IN THE COURT OF APPEALS OF IOWA

No. 3-459 / 13-0438
Filed May 15, 2013

IN THE INTEREST OF N.J. AND M.J.,
Minor Children,

J.J. AND M.W., Parents,
Appellants.

Appeal from the Iowa District Court for Des Moines County, Mark E. Kruse, District Associate Judge.

A mother and father appeal the termination of their parental rights to two children. **AFFIRMED.**

Eric Benne of Swanson, Engler, Gordon, Benne & Clark, L.L.L.P., Burlington, for appellants.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant Attorney General, Patrick C. Jackson, County Attorney, and Luke Hansen, Assistant County Attorney, for appellee State.

Reyna Wilkens, Fort Madison, attorney and guardian ad litem for minor children.

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

VAITHESWARAN, J.

A mother and father appeal the termination of their parental rights to two children, born in 2008 and 2010. They do not challenge the ground for termination on which the district court relied. They simply contend (1) "a more appropriate alternative to termination would have been a guardianship, which would have allowed the parents more time to work through their mental health diagnosis and secure Social Security benefits" and (2) "the children's long-term physical, mental and emotional health would all be served by placement with their natural parents." On our de novo review, we disagree with both contentions. *See In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010) (setting forth the standard of review).

The Department of Human Services became involved with the family in March 2011 after the parents failed to seek immediate medical attention for their younger child's burnt finger, which developed gangrene and had to be partially amputated. The department noted that both children were experiencing developmental delays.

Several months later, the district court adjudicated the children in need of assistance but allowed them to remain in the parents' care. The children began receiving several services. The department social worker assigned to the case also afforded the parents significant assistance and forcefully advocated for their interests. Despite this support, the parents came to distrust the department and decided to curtail their participation in reunification services.

The children were removed from the parents' care in May 2012 and remained out of their care through the termination hearing in 2013. The parents

declined to have any contact with the children following the removal and did not attend either of two termination hearings.

At those hearings, the department social worker testified that she and the children's guardian ad litem unsuccessfully attempted to impress upon the parents the importance of cooperating with service providers. She stated the parents showed no progress through the course of the proceedings.

Notwithstanding the parents' unwillingness to participate in reunification services, they insist the district court should have invoked a statutory exception to termination. That exception allows a court to decline to terminate parental relationships if "[a] relative has legal custody of the child." Iowa Code § 232.116(3)(a) (2011). Presumably, the purpose of this exception is to facilitate ongoing contact between parent and child at the relative's home, with the goal of eventual reunification. The parents also argue that the court should decline termination after giving "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." *Id.* § 232.116(2).

Applying the cited exception, the parents correctly note that the children were in the care of a relative, but they fail to explain how that fact would facilitate reunification. The relative lived in Connecticut, the parents declined the opportunity to visit the children even when the children were in Iowa, and the parents were granted more than a year pre-removal to address the problems that precipitated department involvement and approximately eight months post-removal to work towards reunification. Under these circumstances, the creation

of a guardianship and an allowance of additional time to work towards reunification would have been futile.

For the same reason, we discern no basis for finding the "best interests" of the children requires a guardianship. *See id.* The proceedings were initiated because the health of one of the children was compromised. The proceedings continued because the parents refused to address the underlying factors that resulted in this health concern. We conclude the children's long-term health and safety were best served by termination.

We affirm the termination of the parents' rights to their two children.

AFFIRMED.