IN THE COURT OF APPEALS OF IOWA

No. 2-318 / 12-0454
Filed April 25, 2012

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

A.R., Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Constance Cohen, Associate Juvenile Judge.

A father appeals the termination of his parental rights to his child. **AFFIRMED.**

Jennifer Oetker of Parrish, Kruidenier, Dunn, Boles, Gribble, Parrish, Gentry & Fisher, L.L.P., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John Sarcone, County Attorney, and Stephanie Brown, Assistant County Attorney, for appellee.

Katherine Daman, Norwalk, for mother.

John Jellineck of Public Defender's Office, Des Moines, attorney and guardian ad litem for minor child.

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

TABOR, J.

The juvenile court order challenged in this appeal terminates only the parental rights of A.R.'s father, Anthony. The one-year-old child remains in the custody of her mother. At the time of the termination hearing, Anthony resided at a halfway house and admitted that he could not assume care of his daughter. He only requested visitation. On appeal, he challenges all five statutory grounds for termination, alleges that severing the father-daughter bond is not in A.R.'s best interest, and asks for six more months to prove his capability as a parent.

In terminating his parental rights, the juvenile court discussed Anthony's extensive criminal record and his long history of illegal substance abuse. But the juvenile court pointed to Anthony's unwillingness to admit that he inflicted severe physical abuse upon his stepdaughter—A.R.'s half sister—as the "most significant barrier" to Anthony's safe parenting of A.R. Anthony does not mention the founded report of his physical abuse in his petition on appeal.

We conclude—as the juvenile court did—that six additional months would not be enough time for Anthony to acquire the necessary skills to provide a safe environment for A.R., even as a non-custodial parent. Because the State has met its burden under Iowa Code section 232.116 (2011), we affirm the termination of Anthony's parental rights.

I. Background Facts and Proceedings.

The court adjudicated A.R. as a child in need of assistance (CINA) in April 2011 when she was four months old. At the time of the CINA adjudication, Anthony was serving a sentence for possession of controlled substances with

intent to deliver—one of many drug-related convictions on the father's criminal record. Although he started serving his sentence before A.R.'s birth, testing affirmed his paternity in May 2011.

While incarcerated, Anthony received drug treatment. He also underwent substance abuse treatment in 2006 and 2008, both times while in prison. Anthony never sought treatment voluntarily and the longest period of time he has maintained sobriety in the past twenty years while not incarcerated was one year in 2000 or 2001.

By the time the State filed its termination petition on December 1, 2011, Anthony had been released from Clarinda and was residing at the Fort Des Moines Correctional Facility. He had just three supervised visitations with A.R. between the time he was paroled on November 22, 2011, and the January 25, 2012 termination hearing. Anthony did not contribute to A.R.'s support because all of his earnings went to pay for his stay at the correctional facility.

At the termination hearing, the father admitted he was unable to care for A.R., but requested an additional six months to show he could comply with the court's expectations and safely parent the child. At the hearing, the father also denied having abused A.R.'s half-sibling, H.S., despite prior juvenile court involvement and findings that he perpetrated the abuse.[1] Anthony blamed his thirteen-year-old daughter for the injuries to H.S.

---

[1] Anthony's abuse of H.S. was discussed in the mother's appeal from the termination of her parental rights to her two older daughters, *In re H.S.*, 805 N.W.2d 737, 738 (Iowa 2011).

In its February 20, 2012 order, the juvenile court terminated the father's parental rights on five grounds. *See* Iowa Code §§ 232.116(1)(b), (d), (g), (h), and (*l*) (2011). It found termination was in A.R.'s best interest and no compelling reason existed to maintain the parent-child relationship. The court left A.R. in her mother's care and continued the matter under the juvenile court's jurisdiction. The father now appeals.

