IN THE COURT OF APPEALS OF IOWA

No. 2-815 / 12-1059
Filed September 6, 2012

**IN THE INTEREST OF B.A.L., H.J.L., J.R.L., and T.D.L.,
Minor Children,**

G.L.L., Mother,
Appellant,

J.R.L. Sr., Father
Appellant,

T.D.L., Minor Child,
Appellant,

J.R.L. Jr., Minor Child,
Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Gary K. Anderson, District Associate Judge.

A mother, father, and children separately appeal the order terminating mother and father's parental rights. **AFFIRMED AS TO ALL APPEALS.**

Michael Hooper, Council Bluffs, for appellant mother.

Roberta J. Megel, Council Bluffs, for appellant father.

Scott D. Strait, Council Bluffs, for appellant minor child.

DeShawne L. Bird-Sell, Glennwood, for appellant minor child.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant Attorney General, Matthew Wilber, County Attorney, and Eric Strovers, Trial Counsel, Assistant County Attorney, for appellee State.

Mandy Whiddon of Primmer Law, Council Bluffs, guardian ad litem, and Phil Caniglia, Council Bluffs, attorney for minor children.

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

VOGEL, P.J.

A father, Joseph, and mother, Gina, separately appeal the district court's order terminating their parental rights to their children, B.L., born 2005; H.L., born 2004; J.L., born 2001; and T.L., born 2000. The two oldest children, J.L. and T.L., both individually appeal the termination of their parents' parental rights. On de novo review, *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010), we affirm on all appeals.

I. Background Facts and Proceedings

The children were removed from the care of their parents on July 20, 2005, because of their parents' use of methamphetamine. They were returned to their parents' care from December 8, 2006, until April 10, 2011, when they were taken into protective custody by Council Bluffs Police Department due to a domestic violence dispute between their parents, coupled with their mother's report to the police that she was unable to care for them. At that time, both parents were unemployed, the entire family lived in a one bedroom apartment, and the children suffered from chronic lice. A petition alleging the children to be in need of assistance (CINA) was filed shortly thereafter, and the children were adjudicated as such on May, 27, 2011. Family Safety, Risk, and Permanency (FSRP) services and random drug screens for the parents were provided for in the adjudicative order.

On December 6, 2011, a review modification hearing was held. At that hearing, the court found the parents had made little, if any progress. For example, Gina had yet to obtain a mental health evaluation and Joseph had not participated in any anger management counseling or substance abuse

counseling. Joseph even made a statement to his caseworker that he had no intention of quitting drinking.

A termination petition was filed on February 2, 2012, and a hearing was held on April 5, 2012. The juvenile court summarized the parents' argument before it as such: "since they have resisted all efforts for services that somehow they are successful and the children can be returned home," because there is no evidence presented by the State that the children cannot be returned. In spite of the two older children's resistance, the juvenile court found clear and convincing evidence to terminate the parents' parental rights. Joseph, Gina, as well as the two older children, T.L. and J.L., all separately appeal.

II. Parents' Appeals

Gina and Joseph's parental rights were both terminated under Iowa Code section 232.116(1)(d) (adjudicated CINA for physical abuse, circumstances continue despite services), and (e) (child CINA and removed for six consecutive months, clear and convincing evidence that parents have not maintained contact, and have made no reasonable efforts to resume care) (2011). Joseph's rights were also terminated under Iowa Code section 232.116(1)(*l*) (child CINA, parent has substance abuse problem, child cannot be returned home within a reasonable time). The grounds for termination must be proved by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). We find there is clear and convincing evidence that the adjudicative harm still exists as neither parent has maintained significant and meaningful contact with the children during the previous six consecutive months nor have they made reasonable efforts to resume care of the children despite being given ample

opportunity to do so. Further, Joseph has made no effort in confronting his substance abuse problem and there is clear and convincing evidence that the children cannot be returned to his care because of his substance abuse.

A. Mother

While both Joseph and Gina were fairly consistent with their visitations, Iowa Code section 232.116(1)(e)(3) requires more than just visitation, it requires "continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child and requires that the parents establish and maintain a place of importance in the child's life." Both parents have failed to satisfy this statutory requirement.

