IN THE COURT OF APPEALS OF IOWA

No. 2-949 / 12-1603
Filed October 31, 2012

IN THE INTEREST OF B.E. AND A.E.,
Minor Children,

R.E., Mother,
Appellant,

D.K., Father,
Appellant.

Appeal from the Iowa District Court for Poweshiek County, Randy S. DeGeest, District Associate Judge.

A mother and a father separately appeal the orders terminating their parental rights. **AFFIRMED ON BOTH APPEALS.**

Michael S. Fisher of Fisher Law Office, Oskaloosa, for appellant mother.

Jennifer Meyer of Jennifer Meyer Law, PC, Marshalltown, for appellant father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, and Rebecca Petig, County Attorney, for appellee State.

Dustin Hite, Oskaloosa, attorney and guardian ad litem for minor children.

Considered by Potterfield, P.J., and Danilson and Tabor, JJ.

POTTERFIELD, P.J.

A mother and a father separately appeal the order terminating their parental rights to their twins, B.E. and A.E., born in September 2011. Because grounds for termination exist, reasonable efforts at reunification were made, and termination is in the children's best interests, we affirm on both appeals.

I. Background Facts and Proceedings.

These juvenile proceedings do not exist in a vacuum. We recently affirmed the termination of each parent's parental rights to another child, M.E., the older sibling of the two children before the court now. *See In re M.E.*, No. 12-0772, 2012 WL 2819399 (Iowa Ct. App. July 11, 2012).

We need not reiterate all that we said there. It is sufficient to note that the mother, Rhonda, had older children[1] removed from her care in June 2010 because she left them unsupervised with David, a previously registered sex offender, in violation of a Department of Human Services (DHS) safety plan. "David has sexually abused at least three children—twin six-year-old girls, for whom he babysat, and his own infant daughter."[2] *Id.*, 2012 WL 2819399, at *3. There we observed that "David has denied or minimized the abuse in discussions with his family, law enforcement, and his own therapist." *Id.* We noted:

> David's April 2011 psychosexual evaluation [by David B. Greenwood, Licensed Independent Social Worker] indicated he presents "at least a moderate level of risk to younger children" and advised that David should not be allowed semi-supervised or

[1] Rhonda has three children whose biological father is her husband, to whom she is still married, and three children whose biological father is David—M.E., B.E., and A.E. The three oldest children were placed in their father's custody when they were removed from Rhonda's custody.

[2] David's parental rights to this daughter, H., have been terminated. He also has another daughter, B., by another woman.

> unsupervised visitation with M.E. or Rhonda's other children. The evaluator believed David was "minimally disclosing information and not being fully cooperative" with the evaluation. The evaluator opined David "is not currently safe to be left alone around younger children." That opinion was based on David's guarded responses, his history of minimizing his sexual offending, his abuse of his own daughter, his acts of "fleeing from county to county and violating registering for the sexual offender registry in several counties," his history of substance abuse, prior physical abuse of children, and overall criminal record.

Id. at *4

We also observed that Rhonda lacked insight into the risks to her children in maintaining a relationship with David, and that she continued her relationship with him despite the case permanency plan mandate that she sever all ties with him. *See id.* at *4. We concluded there was clear and convincing evidence to support termination of each parent's rights pursuant to Iowa Code section 232.116(1)(h) (2011),[3] *id.* at *3-4; the State had made reasonable efforts at reunification, *id.* at *5; and termination was in the child's best interests. *See id.*

During the pendency of the CINA proceedings relating to M.E., Rhonda gave birth to twins, B.E. and A.E. The infants were removed from Rhonda's custody in September 2011 when they were one day old. B.E. and A.E. were adjudicated CINA on February 2, 2012, and have remained in foster care throughout these proceedings. They are well cared for by, and bonded to their pre-adoptive foster family.

A petition to terminate parental rights with respect to the twins was filed on May 9, 2012, pursuant to Iowa Code section 232.116(1)(h). At the termination

[3] Pursuant to section 232.116(1)(h), the court may terminate parental rights where a child three years or younger previously adjudicated a child in need of assistance (CINA) has been removed from the custody of the parents for at least six of the last twelve months and cannot be returned to the parents' custody at the present time.

hearing (which began on July 17), based upon the prior termination of the parents' rights to M.E., the State sought to amend the petition to add another statutory ground for termination of parental rights—section 232.116(1)(g).[4] After the hearing, the juvenile court terminated each parent's parental rights pursuant to both statutory grounds.

Both parents now appeal. The father argues the State failed to make reasonable efforts to reunify the children with the parents and "[t]he State . . . adopted an adversarial position that prevented the parents from reunifying with their children." The mother also contends reasonable efforts were not made to reunify her with her children. In addition, she argues there is not sufficient evidence that she lacked the ability or willingness to respond to services to correct the problem that led to the termination of her rights to another child, or that the children could not be returned to her care. Finally, she contends termination of parental rights was not in the children's best interests.

