IN THE COURT OF APPEALS OF IOWA

No. 2-816 / 12-1240
Filed September 19, 2012

IN THE INTEREST OF T.F.,
Minor Child,

T.F., Minor Child,
Appellant.

Appeal from the Iowa District Court for Monona County, Timothy T. Jarman, District Associate Judge.

A child appeals seeking reversal of the juvenile court's order dismissing the petition to terminate her parents' parental rights. **AFFIRMED.**

David A. Dawson, Sioux City, attorney and guardian ad litem for appellant minor child.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant Attorney General, Michael P. Jensen, County Attorney, and Ian McConeghey, Assistant County Attorney, for State, filing a statement of support for position of the guardian ad litem.

Jessica Noll of Deck Law L.L.P, Sioux City, for appellee mother.

Teresa O'Brien, Sioux City, for appellee father.

Considered by Vaitheswaran, P.J., and Potterfield and Bower, JJ.

POTTERFIELD, J.

A two-and-a-half-year-old child, adjudicated in need of assistance in August 2010, appeals from the dismissal of the State's petition for termination of parental rights. She argues the court erred in denying the State's petition, in finding the absence of reasonable efforts to reunify, and in finding termination of parental rights not in the best interests of the child. Both parents argue the court's ruling was correct and based on the record evidence. The State has filed a statement in support of the guardian ad litem's position. We affirm the dismissal of the termination petition.

I. Background Facts and Proceedings.

T.F., then six months old, came to the attention of the Department of Human Services (DHS) in April 2010 when the maternal grandmother (Tammy, who was providing the majority of the care for the child) took her to the doctor for a checkup, and a deep bruise in the child's groin was noted. During the subsequent child abuse investigation, the child's mother, seventeen-year-old R.S., admitted having caused the injury. Child protective services were offered.

A hearing on the State's child-in-need-of-assistance (CINA) petition was held on June 23, 2010. DHS case manager and social worker, Libby Bennett, met with Tammy and R.S. following the hearing to clarify that R.S. "was not to be left alone" with the child. T.F. was found to be a CINA by order dated August 13, 2010. The child was placed in the custody of DHS for placement with the grandmother and her husband, Lynn, with whom R.S. was residing. Family Safety, Risk, and Permanency (FSRP) services were ordered; as was paternity testing to determine if F.F., age eighteen, was the child's father.

A September 2010 mental health assessment noted R.S. minimized her abusive behavior toward her daughter and recommended she "begin examining how she deals with her irritability and anger, to take responsibility for her actions, and develop alternative coping skills." The treatment plan included that R.S. would begin attending a teen group each week and participate in individual sessions.[1]

A dispositional hearing was held on September 16, 2010.[2] Testing established F.F. was the biological father of T.F. The court ordered visits with the father commenced, including overnight visits on the weekend (in the residence where F.F. lived with his parents), and one visit during the week with an FSRP worker present. A family team meeting was held on September 30 at which F.F. stated he wanted to be a part of T.F.'s life and had his parents' support. R.S. was involved in mental health counseling and working with DHS and FSRP service providers on developing parenting skills. Both F.F. and S.R. attended a "Children Cope with Divorce" class in October.

The December 16 hearing was continued to January 20, 2011, because not all parties received the State's exhibits in advance of the hearing. A report to the court dated December 15, 2010, noted R.S. and F.F. had an on again, off again relationship; R.S. continued to struggle to put the child's needs before her own; R.S. was not attending mental health appointments; F.F. was unemployed, living with his parents, and working on his GED; F.F. "continues to struggle with

[1] A January 18, 2011 report from mental health center noted attendance at group meetings on 9/13/2010, 9/20, 10/4, 10/21, 12/13, 12/16, and 1/3/2011; and "no show" on 10/28, 11/04/2010, and 1/14/2011.

[2] The order of disposition, however, was not filed until November 12, 2010.

overall parenting"; and F.F. had difficulty communicating with FSRP worker. Case progress notes from December noted F.F. failed to confirm visits, and therefore did not have visits on December 1, 8, 22, or 29. F.F. also did not exercise his Christmas weekend visitation. A January 14, 2011 report to the court by Ms. Bennett noted F.F. had not seen his child since December 15 as he failed to confirm with the FSRP worker and had reportedly left town after Christmas.

On January 20, 2011, a review hearing was held.[3] The court observed that "the difficulties related to the failed Christmas visitation by [F.F.] with the child demonstrated to the court that both parents are immature and both lack good judgment." The juvenile court found T.F. continued to be a CINA and custody remained with DHS for relative placement. "Visitation by the parents with the child is encouraged, but the times and circumstances of the visitation shall be left to the discretion of DHS in consultation with the GAL pursuant to the schedule announced in open court." A case progress note indicates F.F. was to have visits every other weekend from Friday at 5 p.m. to Sunday at 7 p.m.; FSRP services ceased. F.F. cancelled his visit with T.F. scheduled for January 21.