Gina has been offered services since April 2011, and has largely failed to, or refused to, participate in services other than supervised visitation. In the year between the children's removal and the termination hearing, Gina never progressed past supervised visits. The Department of Human Services (DHS) caseworker testified that the parents could have progressed to unsupervised visits if they had progressed with drug treatment, mental health treatment, and completed negative UAs, none of which happened. Gina claimed she completed a mental health evaluation, but she never showed the results to DHS,[1] nor has

[1] Gina testified that she submitted to a mental health evaluation in the end of February 2012, but chose not to have the results sent to DHS. It was not until the day before the termination hearing that Gina signed a release to produce a copy for her attorney. However, Gina did not produce the evaluation for the hearing, merely an intake form. Gina has not completed any of the follow up therapy that she claims was recommended in the February evaluation but claims she is taking a medication that was prescribed to her during the mental health evaluation.

there been any evidence of follow up care. Gina testified that she would not talk with the DHS worker because she "didn't like her."

The DHS caseworker, in recommending termination, testified "[t]he parents have had ample opportunity to follow through with recommendations, and it's taken a very long time for them to—besides visitation—to complete . . . . That does not lead me to believe that these children would be safe to return home." This DHS caseworker testified that she does not "believe the parents have displayed a genuine effort to complete the responsibilities prescribed in [her] case plan." Gina testified at the hearing she was not employed and did not have housing for the children. Gina further testified that at the time of the hearing it was not in the best interests of the children to be returned to her care.

In addition to the fact that Gina has made little progress towards reunification, there were multiple incidents that occurred during the supervised visits that show both parents' inability to care for their children. The FSRP service provider testified that just two months prior to the termination hearing, during a supervised visit, J.L. became upset over a game and Gina began "yelling and swearing and became upset" and "stormed out of the room." When the service provider attempted to de-escalate the situation, Joseph blamed the situation on J.L., started yelling, and also left the room.

There is no indication additional time would remedy the situation, especially due to Gina's refusal to participate with services. *See In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006) (stating that we look to the parent's past performances because it may indicate the quality of care the parent is capable of providing in the future). We therefore find that the State has satisfied its burden

of proving by clear and convincing evidence that the parental rights of Gina should be terminated as the statutory requirements of Iowa Code section 232.116(1)(e) have been satisfied.

B. Father

Much of the testimony from providers, and facts noted above, as to the statutory elements of Iowa Code section 232.116(1)(e) as they pertained to the termination of Gina's parental rights also apply to Joseph. While we only need to find one ground for termination exists to affirm, we feel compelled to address Joseph's substance abuse as evidence of his lack of desire to parent his children. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996) ("When the district court terminates parental rights on more than one statutory ground, we only need to find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm."). In addition to Iowa Code sections 232.116(1)(d) and (e), Joseph's parental rights were also terminated under subsection (*l*) (child CINA, parent has substance abuse problem, child cannot be returned home within a reasonable time). We affirm the termination of Joseph's rights under subsection (*l*) in addition to finding clear and convincing evidence to terminate under paragraph (e) as discussed above.

One DHS worker testified that the children told her they were afraid of their father when he would drink because he would get extremely angry. Joseph's refusal to participate in alcohol monitoring, or cease his alcohol consumption are illustrated by two instances where it was suspected that Joseph was drinking alcohol during the supervised visits. The first occurred when J.L. took a drink of Joseph's pop and said it didn't taste right. The service provider

suspected it contained alcohol. The second was a separate instance when during a visit J.L. picked up Joseph's cup and stated that it smelled like toothpaste. The provider smelled the cup and reported it smelled of alcohol. The service provider momentarily left to call her supervisor and upon her return she witnessed Joseph "physically in [J.L's] face and yelling at him." When the provider left the home with the children, Joseph followed and told the provider to never bring J.L. back to his home and he never wanted to see him again. During both these instances, Joseph had the opportunity to provide a drug and alcohol screen to disprove the workers' suspicion of alcohol use, but refused.

