J.K.*, 495 N.W.2d 108, 113 (Iowa 1993) (finding that parents who have chronic, severe substance abuse problems “clearly” present a danger to their children). Based on our de novo review, we find clear and convincing evidence supporting termination of K.M.’s and J.L.’s parental rights with respect to D.L. pursuant to section 232.116(1)(J).

We also note that in 2004 K.M. had her rights terminated to three other children. Prior to and subsequent to those adjudications, K.M. was offered services to correct the circumstances leading to the adjudications. Said circumstances included her substance abuse, criminal activity, lack of stable housing, lack of consistent employment, and involvement in unstable

relationships. While she may currently have employment, testimony and reports from service providers concerning her long history of substance abuse and inability to maintain sobriety and stability are strong evidence indicating that she will not successfully resolve her substance abuse issues within a reasonable period of time.

Likewise, the State gave J.L. numerous chances to regain custody of D.L., and he continually tested positive for drugs and abused alcohol. Further, error was not preserved by J.L. regarding his reasonable efforts appeal. When a parent fails to demand services other than those provided, the issue of whether services provided were adequate has not been preserved for appellate review. *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). While J.L. did make a motion to resume supervised visits, the juvenile court determined that visits would not be resumed pending the outcome of the termination hearing. J.L. did not appeal this order. All other services continued to be available in the interim, and it does not appear that he raised any further issues regarding services.

D.L. has been living in foster care for nearly his entire life. Despite K.M.'s and J.L.'s efforts to comply with services, they have been unable to successfully do so. Their continued drug abuse and failed treatment efforts have repeatedly frustrated the State's efforts to facilitate D.L.'s return to parental custody. At some point, D.L.'s rights and needs must rise above the rights and needs of his parents. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). D.L.'s permanency need not be indefinitely deferred based on the faint prospects of K.M.'s and J.L.'s successful treatment for substance abuse.

In addition to the statutory grounds for termination of parental rights, we consider the best interests of the child. *In re J.L.W.*, 570 N.W.2d at 780. In assessing the child's best interests, we must consider what the future holds for the child if the child is returned to the parent's care. *In re J.K.*, 495 N.W. 2d at 110. To determine what is in the best interests of the child, evidence of the parent's past performance is the best indicator of the quality of future care for the child. *Id.* (citing *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992)). For the same reasons cited above, we find D.L.'s best interests are served by terminating both K.M.'s and J.L.'s parental rights. The juvenile court's decision terminating K.M.'s and J.L.'s parental rights with respect to D.L. is affirmed. We have carefully considered all of the parents' remaining arguments raised on appeal and find they have no merit or are controlled by the foregoing.

AFFIRMED.