A permanency hearing was scheduled for April 21. However, because "reports were not circulated in time" for review, the matter was continued until May 19. FSRP services were to resume for F.F. with a different worker. The father again received overnight visits with T.F. at the end of May 2011. On June

[3] The review order was not filed until March 17, 2011. The order stated the "focus of the testimony by the parents related a failed attempt by [F.F.] to have a visitation with the child at Christmas." An affidavit submitted noted the father had attempted to pick up the child for visitation, but could not locate the residence where the child was visiting with mother and grandmother.

12, 2011, the juvenile court filed a permanency order finding T.F. remained a CINA and continued removal was required. The court further concluded "reasonable efforts have been made and continue to be made to reunite the child with at least one of her parents." The court stated that despite continued lack of maturity and lack of interest on the mother's part,

> there are signs that both parents are becoming more mature and are actively participating in services to improve their parenting skills. If the parents continue to improve their parenting skills and their relationship with [T.F.], then there is hope that the placement of the child will be able to change in the near future.

The court thus granted a six-month extension to consider a modification of its permanency order pursuant to Iowa Code section 232.104(2)(b) (2011).

That same month, June 2011, F.F. and his seventeen-year-old girlfriend left Iowa and went to South Dakota. F.F. informed DHS he was going away on vacation for two weeks, however, he did not return to Iowa until August. While in South Dakota he did not contact his daughter or DHS. Upon his return in August, however, he did seek to resume visits with T.F., explaining he had gotten stuck in South Dakota. DHS case manager, Ms. Bennett, would not resume visits. F.F. also attempted to contact the guardian ad litem, but there was currently no guardian ad litem assigned on the case. He also attempted to contact the FSRP worker to have visits resume.

At a November 17, 2011, permanency review hearing F.F. testified he left Iowa because it was likely his home was going to be flooded. His girlfriend's father gave them a ride to his girlfriend's mother's home in South Dakota and was to return in two weeks to bring them back; but, due to money issues, he did

not retrieve them until August. F.F. did not have money or transportation to return to Iowa on his own.

Ms. Bennett testified she decided upon F.F.'s return to Iowa she would not allow him visitation. It was her testimony that he contacted her in August. At that point she told him she would talk to the guardian ad litem. Ms. Bennett further testified,

> The prior guardian at litem wasn't responding to e-mails and phone calls, and I knew from other hearings that she was not going to be working in this county any longer. I explained to [F.F.]—I didn't give him all that background. I explained to him that we were kind of in a flux with the guardian ad litems, that I would be speaking to the guardian ad litem as soon as we had one appointed. But at that point, he wouldn't have visits but I would express his desires to the guardian ad litem.

She did not speak to F.F. again until October, at which point she stated she would not allow visitation and that he would need to petition the court for a change of visitation.

> Due to his absence and I questioned his commitment at that point to be a parent. And I told him that I was concerned that he got to essentially abandon his role as a parent and get to take off without any responsibility and to allow him to just come back into [T.F.'s] life didn't seem fair to me.

On January 17, 2012, the court filed a permanency review order, which provides in part:

> The continued transfer of legal custody of the child is required by clear and convincing evidence that the child in interest cannot be protected from physical danger without a continued transfer of custody. [R.S.] made comments in the recent past suggesting that she might take the child and run. This attitude by the mother of the child, as well as her choice of a boyfriend [not F.F.] and other life choices, indicate a continuing lack of maturity and a lack of interest in the welfare of the child. [F.F.], the father of the child, took off for western South Dakota and was gone from the area for approximately two months. His explanations of why he

> went and why he didn't come back earlier, are at best, more evidence of bad judgment, selfishness, and a lack of real concern for the welfare of his child.
>
> Contrary to the findings of this court after the permanency hearing, there are no longer signs that both parents are becoming more mature. Instead, the opposite has occurred and both parents appear to have chosen a self-absorbed and immature lifestyle. There is no longer any reason to hope that the placement of the child will be able to change in the near future.
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> The child has a need for a secure and permanent placement. The court finds that reasonable efforts were made to achieve the previous permanency goal of reunification with numerous services offered to the parents. However, reasonable progress is not being made by the parents in achieving the permanency goal and in complying with the permanency plan.

The court therefore ordered the county attorney to institute termination of parental rights proceedings.

The State filed a petition to terminate parental rights on March 30, 2012. Hearing on the termination petition was held on April 19 and May 7, 2012.

