IN THE COURT OF APPEALS OF IOWA

No. 1-1017 / 11-1823
Filed February 1, 2012

IN THE INTEREST OF N.H., C.H., D.S., and D.S.,
Minor Children,

M.H., Father of N.H. and C.H.,
Appellant,

J.H., Mother,
Appellant,

S.F., Father of D.S.,
Appellant.

Appeal from the Iowa District Court for Scott County, John G. Mullen, District Associate Judge.

A mother and two fathers appeal from the order terminating their parental rights to four children. **AFFIRMED.**

Patrick J. Kelly, Bettendorf, for appellant S.F.

Barbara E. Maness, Davenport, for appellant M.H.

Martha L. Cox, Bettendorf, for appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Michael Walton, County Attorney, and Julie A. Walton, Assistant County Attorney, for appellee.

Cheryl Fullenkamp, Davenport, attorney and guardian ad litem for minor children.

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

MULLINS, J.

Three parents appeal from the order terminating their parental rights to their respective children. We affirm.

I. Background Facts and Proceedings.

Jerri is the mother of Dk.S. (born February 2007), Dl.S. (born September 2008), and C.H. (born February 2010). The mother of N.H. (born July 2005) is deceased. Matt is the father of N.H. and C.H., Steve is the father of Dl.S., and Adam is the father of Dk.S. Steve is currently incarcerated at Shawnee Correction Center in Vienna, Illinois. Both he and Adam have not participated in services in any meaningful way throughout this case.

The children first came to the attention of the Iowa Department of Human Services (DHS) on June 12, 2010. At the time, Jerri and Matt were staying at the Salvation Army Homeless Shelter in Davenport with the four children, and had been for approximately ten days. Prior to going to the shelter, the family had been living at Jerri's mother's house in Illinois. While at the shelter, concerns were reported regarding whether the children were receiving adequate nutrition and their cleanliness. Specifically, four month old C.H. was reportedly being fed regular milk and Gatorade. Jerri claimed this was necessary because the child was not tolerating the formula obtained from WIC in Illinois. DHS first made contact with the family on June 14, and requested the children be immediately examined and weighed at the emergency room. N.H. was found to be at the low end of weight, while the three other children were found to be under weight for their respective ages. The children were also found to be behind on their

immunizations and in dire need of dental work. A child protective assessment was performed and determined to be founded for denial of critical care for failing to provide adequate food, health care, and clothing.

Over the next two days, DHS implemented daily safety services, helped the family in transferring WIC benefits from Illinois to Iowa, and had the children's growth and development evaluated. N.H., Dk.S., and Dl.S. were each found to have developmental delays. Most significantly, Dl.S. was nonverbal and had significant gross motor skill and coordination difficulties.

Although Jerri and Matt were amenable to services, DHS continued to have concerns regarding their ability to recognize and meet the children's medical, hygienic, nutritional, and developmental needs as well as provide consistent supervision. As a result of their continued concerns, DHS sought and received an ex parte removal order on July 6, 2010. The children were placed into family foster care. After the children were removed, Jerri and Matt returned to Illinois to reside, where they have remained.

On July 12, 2010, a contested hearing was held on the temporary removal. At this time, Jerri and Matt also challenged the court's jurisdiction. Following the hearing, the court confirmed the children's removal. The court also determined that certain acts of neglect occurred in Iowa between June 2 and July 12 resulting in the children's removal. However, because the neglect was Iowa's only connection to the children and parents, the court ordered that jurisdiction be referred to the State of Illinois. The court further ordered that Iowa would only

exercise jurisdiction if Illinois refused or failed to exercise jurisdiction. The State of Illinois declined to exercise jurisdiction in August 2010.

On July 7, 2010, the State filed a petition alleging the four children to be children in need of assistance (CINA). The petition came to contested hearings on October 14 and November 2, 2010. On November 16, 2010, the juvenile court adjudicated the children to be CINA under Iowa Code sections 232.2(6)(b), (c)(2), (e), and (g) (2009). The basis of the adjudication was that all four children suffered neglect, malnutrition, dental decay, and emotional, physical, and mental trauma from the parents' pattern of a transient lifestyle, and the parent's lack of understanding of the children's developmental needs.

The children have been offered numerous services to address their developmental needs, including play therapy for N.H., special needs preschool for Dk.S., and speech, occupational, and physical therapy for Dl.S. In addition, the children have undergone continuing medical appointments. Jerri and Matt have not consistently attended any of these appointments. For instance, Matt and Jerri had only attended eleven of N.H.'s twenty-nine play therapy sessions.

Jerri and Matt have consistently participated in fully-supervised visitations with the children twice a week. During visits, Jerri and Matt struggled to focus and interact with all four children. N.H. and Dk.S. often fought, and the parents struggled to follow through on discipline. It was also observed that Jerri often treated N.H., her stepson, unfairly and singled him out for punishment. Matt did not intervene to protect N.H. from this obvious and consistent unfair treatment.

As a result, N.H.'s play therapist opined that N.H. was "highly anxious" and "very uncomfortable" around Jerri and Matt.

Jerri and Matt did consistently bring healthy meals to the visits. In addition, Jerri and Matt completed a food and nutrition education program. Visits were eventually changed so that one visit per week occurred at the parents' apartment in Illinois; but, these visits ended when the parent's unexpectedly moved out of their apartment and back in with Jerri's mother. A home study on Jerri's mother's home was conducted and not approved by the State of Illinois.

