IN THE COURT OF APPEALS OF IOWA

No. 1-843 / 11-1344
Filed November 23, 2011

IN THE INTEREST OF R.V.,
Minor Child,

W.S., Jr., Father,
Appellant,

A.L.V., Mother,
Appellant.

Appeal from the Iowa District Court for Linn County, Susan Flaherty, Associate Juvenile Judge.

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

Brandy R. Lundy of Lundy Law Office, Cedar Rapids, for appellant mother.

Sharon D. Hallstoos of Hallstoos Law Office, Cedar Rapids, for appellant father.

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 State.

Julie Trachta of Linn County Advocate, Inc., Cedar Rapids, attorney and guardian ad litem for minor child.

Considered by Sackett, C.J., and Vogel and Eisenhauer, JJ.

VOGEL, J.

April and Billy separately appeal the termination of their parental rights to R.V., born in January 2010. Upon our de novo review, we affirm as to both terminations. *See In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010) (stating termination of parental rights proceedings are reviewed de novo). When R.V. was born, April had serious health problems, including COPD, asthma, and borderline diabetes. She was on oxygen due to her past methamphetamine use. R.V.'s circumstances as a medically needy child, coupled with the hospital staff's observations of Billy's unusual behavior and fighting between April and Billy, led hospital staff to believe April and Billy could not care for R.V. without full-time supervision.

R.V. has been in the physical care of a foster family since his removal and has not been returned to April and Billy's custody during the pendency of this case. April and Billy participated in supervised and semi-supervised visits with R.V., and for about one month were able to have unsupervised visits. However, when three bruises were discovered on R.V.'s forearm following an unsupervised visit with April and Billy in January 2011, supervised visits were reinstated.[1] A child abuse assessment completed by the Iowa Department of Human Services (DHS) in February 2011, concluded that although the perpetrator was unknown, the allegation of child abuse was confirmed and founded.

[1] At this time, April's sister, Ashley, and her boyfriend, Bryce, were also living with April and Billy. Ashley's daughter was also removed from the home and under assessment because she had a fractured forearm and ribs.

A termination hearing was held on January 21 and 24, 2011. Additional evidence was presented at a hearing held on February 28, 2011.[2] In its August 12, 2011 termination order, the district court terminated April's parental rights under Iowa Code section 232.116(1)(g) (child adjudicated CINA, parental rights terminated with respect to another child who is member of same family, lacks ability or willingness to respond to services) and (h) (child under three, adjudicated CINA, removed from parents at least six of last twelve months, or for six consecutive months with trial period at home less than thirty days, child cannot be returned to parent's custody) (2011). Billy's parental rights were terminated under Iowa Code section 232.116(1)(h).

Both April and Billy argue the district court erred in terminating their parental rights under Iowa Code section 232.116(1)(h) because the State failed to prove by clear and convincing evidence that R.V. cannot be returned to their custody. Grounds for termination must be proved by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). 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." *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

To April and Billy's credit, they have been receptive to services in that they have participated in parenting sessions, made changes to their home

[2] On January 24, 2011, April alluded to the fact that R.V. might be part Native American, and during closing arguments Billy asserted that this is an Indian Child Welfare Act (ICWA) case. The record was left open for thirty days, and the February 28 hearing regarded the applicability of the ICWA and the completed child abuse assessment. After contacting the Bureau of Indian Affairs and state authorities in Missouri, it was determined the tribe Billy referred to is not a federally recognized tribe, and therefore Billy no longer asserted this was a state or federal ICWA case.

environment to accommodate R.V. more appropriately, attended couples counseling and mental health counseling, been honest with providers regarding their housing and financial situations, consistently offered drug testing, and graduated from a drug treatment program. April and Billy's short-term progress in parenting and general stability did not convince the district court, nor does it convince us, that returning R.V. to April and Billy's care would be feasible.

The district court stated, "Despite their best efforts and the efforts of numerous service providers, April and Billy have not been able to demonstrate that they have the ability to meet this child's needs on a day-to-day basis." Further, our de novo review of the record indicates that although three of April and Billy's service providers acknowledged the progress April and Billy have made, each provider questioned April and Billy's ability to sustain this progress long-term. Service provider Kathryn Jetter stated at the termination hearing that she did not have the confidence that April and Billy could parent R.V. twenty-four hours a day, seven days a week "without significant services in place." Linn County Home Health provider Robert Schmit was also concerned with April and Billy's stability at the time of the termination hearing, especially because each had "ongoing mental health issues" and they were unwilling to establish a consistent, daily schedule for R.V. Finally, DHS caseworker Kelly Morgan stated that she had "ongoing concerns" regarding April and Billy's, "ability to have structure and routine for R.V. and to make sure they put his needs first."

