IN THE COURT OF APPEALS OF IOWA

No. 3-535 / 13-0514
Filed June 12, 2013

IN THE INTEREST OF J.W. and J.D.,
Minor Children,

M.D., Father of J.D.,
Appellant,

A.W., Mother,
Appellant,

A.W., Father of J.W.,
Appellant.

Appeal from the Iowa District Court for Polk County, Colin J. Witt, District Associate Judge.

The mother and the fathers of two children appeal from the termination of their parental rights. **AFFIRMED ON ALL APPEALS.**

Tabitha L. Turner of Turner & Vogel Law Office, Des Moines, for appellant father of J.D.

Jane M. White of Jane M. White Law Office, Des Moines, for appellant mother.

Bridget Bott of Bott Law Office, P.L.L.C., Des Moines, for appellant father of J.W.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John Sarcone, County Attorney, and Susan Cox, Assistant County Attorney, for appellee.

John Jellineck of Public Defender's Office, Des Moines, attorney and guardian ad litem for minor children.

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

DANILSON, J.

The mother and the fathers of two children appeal from the termination of their parental rights. Statutory grounds for termination of parental rights exist as to each parent and each child. Termination of parental rights will offer the children needed permanency, and no factor precludes the termination of each parent's rights. We therefore affirm on each appeal.

I. Background Facts and Proceedings.

J.D. was born in August 2005. His mother is Amanda and his father is Michael. J.D. has leukemia and is in the final year of a three-year initial treatment regimen. His caretaker has to be very attentive to his medical condition at all times. He also has ongoing behavior struggles—he can be violent with others—and regularly attends therapy sessions to address his aggression and other behaviors.

J.W. was born in March 2009. His mother is Amanda and his father is Aaron. J.W. has significant medical issues: narrow heart arteries, one partial kidney, and cognitive limitations. He requires considerable medical supervision and at least eight hours of skilled in-home nursing care per day. At the time of the termination hearing in March 2013, J.W. was just "starting to become verbal."

The children came to the attention of the department of human services (DHS) and were removed from the parents' custody in November 2011 when Amanda and Aaron left the half-siblings at Michael's home, where a registered sex-offender was also residing. The two children were placed with J.W.'s paternal grandmother, Christina. Christina is a full-time nurse who takes care of

medically dependent children. She has provided the children with needed care and stability for more than sixteen months and is willing and eager to adopt both children.[1]

Michael has a history of domestic abuse and substance abuse. It is reported by workers that Amanda has "inappropriate expectations" for children.[2] Aaron does not interact with the children unless prompted.

The parents did not contest the children's removal and the children were adjudicated children in need of assistance (CINA) after an uncontested hearing on January 6, 2012. A February 16 dispositional order continued the children's placement with Christina.[3] The August 13 review order noted the children's placement outside the home was required because the "[p]arents [are] living in shelters and these kids have extreme medical needs." The permanency hearing was scheduled for November 6.

An October 1, 2012 report to the court by DHS social worker Callie Taylor indicated all three parents continued to live in shelters, needed to secure housing, and needed to work toward attending all medical appointments for their children and showing that they were able to handle their medical needs. The following services were being provided: Family Safety, Risk, and Permanency

---

[1] Christina testified at the termination hearing that Aaron, Amanda, and the boys lived with her from 2009 through 2011 because Aaron and Amanda were evicted from their apartment about the time Amanda gave birth to J.W. and they were unable to secure other housing for quite some time. She also testified that Michael had little contact with J.D. prior to J.D. being diagnosed with leukemia.

[2] Christina testified that Amanda is very controlling and expects children to sit quietly and not run around.

[3] This is a relative placement for J.W. Christina qualifies as another suitable person as to J.D. *See* Iowa Code § 232.102(1)(a)(1) (2011).

(FSRP) services, including supervised visits; Behavior Health Information Services (BHIS) for J.D.; individual therapy for J.D.; Door of Faith program for Michael; drug analysis ("drops") and drug treatment for Michael; parenting classes for Amanda and Aaron; Housing and Urban Development Family Unification Program application for Amanda and Aaron; and daily nursing for J.W. The report notes:

> Throughout this case Amanda [ ], Aaron [ ], and Michael [ ] have been given many services aimed at helping them to gain the insight and skills necessary to provide [J.W.] and [J.D.] with a safe, stable home that will meet their many needs. Aaron and Amanda have spent the majority of this case living in a homeless shelter and have not taken advantage of the visits that were available. They have had many excuses, but struggled to make progress. They continue to struggle with parenting, budgeting and priorities.
>
> Michael was working and making progress throughout a good part of this case. Since the last hearing Michael has struggled to continue to step up for his son. He has also not taken advantage of all visits that were provided to him, and to take advantage of the resources necessary to help him with transportation. He has struggled lately to make appointments for [J.D.'s] medical and therapy. He has also not been able to find a job. Michael seems to have stalled in his progress on this case. When this worker has talked to him about this Michael, too, has excuses, but even after has not the progress necessary to show that he can appropriately parent his son.

