IN THE COURT OF APPEALS OF IOWA

No. 2-647 / 12-1058
Filed August 8, 2012

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

C.A., Father,
Appellant,

R.S., Mother,
Appellant.

Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

A mother and a father separately appeal the termination of their parental rights. **AFFIRMED.**

Sara Strain Linder of Tindal Law Office, Washington, for appellant-father.

Joan M. Black, Iowa City, for appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Alan Ostergren, County Attorney, and Korie L. Shippee, Assistant County Attorney, for appellee.

Mark J. Neary, Muscatine, attorney and guardian ad litem for minor child.

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

DANILSON, J.

Rose is the mother, and Chris is the father, of K.A., born in 2005. The parents each appeal from the termination of their parental rights. Despite three and one-half years of intensive services and education, the mother is unable to follow through with K.A.'s dietary guidelines and fails to provide proper supervision sufficient to keep the child safe and healthy. The father has not progressed beyond supervised visits and did not request that he be considered a placement for the child until the termination hearing. Because statutory grounds for termination exist, termination is in the child's best interest, and no consequential factor weighs against termination, we affirm.

I. Background Facts and Proceedings.

The underlying juvenile case began through voluntary services with the Department of Human Services (DHS) in December 2008 when the child was three years old. The child was initially brought to DHS's attention due to a concern that the child was not being provided appropriate clothing. Specifically, it was alleged that she was wearing adult shorts, no socks or shoes, and no coat when she was outside in six-degree weather. In the process of a child abuse investigation, it was determined both parents are intellectually challenged and receive disability benefits. It was also learned K.A. was morbidly obese—she weighed 117 pounds at age three years and nine months old—and that K.A.'s

weight had been a concern of the child's doctor since K.A. was about one year old.[1] DHS offered services on a voluntary basis.

The family was encouraged to follow a restricted diet for K.A. and engage in exercise with her. They were offered numerous services, including parenting and nutritional education, and membership to the "Y," protective daycare on a voluntary basis. Unfortunately, K.A. continued to gain weight despite ongoing efforts by DHS and being closely monitored by her doctor. Chris and Rose did not follow through with services offered by DHS.

On June 2, 2009, a petition was filed alleging K.A. was a child in need of assistance (CINA). At the subsequent July 20, 2009 hearing, Rose and Chris stipulated K.A. was in a CINA and an adjudicatory order was filed. The juvenile court noted in the order that K.A., age four, weighed 129 pounds and

> [d]espite the receipt and offer of services for the local Y program regarding exercise and the offer of a dietician, the parents did not provide adequate and/or proper nutrition and did not follow medical and dietician recommendations for proper care and supervision of the child's eating and developmental issues. The child has been diagnosed with morbid obesity and obstructive sleep apnea based partially on her obesity. Her fine motor skills are obstructed due to her inability to grasp and manipulate objects as a result of her obesity. There is no medical cause for the child's obesity.

K.A. remained in the care of her parents and services were to continue. But the parents failed to cooperate with meal planning, nutrition, and exercise for K.A., who continued to gain weight.

On August 28, 2009, a dispositional order placed K.A. in the care of an aunt. Shortly after the dispositional hearing, there was reported an incident of

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[1] The doctor stated the family had been offered multiple services, which had been unsuccessful.

domestic violence causing injury to Rose, at which time the couple's son, S.A. age two, was present.[2] A protective order prohibited Chris from contacting Rose, but he subsequently violated the order and spent some time in jail.

K.A. began to lose weight in her aunt's care. The parents, particularly Rose, participated in services designed to teach them about the appropriate foods for K.A. and how to meet her health needs. Chris was less involved, and in the fall of 2009, he was imprisoned on other matters. He was released in October 2010.

In March 2010, weighing about 115 pounds, K.A. was placed back with Rose. Unfortunately, K.A.'s aunt, who had often monitored Rose, left the state. K.A. began gaining weight at an accelerated rate again, despite continued services. K.A. was removed from the mother's care in August 2011. K.A. has been in foster care since and has again lost weight (going from 126 pounds to 76 pounds in about six months).

While the father was in prison, the mother began having a new relationship with a person who was a sex offender. Despite repeated efforts to educate Rose to keep that person away from K.A., Rose continued to allow the offender to have access to K.A., particularly during the unsupervised portions of partially-supervised visits. In September of 2011, the child reported that she had been sexually abused by the offender.

Both parents continued to participate in visits with their daughter, with a major issue in all visits being the preparation of meals and monitoring the food

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[2] A founded child abuse report resulted, and S.A. was later adjudicated a CINA. However, S.A. is not affected by this appeal.

intake of the child. While both parents can somewhat verbalize the goals, they often do not implement them. They still have some inappropriate food available for the child, and they (particularly the mother) do not participate in exercise activities with the child. K.A. also has mental limitations that require additional attention, supervision, and services.