Joseph only completed two out of twenty-one drug and alcohol screens. One of the drug and alcohol screens he did provide came back positive, indicating extremely high alcohol levels. Joseph did not complete the chemical dependency program he was offered. While Joseph has conveyed that he is no longer drinking, there was no evidence offered to support this substantial and critical asserted change. We agree with the juvenile court's rejection of Joseph's argument which goes something like this: "Since he has not complied, there is no proof that he is not an adequate parent and the children should be returned." When expectations are set forth in a court order, the parent must demonstrate compliance to enable the court to measure progress and make a determination regarding the safety of the children. *See In re J.L.P.*, 449 N.W.2d 349, 352 (Iowa 1989) (finding the failure of the parents to comply with DHS's case plan cannot be an independent ground to terminate parental rights, however, that failure "can be considered evidence of the parent[s'] attitude[s] toward recognizing and

correcting the problems which resulted in the loss of custody"). We affirm the termination of Joseph's parental rights under Iowa Code section 232.116(1)(*l*).

C. T.D.L. and J.R.L.'s Appeal

Having affirmed the termination of the mother's and father's parental rights, we next address T.L's and J.L.'s issues on appeal. The children each raise Iowa Code sections 232.116(2)(b)(2) and 232.116(3)(b) and (c), to contest the termination. They have no standing to appeal the termination under section 232.116(1), the statutory grounds upon which their parent's rights were terminated.[2] *See In re D.G.*, 704 N.W.2d 454, 459 (Iowa Ct. App. 2005) (finding that in termination of parental rights proceedings each parent's parental rights are separate adjudications, both factually and legally, and therefore must be appealed separately) (citing generally Iowa Code § 232.109 *et seq*).

Iowa Code section 232.116(2)(b)(2) provides that when a child is in foster care, the court shall review "[t]he reasonable preference of the child, if the court determines that the child has sufficient capacity to express a reasonable preference." We find that neither child's preference is reasonable. T.L. has expressed fear of her father because he has hit the children. T.L. has shown frustration with her parents' lack of desire to work towards meeting the goals of the case plan. J.L.'s therapist expressed concern that the parents' angry outburst with him, such as the ones discussed above, increase J.L.'s anxiety and depression when J.L. already has a lot of anger and self-blame. Placement in an

[2]T.L. also appealed the findings the district court made under Iowa Code sections 232.116(1)(d), (e), and (*l*).

unsafe environment is not reasonable, and therefore it was appropriate for the district court to reject T.L. and J.L's preference, and we agree.

Both T.L and J.L. also seemingly contend that Iowa Code section 232.116(3) is applicable. This section provides:

> The Court need not terminate the relationship between the parent and child if the court finds any of the following:
>
> . . . .
>
> (b) The child is over ten years of age and objects to the termination.
>
> (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.

We find this argument unpersuasive. A strong bond between parent and child is a special circumstance that militates against termination when the statutory grounds have been satisfied. Iowa Code § 232.116(3). However, this is not an overriding consideration, but merely a factor to consider. *In re Z.H.*, 740 N.W.2d 648, 652 (Iowa Ct. App. 2007) (citing *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998)). Our overall concern is the children's best interests. Here, the strong bond both T.L. and J.L assert exists between themselves and their parents is simply not strong enough to forestall termination for either child in this case. *See J.E* 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially) ("A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests."). While the parents state they love their children and they have a tight bond, they have failed to act accordingly by taking advantage of the services offered to reunify the family.

In addition to the parents, both T.L. and J.L. contend that termination is not in their best interests. Even when the evidence supports termination, we still

consider whether termination is in the children's best interests. *In re P.L.*, 778 N.W.2d 33, 37, 40 (Iowa 2010) (stating that even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of the child after a review of Iowa Code section 232.116(2)). The legislature adopted the standard in the belief that this period in limbo waiting for resolution must be reasonably limited because, "beyond the parameters of chapter 232, patience with parents can soon translate into intolerable hardship for their children." *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997).

As discussed at length above, termination is in both these children's best interests. The parents cannot currently, or in the foreseeable future, provide the children with the safe, nurturing environment they deserve, and we therefore agree with the district court's findings and affirm.

AFFIRMED AS TO ALL APPEALS.