The record is also illustrative of the difficulties April and Billy have in parenting R.V. April and Billy's involvement with DHS began following R.V.'s birth, when the hospital was concerned about April and Billy's ability to meet

R.V.'s needs without assistance from the hospital staff. At the termination hearing, Billy was asked in what ways his parenting had improved. He provided the following example to demonstrate his improvement:

> When in the hospital, which has been spoken about today a couple of times, there were times when I'd be, say, changing R.V., and I'd turn around to do something else and not like pay attention to how he was on the bed where he could maybe fall off or something of that nature and be redirected to, hey, turn around, you need to keep your eye on him. And now it's more like, with the changing table incident, there's a buckle on it. If I need to turn around and grab something, I buckle him up, and that way, if he does try to get up, he can't get up to roll off or get off the table or anything like that.

While Billy may now be more attentive to R.V.'s needs, we recognize that a strap on a changing table is no substitute for the judgment required of a parent. Similar to the hospital staff's concern regarding April and Billy's ability to parent R.V. on their own, service providers working on the case up to the time of the termination hearing shared these same sentiments, noting that April and Billy's reliance on service providers, along with their inability to make independent decisions regarding R.V.'s care, make it unlikely that April or Billy will be able to care successfully for R.V. on a full-time basis. For example, when April and Billy had an unsupervised visit with R.V. in late December 2010, a Four Oaks caseworker reported:

> [Caseworker] is concerned that Billy and April are still constantly consulting this worker and seem to want someone to come every visit. When this worker stated that she would not be stopping that day but the next, Billy and April called several others from Four Oaks to ask if they were coming to see them. [Caseworker] explained that they were at unsupervised and that they needed to start making decisions on their own and that someone wasn't going to be there every day. They still don't seem to understand this.

On another occasion when R.V. was in April and Billy's care during a semi-supervised visit, April brought Billy to the emergency room for treatment for major chest pains and vomiting. During the incident, April called a Four Oaks caseworker who reported that April "seemed to want someone to come get [R.V.] because she was too overwhelmed to deal with him." The caseworker, however, determined that it was best to leave R.V. with April in such a situation, because "these are situations they would have to handle with [R.V.] there." This incident again puts in question April and Billy's ability to deal with the full-time responsibility of parenting a child. April and Billy have also demonstrated a lack of persistence in assuring that one of R.V.'s basic needs—proper nutrition—is met. April and Billy often failed to feed R.V. either enough food or appropriate food for a baby, and the various caseworkers repeatedly stepped in to remind April and Billy of these basic things. These incidents exemplify April and Billy's ill-preparation to have a child in their care on a full-time, permanent basis, without the continual supervision and follow-up their caseworkers have provided.

In addition to their inability to make independent decisions regarding R.V.'s care, the record reflects that Billy and April each struggle with mental health issues and were only discharged from drug treatment in the week prior to the termination hearing. At the hearing, Billy testified he has been diagnosed with depression, anxiety, and ADHD. Billy's condition makes it difficult for him to focus on the task at hand, and he is often distracted by other events happening around him. April also testified that her mental health problems include depression, anxiety, and possibly bi-polar disorder. Both April and Billy, however, are in counseling and on medication to address these problems. With

respect to substance abuse issues, April had engaged in drug use since her teenage years, and despite graduating from drug treatment in 2003 or 2004, relapsed and began using methamphetamine again. In March 2009, she flat lined and was resuscitated. She has been on oxygen since that time but alleges she has been "clean" from methamphetamine since that incident. She did, however, admit to smoking marijuana a couple times since then. Billy also has a history of marijuana use and reported using marijuana the week before R.V. was born. He, however, claims this was the last time he used marijuana. While we recognize April and Billy have taken steps to improve their situations as they relate to mental health issues and drug use, we also acknowledge that the personal issues April and Billy are dealing with may hinder their ability to care for R.V.

We agree with the district court's conclusion that clear and convincing evidence exists to support a finding that R.V. could not be returned to April and Billy's care based on concerns regarding their ability to care for R.V. on a day-to-day basis, the instability that exists due to their unwillingness to develop structure or routine for R.V., and the concerns we have regarding the personal stability of April and Billy due to their mental health issues and past substance abuse issues.

Notwithstanding the clear and convincing evidence supporting termination, both parents assert termination of their parental rights is not in R.V.'s best interests. Our primary goal in termination of parental rights cases is the best interests of the child. *J.E.*, 723 N.W.2d at 798.

> In seeking out those best interests, we look to the child's long-range as well as immediate interests. This requires considering what the future holds for the child if returned to the parents. When making this decision, we look to the parents' past performance because it may indicate the quality of care the parent is capable of providing in the future.

Id. While April and Billy have taken steps to improve their parenting skills and address their mental health issues and relationship issues, we agree with the district court that both continue to lack the requisite judgment and skills to parent their growing son in a safe and adequate manner. April has had her parental rights terminated as to three other children, and relatives are guardians to two of her other children. Billy has three other children who all live with their respective mothers.

Our supreme court has held that "[c]hildren simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). We reiterate the district court's conclusion that "R.V. deserves the permanency and security of a family who can provide for his needs and can provide him with a safe, secure, loving home, both now and into the future." We therefore find it is in R.V.'s best interests that the termination of parental rights of both parents be affirmed.

AFFIRMED.