IN THE COURT OF APPEALS OF IOWA

No. 2-074 / 11-1942
Filed February 15, 2012

IN THE INTEREST OF T.Y. Jr.,
Minor Child,

T.Y. Sr., Father,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Daniel L. Block, Associate Juvenile Judge.

A father appeals the district court's ruling terminating his parental rights. **AFFIRMED.**

Michael J. Lanigan of Law Office of Michael J. Lanigan, Waterloo, for appellant father.

Thomas J. Miller, Attorney General, Diane M. Stahle, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kathleen Hahn and Steven J. Halbach, Assistant County Attorneys, for appellee State.

Kelly J. Smith of Kelly J. Smith, P.C., Waterloo, for mother.

Mary McGee Light of Juvenile Public Defender's Office, Waterloo, attorney and guardian ad litem for minor child.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ. Bower, J., takes no part.

POTTERFIELD, J.

A father appeals the district court's ruling terminating his parental rights. Because statutory grounds for termination exist, termination is in the child's best interests, and no factors weigh against termination, we affirm.

I. Background Facts and Proceedings.

T.Y. Jr. was born in late November 2010; no medical concerns were noted upon his birth. His parents, however, each had "limited cognitive functioning and a history of mental illness."[1] The father, T.Y. Sr., was under the supervision of the Mental Health Court due to assault charges: his medications were supervised, he had a probation officer, and he received extensive community supportive services. Dr. Kimberly Neumann, a pediatrician and part-time medical director for the pediatric services at People's Community Health Clinic in Waterloo, stated the baby was discharged after delivery "with more in-home services than I have ever seen a baby receive."

Despite "aggressive attempts at educating his parents" and extensive in-home monitoring, Sr. brought Jr. (now six weeks of age) to the hospital in January 2011. The father informed medical staff he thought the child was suffering seizures. After medical staff determined the movements "were just the normal twitches and movements that babies make as they're entering or leaving sleep," they turned their attention to indications that the child was malnourished and exhibiting signs of social neglect. They found the child was "severely

[1] The mother's parental rights to T.Y. Jr. were terminated on November 18, 2011; she does not appeal. She had her parental rights to another child terminated in March 2006.

malnourished," having gained only two ounces since birth, instead of the expected three or more pounds. Dr. Neumann stated:

> [I]t was quickly apparent, based on what the nurses were observing between the parents, both parents and the baby, that they were having significant difficulty with their approach to the baby both in terms of providing adequate social interaction, but also more specifically in terms of adequately feeding the baby and getting him to eat.

Jr. was admitted to the hospital. The child "was by that point a very difficult baby to feed," and the nurses were able to get him to feed, "but you really had to stick with it and push him to eat for 20, 30, maybe 40 minutes per feeding, and the parents just weren't focused to do that." Dr. Neumann explained,

> By the time we saw him, his ability to innately feed well was gone. He wasn't exhibiting the cues that we would expect from a six-week-old, the hunger cues that we would expect. And as I said before, he was really quite apathetic. His behavior was comparable to what's been described in socially neglected infants in institutional settings such as orphanages[.]

Jr. began to gain weight immediately in the hospital, where he remained for more than a week. Because Dr. Neumann believed "that discharging [Jr.] to his parents' care would put his life at risk," a temporary removal order was issued and the child was placed in foster care.

On February 22, 2011, and pursuant to a stipulation of all parties, Jr. was adjudicated a child in need of assistance (CINA). The court found:

> Both parents have a history of limited cognitive functioning and mental illness. Significant concerns exist in regard to the parents' ability to care for the infant child. Both parents have limited parenting skills and support within the community. Because of these supervision concerns, mental health issues, and other parenting concerns, it is contrary to the welfare of the child to return custody to either parent at this time.

At the CINA adjudication hearing, the father agreed with the State's recommendations that the child continue in family foster care placement; child welfare services be offered; both parents follow through with all recommendations for outpatient mental health programming, individual therapy and medication management; and visits be supervised.

During these first months Jr. was in foster care, Dr. Neumann was concerned with the child's "poor tolerance of any change in feeding routine" and recommended that only the foster family feed him. Supervised visits began on January 28, 2011. Sr. consistently attended visits and was affectionate and caring with his son. Sr. cooperated with services and was open to suggestions, but had difficulty internalizing the information he received.

On April 6, 2011, the court's dispositional order continued the child's placement in foster care and all previous recommended services.

The father had a psychological evaluation on May 4, 2011. The evaluator summarized:

> Unfortunately, [Sr.] took the wrong medication the morning of this evaluation and was quite drowsy as a result thereof. . . . He will need to be reassessed intellectually at a time when he is fully alert. Nevertheless, his scores . . . lend credence to the idea that he does function with extremely low intelligence and academic achievement. . . . Although background documents and observations of [Sr.] during the current assessment as he spoke of his six-month-old son suggest that this man is bonded to his child, it is quite clear that he lacks the cognitive abilities to care for this child who is exhibiting some feeding difficulties. Additionally, questions are raised whether or not [Sr.] is capable of taking his own medication in an appropriate way so as to remain alert and ready to care for his young son.