On July 6, 2012, the juvenile court found T.F. remained a child in need of assistance under Iowa Code section 232.2(6)(c)(2) and (6)(n). Despite these findings, the juvenile court ruled "termination of parental rights is not in the child's best interests at this time." The court explained:

> 12. The trial made clear not only the failings of the parents, but of the failings of the system as a whole with respect to this child and her parents. In part, this was caused by significant changes of people involved in the C.I.N.A. case. There have been at least three different GAL/attorneys for the child. The assistant county attorney involved in the case changed while the case was in progress. The court notes the appearance of at least four different DHS employees during the course of the C.I.N.A. case as well as multiple service providers. Many of the current critical participants in this proceeding have made no attempt to contact one or both parents outside of court hearings; due in large part to the decisions of their predecessors.
>
> 13. The court also accepts blame in having left too much discretion to previous caseworkers and previous guardians ad litem

with respect to visitation and other issues. However, more vigorous action by the parents and their counsel would have been helpful.

14. There can be no doubt that [F.F.]'s decision to go to western South Dakota for two months last summer was foolish. However, in light of the more detailed information now available to the court related to that entire situation, the court finds that it was a mistake to have stopped his visitation when he returned to the area.

15. Although [F.F.] has not seen the child since May of 2011, that is due in large part to his decision to go to South Dakota for two months in the summer of 2011. After his return to Monona County, he was denied the opportunity for further visitation. One of the previous DHS caseworkers suspended visitation between [F.F.] and the child when he returned from South Dakota.

16. Although she is less mature than the child's father, [R.S.] was offered the chance by DHS to spend Easter with the child in interest at the home of the child's caretaker. The child's caretaker is [R.S.]'s mother, a grandmother of the child in interest. Nonetheless, [R.S.] did not take advantage of this opportunity.

17. The court now finds that there is reason to believe that at least one of the parents has begun to make progress toward maturity. [F.F.] is involved in a relatively stable relationship with a slightly older woman, Stephanie [L.]. Ms. [L.] has two children from an earlier relationship, one older and one fairly close in age to the child in interest. She testified that [F.F.] does well with her children.

18. The court now finds that the State has failed to prove that the parents were offered sufficient services to correct the circumstances which led to the adjudication of the child as a child in need of assistance.

19. The court now finds that the State has failed to prove that the receipt of further services by the parents would not correct the conditions that led to the adjudication of the child as a child in need of assistance.

20. The court now finds that the State has failed to prove that the welfare of the child would be best served by the termination of her parents' rights.

21. The court finds that opportunities for supervised visitation with the child and other services should now be made available to the parents. The court recognizes that the resumption of visitation will not be easy. Therefore, the parents and everyone involved are cautioned to use discretion and care during visitation sessions. The adults involved should avoid comments that will be distressful to the child. The parents and the child's caretakers should listen to advice from the service providers in this regard.

22. The facts found establish that the least restrictive, most family like and appropriate disposition available in the circumstances at this time, which is in the best interests of the child in interest, is that the care, custody and control of [T.F.] shall

> remain with the Iowa Department of Human Services for continued placement in relative care or with another suitable person.

The juvenile court dismissed the petition for termination of parental rights.

The child appeals from the juvenile court's dismissal of the termination petition.

II. Scope and Standard of Review.

Our review of termination of parental rights proceedings is 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 do give them weight, especially in assessing the credibility of witnesses. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

III. Analysis.

> Termination of parental rights under chapter 232 follows a three-step analysis. *In re P.L.*, 778 N.W.2d at 39. First, the court must determine if a ground for termination under section 232.116(1) has been established. *Id.* If a ground for termination is established, the court must, secondly, 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.* Third, if the statutory best-interest framework supports termination of parental rights, the court must consider if any statutory exceptions set out in section 232.116(3) should serve to preclude termination of parental rights. *Id.*

In re D.W., 791 N.W.2d 703, 706-07 (Iowa 2010).

Here, the court found the State failed to prove its case for termination by clear and convincing evidence. First, the court found the State had failed to prove that the receipt of further services by the parents would not correct the conditions that led to the adjudication of the child as a child in need of assistance. As for reasonable efforts, in *C.B.*, 611 N.W.2d at 493-94, our supreme court observed that "the reasonable efforts requirement is not viewed

as a strict substantive requirement of termination. Instead, the scope of the efforts by the DHS to reunify parent and child after removal impacts the burden of proving those elements of termination which require reunification efforts." Thus, the State must show reasonable efforts as a part of its ultimate proof the child cannot be returned to the care of a parent safely. *Id.* at 494. The court here found that proof lacking in the refusal of visits with the father following the father's return from South Dakota.

Second, the court found the State had failed to prove that termination was in the child's best interests.

On both grounds, in our de novo review, we agree that clear and convincing evidence was lacking on those two issues. Because the court's order dismissing the petition was required by Iowa Code section 232.117(2), once it found the facts did not support termination, we affirm.

AFFIRMED.