II. Scope and Standard of Review.

We review termination orders de novo. *In re P.L.,* 778 N.W.2d 33, 40 (Iowa 2010). While we are not bound by the juvenile court's findings of fact, we accorded them weight, especially in assessing witness credibility. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We will uphold an order terminating parental rights if the record contains clear and convincing evidence to support the grounds identified in Iowa Code section 232.116(1). *Id.* Evidence is "clear and convincing" if no "serious or substantial doubts" exist as to the legal conclusions that can be drawn from it. *Id.*

III. Analysis.

We first consider Anthony's contention that the State failed to prove the grounds for termination by clear and convincing evidence. The juvenile court terminated his parental rights under sections 232.116(1)(b), (d), (g), (h), and (*l*). To affirm, we need only find termination to be appropriate under one of these sections. *See In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

Termination is proper under section 232.116(1)(h) where the State proves the following elements by clear and convincing evidence:

> (1) The child is three years of age or younger.
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (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.
> (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.

The father does not dispute the State's proof of the first three elements, but contends the State offered insufficient evidence to show A.R. could not be safely placed in his custody.

Clear and convincing evidence supports termination under section 232.116(1)(h). The father was residing in a correctional facility as a condition of his parole at the time of termination. Due to rules imposed by the Fort Des Moines facility, Anthony could not even visit with A.R during the week, let alone assume custody of her. His sobriety was untested outside the confines of correctional facilities. And because he had not acknowledged his abuse of A.R.'s half-sibling, Anthony had not received any services to address such violent behavior.[2] When asked at the termination hearing if he was in a position to have the child returned to his care at the present time, Anthony admitted he was not. The record supports termination under section 232.116(1)(h).

---

[2] We are mindful that our supreme court has held that a juvenile court may not compel a parent to admit criminal responsibility for a child's injuries as a prerequisite to regaining custody of that child. *See In re C.H.,* 652 N.W.2d 144, 149 (Iowa 2002) (explaining that State may require parents to undergo treatment so long as it does not require admission of guilt). In this case, the juvenile court did not run afoul of *C.H.* by focusing on Anthony's continuing danger to A.R. as a result of his refusal to engage in remedial services in the wake of the founded abuse of H.S.

In the alternative, Anthony asks for an additional six months to prove his stability as a parent. Although the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," the legislature built that patience into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). The juvenile court found that Anthony squandered the time he had to establish a relationship with A.R. Not only was his incarceration "a direct result of voluntary decisions that he made," but "there was much more he could have done to be part of her life while incarcerated, especially since having been moved to a halfway house."

We agree with the juvenile court's assessment that the father would need more than six months to demonstrate his commitment to being drug free given his twenty-year history of substance abuse and his inability to maintain sobriety following treatment in the past.

We likewise find termination is in A.R.'s best interest. In considering whether to terminate, "the court shall give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child." Iowa Code § 232.116(2); *P.L.*, 778 N.W.2d at 39. Anthony has provided little mental or emotional support to A.R., having only visited with her on three occasions in her entire life. In addition, he has not provided financial assistance to meet his daughter's needs. *See In re H.S.*, 805 N.W.2d 737, 749 (noting that nonpayment of support may be "relevant information about the parent's ability to successfully parent"). As the juvenile court found, Anthony is a father "in name

only." While the benefit to A.R. of maintaining the father-child relationship is marginal, the risk to her safety is high—given the strong evidence of Anthony's physical abuse of a half-sibling, who was about the same age as A.R. is now, and his disinclination to admit that abuse. Anthony's substance abuse problem also poses a threat to A.R's safety. No compelling interest weighs in favor of preserving Anthony's parental rights.

The father argues termination was not necessary because A.R. remains in the care of her mother. *See* Iowa Code § 232.116(3)(a). However, "[a]n appropriate determination to terminate a parent-child relationship is not to be countermanded by the ability and willingness of a family relative to take the child. The child's best interests always remain the first consideration." *In re C.K.*, 558 N.W.2d 170, 174 (Iowa 1997). Given the record before us, we find no cause to reverse the termination order.

AFFIRMED.