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[4] Iowa Code section 232.116(1)(g) allows for termination of parental rights if all the following have occurred:

> (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
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> (2) The court has terminated parental rights pursuant to section 232.117 [concerning disposition after a termination hearing] with respect to another child who is a member of the same family or a court of competent jurisdiction in another state has entered an order involuntarily terminating parental rights with respect to another child who is a member of the same family.
>
> (3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.
>
> (4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

II. Scope and Standard of Review.

We review termination decisions de novo. *See In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We give weight to the juvenile court's findings of fact, particularly matters of witness credibility, but we are not bound by them. *Id.*

III. Discussion.

At the termination hearing in these proceedings, Rhonda acknowledged only that David had pleaded guilty to sexually abusing one child several years prior. She continues to believe, however, he poses no risk to his own children, despite a previous founded abuse report of sexual abuse of his own infant daughter. Rhonda states she would protect her children if they were returned to her care.

David's therapist, Charles Camp, testified that David had made progress in therapy; presented a low risk to reoffend; and now could be allowed unsupervised time with his children, so long as he not diaper or bathe them and not hold them on his lap. The therapist stated, "I don't really see [David] as a high risk to either one of the children and mainly that's because Rhonda is very protective and because he's expressed a great deal of emotional connection to these children." The counselor's opinions as to the risk David posed to B.E. and A.E. are of limited value in light of the counselor's reliance on David's minimization of his own behavior[5] and a faulty premise for the cause of the sexual abuse.[6]

[5] Based upon David's self-reports, the counselor stated he did not believe David previously had sexually abused his own infant daughter.

[6] The counselor opined David's sexual abuse of the six-year-old twins was the result of sexual attraction. At the termination hearing, however, and for the first time, David

"It is vital in a juvenile matter the parent(s) recognize abuse occurred. '[T]he requirement that the parents acknowledge and recognize the abuse before any meaningful change can occur is essential in meeting the child's needs.'" *In re T.J.O.*, 527 N.W.2d 417, 421 (Iowa Ct. App. 1994) (quoting *In re H.R.K.*, 433 N.W.2d 46, 50 (Iowa Ct. App. 1988)).

This family has been offered numerous services for more than two years—since before the birth of these two children. There is clear and convincing evidence that each parent continues to lack the ability or willingness to respond to services that might correct the situation. David continues to minimize his abuse. Rhonda continues to be unwilling or unable to acknowledge the risk of harm David poses to her children. We adopt the following finding of the juvenile court:

> David continues to pose a risk to the safety of both children. David has a long history of sexual abuse, both on nonrelatives as well as on his own infant daughter. David's story about the founded abuse report and subsequent termination of his parental rights as to his own daughter [H.] does not become more believable just because he keeps repeating it. David also has multiple founded abuse reports, including "smacking" a child in the mouth for using inappropriate language, as well as smoking marijuana in front of a child. David admits the physical abuse was wrong, but has provided no proof that he has addressed the issues that caused the abuse in the first place. In court, David has tried to minimize the marijuana incident because the child was seventeen years old. Even David admitted that he would not allow a sex offender to be around his daughter. David continues to pose a substantial risk to the twins if they were returned to the parents' custody.

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testified his sexual abuse of those twins was out of vengeance because their mother refused to have a sexual relationship with him. Since therapy never addressed this motivation for sexual abuse, it is difficult to have confidence in the counselor's risk assessment.

We conclude that in spite of reasonable efforts by DHS,[7] B.E. and A.E. remain at risk of being sexually or physically abused by David, and Rhonda cannot appreciate and protect them from this threat. Because the children cannot be returned to either parent's custody safely, the State proved the statutory ground for termination pursuant to Iowa Code section 232.116(1)(h).

We also reject the mother's contention that termination is not in the children's best interests. The best interest inquiry requires that we 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); *In re P.L.*, 778 N.W.2d at 33, 40 (Iowa 2010). When considering the factors set forth in section 232.116(2), we agree termination is in the children's best interests. The children are currently in a pre-adoptive home where they have been since just after their birth; their family identity is with this foster family. *See* Iowa Code § 232.116(2)(b).

We affirm the termination of each parent's parental rights.

AFFIRMED ON BOTH APPEALS.

[7] Except for unsupervised visits, neither parent requested or proposed additional services. *See In re C.B.*, 611 N.W.2d 489, 493-94 (Iowa 2000) (noting the State must show reasonable efforts as a part of its ultimate proof the child cannot be returned safely to the care of the parent, and emphasizing "the importance for a parent to object to services early in the process so appropriate changes can be made").