Testing resulted in diagnoses of anxiety disorder, moderate mental retardation,[2] and paranoid and obsessive/compulsive personality traits. Later, retesting indicated Sr. fell in the "extremely low" range of intellectual abilities.

In early May, the father began to bottle feed Jr. during some of his supervised visits: the foster mother was in attendance demonstrating and offering encouragement to Sr. This was a frustrating process for the child and the father because the child showed little interest in eating when the father tried to feed him; the child would then finish eating when the foster mother fed him.

In a June 16, 2011 report to the court, a social worker, Lisa Cross, reported Sr. was meeting with his probation officer one time per week and his mental health worker one time per week. A community supportive services worker came to his house daily to distribute his prescription medications and assisted him with transportation to and from his appointments. Sr. "is very consistent in attending scheduled appointments." Supervised visits had moved from a church to Sr.'s residence and had been increased to three times per week for three hours each visit. On June 15, however, Ms. Cross reported that a home visit was held with Sr. and staff from the community supportive services program,

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[2] The evaluator indicated, however, that further testing was needed for verification because of Sr.'s medication. The evaluator described Sr.:

> [He] was extremely sleepy during this assessment and do[z]ed off a number of times. He later explained to this psychologist that he accidentally took his night-time medication the morning of the assessment, and that this medication is supposed to make him sleepy. Additionally, it was very difficult to understand [Sr.'s] language because of significant articulation and slurring problems.

A visitation note from that same date, May 4, states that during supervised visitation that day: "Sr. seemed very tired and FSW Hansen asked [Sr.] if he was alright and he mumbled something." Sr. fell asleep for the remainder of the visit.

at which Sr. was informed that DHS intended to recommend the termination of his parental rights:

> This worker attempted to explain that the recommendation was not made because his bond and good intentions for his son were in question but due to his functioning ability and how that would affect his ability to keep his son safe and meet his needs throughout his life.

On July 7, 2011, a permanency hearing was held at which time the State indicated its intent to file a petition for termination of parental rights. The court continued its previous custodial orders and services and directed the petition be filed and a termination hearing set.

Sr. canceled several visits with Jr. the remainder of the month of July. When visits occurred, Sr. was learning to bathe Jr.,[3] in addition to bottle feeding him. Sr. was attending parenting classes. Ms. Cross stated in a report to the court, "There have been concerns with Sr. taking his medications because he has been unavailable to [community supportive services] when they deliver his medications." His mental health was described as "unstable" and his behavior as "unpredictable and unstable."

On August 3, 2011, Sr. was hospitalized after an apparent suicide attempt. He was discharged from the mental health unit on August 5. On August 24, 2011, Sr.'s probation officer informed Ms. Cross that community supportive services had discharged him from services "due to his erratic behavior." On August 25, Sr. was placed in jail "due to his recent behaviors, for his safety and

[3] The supervising worker would assist, offer suggestions, and hold Jr. when Sr. had to retrieve an item he had forgotten. In reading the progress notes of these visits, it is clear Sr. was putting forth effort. However, it is also clear that he would not have been able to care for Jr. without assistance.

for the safety of others." There were no new criminal charges. While in jail, Sr. refused to take his medications and was taken to a hospital psychiatric unit. He was transferred back to the jail on September 6, where workers discussed residential care with him. He was released on September 15, and on September 17, Sr. was back home.

On September 30, 2011, a termination of parental rights hearing was held. Dr. Neumann testified about her observations during Jr.'s hospitalization and the parents' ineffectiveness in feeding the child. She stated her belief that placing Jr. in his parents' care "would put his life at risk."

> I think it's fair to point out that [Jr.'s] parents, his birth parents love him. I don't think there's any doubt in anyone's mind about that. And this would be an easy decision if they didn't love him and didn't care. But loving him and caring about him does not mean that they are a safe place for him to grow up.

Ms. Cross testified that even though Sr. attended visits consistently (until the beginning of July), was cooperative with services, and was trying to make progress, he had not made significant progress in being able to care for his son without supervision. Nor did she believe an extension of time and services would result in Sr. being able to parent Jr. safely. She also testified that Jr.'s behavior changed after supervised visits:

> When visits had first started, [Jr.] would return to the foster home and would sleep for four to five hours at a time, and it would be very difficult for him to return to his normal feeding schedule during the day. [Foster mom] would have to wake him up periodically to eat, and when there were days where there were not visits, he would fluctuate back to his normal schedule. . . . He also had periods of time when visits resumed [after foster family vacation and Sr.'s incarceration and hospitalization] where he would cry uncontrollably and would not allow [foster mom] to put him down to sleep without crying, which was not observed before.