Jerri and Matt were also provided weekly parenting sessions. In January 2011, Jerri and Matt requested additional parenting services, and DHS increased the sessions to twice a week. However, the parents were only minimally compliant in this service. Between January and June 2011, Jerri and Matt only attended seven parenting sessions, and did not attend any sessions after June 2011. In addition, when Jerri and Matt attended parenting sessions, they were not interested in addressing their weaknesses, were not open to suggestions, and did not interact. At one session, Matt became angry, stated, "I'm done," then crossed his arms and pulled the hood on his sweatshirt over his head. Despite not participating in parenting sessions, Jerri and Matt did complete a one week, 7.5 hour, parenting class offered by Bethany for Children and Families.

On July 14, 2011, the State filed a petition to terminate all parental rights to the four children. The petition came to a contested hearing on October 19, 2011. Following the hearing, the juvenile court terminating Jerri's parental rights under Iowa Code sections 232.116(1)(d), (e), (f), (h) and (i) (2011). The juvenile

court terminated the parental rights to Matt, Steve, and Adam under Iowa Code sections 232.116(1)(b), (d), (e), (f), (h) and (i). Jerri, Matt, and Steve now appeal.[1]

II. Standard of Review.

We review termination orders de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). While we are not bound by the juvenile court's factual findings, we give them weight, especially to the extent that they provide us insight into the credibility of witnesses who appeared before the trial judge. *Id*.

III. Jurisdiction.

Jerri and Matt first claim the juvenile court improperly exercised jurisdiction. In its July 12, 2010 order, the juvenile court recognized that it was not the "home state" and thus referred this matter to the State of Illinois. *See* Iowa Code § 598B.102(7) (defining "home state"). However, Illinois declined to exercise jurisdiction believing Iowa was a more appropriate forum since the alleged neglect occurred here. *Id*. § 598B.201(1)(c). Jerri and Matt did not appeal this finding, and cannot challenge it now. *In re J.D.B.*, 584 N.W.2d 577, 581 (Iowa Ct. App. 1998) (holding parents cannot challenge deficiencies in the CINA proceedings in a termination appeal).

The State then filed its petition to terminate parental rights on July 14, 2011. The filing of this petition was the date of "commencement" in the termination action. *Id*. §§ 232.111, 598B.102(5). The children had been in Iowa for more than six consecutive months before this filing date. Accordingly, the

[1] Adam has not appealed, and his rights are not at issue in this opinion.

children's home state was Iowa on the date of the commencement of the termination proceedings. *Id*. § 598B.102(7). Thus, the juvenile court had jurisdiction under section 598B.201(1)(a).

To the extent Jerri and Matt are contesting personal jurisdiction, we find that issue waived. The parents received notice of the termination proceedings and participated in them. Their actions are sufficient to confer personal jurisdiction. *In re Guardianship of Cerven*, 334 N.W.2d 337, 339 (Iowa 1983) ("Personal jurisdiction may be conferred upon the court by the consent of the parties. Consent may take the form of a general appearance and participation in the proceedings.").

IV. Statutory Grounds.

Jerri and Matt also argue that the State failed to prove each of the statutory grounds for termination. The juvenile court terminated parental rights under five statutory grounds: 262.116(1)(d), (e), (f), (h) and (i). To affirm, we need only find termination appropriate on one of those grounds. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). For Jerri and Matt, we find clear and convincing evidence supports termination under sections 232.116(1)(f) and (h).

The evidence in this case reveals serious continued concerns over Jerri and Matt's ability to recognize and meet the children's developmental and medical needs. The parents have only sporadically attended parenting sessions and the various appointments for the children. Although Jerri and Matt have been consistent in their visitation, they have struggled to interact with and control all four children even in a fully-supervised setting. In addition, it is highly

concerning that N.H. is treated and disciplined differently and unfairly by Jerri and that Matt either does not recognize it or fails to come to N.H.'s aid. This has resulted in N.H. being distressed, very anxious, and upset before and after visits. We find the State proved by clear and convincing evidence that the children cannot be returned to Jerri and Matt's care at the time of the termination hearing. Iowa Code § 232.116(1)(f)(4), (h)(4).

V. Reasonable Efforts.

Jerri further argues the State failed to show that reasonable reunification efforts were made. The State has an obligation to make reasonable efforts towards reunification. Iowa Code § 232.102(7), 232.102(10)(a) (setting forth reasonable efforts).

> [T]he reasonable efforts requirement is not viewed as a strict substantive requirement of termination. Instead, the scope of the efforts by the DHS to reunify parent and child after removal impacts the burden of proving those elements of termination which require reunification efforts. The State must show reasonable efforts as a part of its ultimate proof the child cannot be safely returned to the care of a parent.

In re C.B., 611 N.W.2d 489, 193 (Iowa 2000) (citations omitted).

Jerri did request that she be provided additional parenting sessions. These sessions were provided, but Jerri failed to participate, only attending seven of the weekly appointments from the date of the request until the date of the termination hearing. In addition, Jerri argues she was not provided notice of the children's various medical and therapy appointments. However, the record indicates that she was encouraged to attend and was given schedules, stickers, and reminders. *See id*. at 494 (stating our focus is on the services provided by the State and the parent's response to those services, not on the services the

parent now claims DHS failed to provide). We find the State made reasonable efforts in this case.

VI. Steve's Appeal.

Steve argues the State failed to show sufficient evidence for termination and that termination was not in the child's best interests. Steve has been incarcerated throughout this case. He has not participated in any services, nor has he had any interaction with Dl.S. Clear and convincing evidence shows that Dl.S. cannot be placed into his care, and that termination was in the child's best interests. Iowa Code §§ 232.116(1)(h), 232.116(2).

VII. Conclusion.

For the foregoing reasons, we affirm the juvenile court order terminating the parties' parental rights to N.H., Dk.S., Dl.S., and C.H.

AFFIRMED.