A petition to terminate both parents' parental rights was filed. Following a hearing, at which Chris asked that he be considered as a possible placement, the court entered a ruling terminating parental rights pursuant to Iowa Code section 232.116(1)(f) (2011). The parents separately appeal.

II. Scope and Standard of Review.

We conduct a de novo review of termination of parental rights proceedings. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). Although we are not bound by the juvenile court's findings of fact, we do give them weight, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under section 232.116. *Id.* Evidence is considered "clear and convincing" when there are no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.*

III. Analysis.

Iowa Code chapter 232 termination of parental rights follows a three-step analysis. *See In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). The court must initially determine whether a ground for termination under section 232.116(1) is

established. *Id.* If a ground for termination is established, the court must next apply the best-interest framework set out in section 232.116(2) to decide if the grounds for termination should result in a termination of parental rights. *Id.* If the statutory best-interest framework supports termination of parental rights, the court must finally consider if any statutory exceptions or factors set out in section 232.116(3) weigh against termination of parental rights. *Id.*

A. Grounds for Termination.

The juvenile court terminated parental rights pursuant to Iowa Code section 232.116(1)(f), which provides that termination may be ordered when there is clear and convincing evidence a child over the age of four who has been adjudicated a CINA and removed from the parents' care for the last twelve consecutive months cannot be returned to the parents' custody at the time of the termination hearing.

1. Father's appeal. The father argues there is not clear and convincing evidence K.A. could not be returned to his care at the present time. We disagree. We first note that until the termination hearing, Chris did not state he wished to be considered as a possible placement for the child. And, despite more than three years of services, the father never progressed beyond supervised visitation. He testified he had never parented K.A. alone. While the father has recently made some strides, he has progressed only to preparing some meals for K.A. as part of a fully-supervised visitation program. We agree with the juvenile court's assessment: "If returned to either parent, the child would be subject to adjudicable harm, including the child being imminently likely to

suffer harmful effects . . . . In short, the same harm would be present that originally supported adjudication."

We also reject the father's contention that the State has failed to make reasonable efforts for reunification. Chris did not participate in services consistently until termination was imminent. He was not involved with K.A. while he was incarcerated. The father acquiesced in the mother's efforts to have K.A. returned to her—he did not seek placement of the child in his care until the termination hearing. Under these circumstances, we do not find the State failed to make reasonable efforts. *See In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000) (discussing reasonable efforts and noting that "our focus is on the services provided by the state and the response by [the parent], not on services [the parent] now claims the DHS failed to provide").

2. *Mother's appeal.* The mother does not contest that the statutory factors have been met, so we need not address this step with respect to her. *See P.L.*, 778 N.W.2d at 40.

B. Factors in Termination.

Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of section 232.116(2). *Id.* at 37. Here, both parents contend that termination of their parental rights is not in K.A.'s best interests. In determining the child's best interests, this court's primary considerations are "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." *Id.* Upon our de novo review, we

conclude the best placement for furthering K.A.'s long-term nurturing and growth is with an adoptive family who can meet her physical, medical, and dietary needs. K.A. has endured more than three years of juvenile court involvement and services offered to her parents, neither of whom has progressed sufficiently to provide her appropriate supervision and care. *See In re J.K.*, 495 N.W.2d 108, 110 (Iowa 1993) (noting the court must consider what the future likely holds for the child, insight for which may be gained from a parent's past performance). "It is well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination . . . by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child." *P.L.*, 778 N.W.2d at 41.

C. Exceptions or Factors against Termination.

Finally, we give consideration to whether any exception or factor in section 232.116(3) applies to make termination unnecessary. The factors weighing against termination in section 232.116(3) are permissive, not mandatory. *See In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). In this case, the mother relies upon the exception found in section 232.116(3)(c): "There is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship."

The court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply the factors in this section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). We do not find such evidence exists here. While we acknowledge

and give weight to the bond between K.A. and Rose, we do not find that termination would be detrimental to K.A. based solely on the parent-child relationship. We therefore conclude no exception or factor in section 232.116(3) applies to make termination unnecessary.

D. Extension.

We also adopt the juvenile court's findings that a six-month extension is not warranted here. The parents have had more than three years to achieve reunification and have made little progress. More time cannot be taken from K.A. *See In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) ("Once the limitation period lapses, termination proceedings must be viewed with a sense of urgency.") Furthermore, although a relative has recently shown interest in placement, the child is not currently in the custody of a relative. The juvenile court properly denied the extension, yet ordered a home study of the relative for future placement or adoption.

IV. Conclusion.

There is clear and convincing evidence that grounds for termination exist under section 232.116(1)(f), termination of parental rights is in the child's best interests pursuant to section 232.116(2), and no consequential factor weighing against termination in section 232.116(3) requires a different conclusion. We affirm termination of each of the parent's parental rights.

AFFIRMED.