The court found that Jr. could not be returned to either parent at that time. The court found:

> [D]espite intensive parent skill training, use of hands-on training and other forms of demonstrative education, [Sr.] has been unable to demonstrate his ability to meet the basic needs of the child. [Jr.] currently resides in a family foster home which has been very supportive of the parents and even tried to assist the parents in learning how to feed the child. The foster family desires to adopt the child and provide a safe and stable home for the child. Because of the child's age and lack of meaningful progress by either parent in addressing the issues which led to the child's out-of-home placement, permanency through adoptive placement is clearly the most appropriate option. The child's safety can best be ensured by a termination of parental rights. The best placement for furthering the long-term nurturing and growth of the child is through adoption, because the parent's history of unmet mental health issues, denial of critical care, history of instability and limited parenting skills. The physical, mental, emotional needs of the child can also best be met by adoption.

The court concluded that the father's request for an additional six months of services was not in the child's best interests and terminated the father's parental rights pursuant to Iowa Code section 232.116(1)(c),[4] (h), and (k) (2011).[5]

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[4] This is obviously a typographical error as this ground, where a parent has voluntarily released custody of a newborn, was not alleged and has no basis in fact.

[5] Iowa Code section 232.116(1) allows termination where:

> (h) The court finds that all of the following have occurred:
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> (1) The child is three years of age or younger.
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> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
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> (3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
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> (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.
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> . . . .

The father appeals.

II. Scope and Standard of Review.

We review all termination decisions de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We are not bound by the juvenile court's findings of fact, but we accord them weight, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010).

III. Analysis.

We may affirm the juvenile court's termination order on any ground that we find supported by clear and convincing evidence. *D.W.*, 791 N.W.2d at 707. After reviewing the record in this case de novo, we conclude grounds for termination exist under Iowa Code section 232.116(1)(h).

Section 232.116(1)(h) provides that termination may be ordered when there is clear and convincing evidence that a child under the age of three who has been adjudicated CINA and removed from the parent's care for at least the last six consecutive months cannot be returned to the parent's custody at the time of the termination hearing. Iowa Code § 232.116(1)(h). Jr. was approximately six weeks old when he was removed and placed in foster care for over six months while service providers worked with Sr. Upon our review of the

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(k) The court finds that all of the following have occurred:

(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.

(2) The parent has a chronic mental illness and has been repeatedly institutionalized for mental illness, 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.

record, we find no evidence that the child could safely be returned home with Sr. at the time of the termination hearing. Sr. had not, despite extensive services, moved beyond supervised visitation. We note with concern that despite daily medication management assistance from community supportive services in May, Sr. mistakenly took his night-time medication, which rendered him unable to visit with his child that day. Even with Sr.'s sincere attempts and marginal improvements after extensive services were received, the service providers and the guardian ad litem were unable to recommend reunification.

It is clear that Sr. loves his son and wishes to be able to care for him. However, he is not able to provide that care without supervision and extensive services.

Our legislature has carefully constructed a time frame to provide a balance between the parent's efforts and the child's long-term best interests. *In re C.B.*, 611 N.W.2d at 494. "Children simply cannot wait for responsible parenting. Parenting . . . must be constant, responsible, and reliable." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). We find clear and convincing evidence that grounds for termination exist under Iowa Code section 232.116(1)(h).

Having found statutory grounds for termination, "we turn to further consider the circumstances described in section 232.116(2) that drive the actual decision-making process." *D.W.*, 791 N.W.2d at 708. We are required to use the best-interests framework established in section 232.116(2), with the primary considerations of "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." *D.W.*, 791 N.W.2d at 708. The mental

capacity of a parent and the existence of a preadoptive foster family in the life of a child are relevant considerations in evaluating the safety of the child, the best placement for optimal growth of the child, and the physical, mental, and emotional condition and needs of the child. *Id.* § 232.116(2)(a), (b). Our analysis thus considers "the ability of the parent to properly care for the child and the presence of another family to provide the care." *D.W.*, 791 N.W.2d at 708.

Upon our de novo review, we find the considerations guiding the decision support termination. The father, while loving and well-intentioned, needs services to get himself through the day. He receives services to maintain his mental health and meet his own needs. He has been unable to improve his parenting skills significantly.

We recognize that lower mental functioning alone is not sufficient grounds for termination. But in this case it is a contributing factor to the father's inability to provide a safe and stable home for his child. *See D.W.*, 791 N.W.2d at 708–09; *see also In re Wardle*, 207 N.W.2d 554, 563 (Iowa 1973) ("Ordinarily, mental disability in a parent does not operate in a vacuum so far as the best interest and welfare of [the] child is concerned but is usually a contributing factor in a person's inability to perform the duties of parenthood according to the needs of [the] child.").

And pursuant to section 232.116(2)(b), we consider that the child has been placed into a foster family, that he has been integrated into that foster family, that the family has expressed a willingness to adopt the child, and that adoption would provide Jr. with the permanency he deserves. Upon our de novo review, we find the considerations guiding the decision support termination and

no factors in section 232.116(3) apply to make termination unnecessary. We therefore affirm.

AFFIRMED.