The child advocate's November 1, 2012 report noted Michael had completed the one-year Door of Faith recovery program, was maintaining his sobriety, and had found full-time employment. However, "[t]here has been a noticeable decrease in Michael's visitation with [J.D.] and his attendance at various appointments for [J.D.]" The child advocate noted a strong bond between J.D. and Michael, and recommended Michael receive additional time to stabilize his work pattern and prepare to be a full-time parent. The child

advocate reported Amanda and Aaron had continuing budgeting and housing problems, and she did not "see the intense effort or determination on the part of [Amanda and Aaron] to get their children back." She indicated that visits between the children and Amanda and Aaron were inconsistent and she questioned what progress was being made with these parents. The child advocate recommended that a petition be filed to terminate Amanda and Aaron's parental rights, but an additional six months be given to Michael to work toward reunification.

The November 6 permanency hearing was continued, a termination of parental rights petition as to all three parents was filed in January 2013, and a permanency/termination hearing was held on March 8, 2013.

Each father testified and acknowledged they could not then care for their respective children. Aaron and Amanda sought to have a guardianship set up with Christina as guardian. Michael asked for additional time to seek reunification with J.D.

The court terminated each parent's parental rights. The order terminating parental rights reads, in part:

> As to [J.W.], neither parent [Amanda or Aaron] can meet his physical needs. Neither parent is even asserting that they are able to work towards being full-time custodians of [J.W.] who requires a very close watch and daily in home nursing care. The best interest for [J.W.] is that he remain with his grandmother and with all related services that have been ongoing and that this provide permanency for him.

The court terminated both Amanda's and Aaron's parental rights to J.W. pursuant to Iowa Code section 232.116(1)(d), (h), and (i) (2013).[4]

Turning to J.D., the court wrote:

> As to [J.D.], he is an eight (8) year old little boy who has been battling cancer for more than two years. He requires a lot of medical attention. He has extreme behavioral issues. Due to the level of attentiveness required to be his caretaker, his physical and emotional needs require an extremely reliable and responsible

---

[4] Section 232.116(1) provides, in pertinent part, that the court "may order" the termination of parental rights when any of the following is shown by clear and convincing evidence:

> (d) The court finds that both of the following have occurred:
>
> (1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.
>
> (2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.
>
> . . . .
>
> (h) The court finds that all of the following have occurred:
>
> (1) The child is three years of age or younger.
>
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
>
> (3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
>
> (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.
>
> (i) The court finds that all of the following have occurred:
>
> (1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.
>
> (2) There is clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child.
>
> (3) There is clear and convincing evidence that the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.

> caretaker. [Amanda] does not even assert that she can do it. And while [Michael] has tried, he simply has fallen short and he has had sixteen months to get his act together. The Court ultimately believes it would likely take another year of full engagement by [Michael] with the Door of Faith services for him to reach the point that he might be able to meet his Son's physical and emotional needs. This Child needs permanency . . . .
>
> The Court has considered the exceptions available under [section] 232.116(3), and they are permissive. Neither the bond of the parents with the Children or the fact of relative placement or other exception should prevent termination of rights and the provision of permanency for both of these Children.

The court terminated both Amanda's and Michael's rights to J.D. pursuant to section 232.116(1)(d), (f),[5] and (i).

The juvenile court indicated it had considered giving more time for Michael to reunify with J.D. and whether a guardianship would be a better alternative. The court observed that Michael had already had sixteen months to try to reunify with J.D. and that termination of parental rights would best provide for J.D.'s wellbeing and protection.

Each parent now appeals.

II. Scope and Standards 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

---

[5] Subparagraph (f) of section 232.116(1) allows termination where a child four years or older, has been adjudicated CINA, has been removed from the parent's custody for twelve consecutive months, and cannot be returned to the parent's custody at the present time.

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. *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. Mother's appeal. Amanda argues that as to both children Iowa Code section 232.116(1)(d)(2) is not met. However, she does not contest the existence of other statutory grounds for termination. When the juvenile court terminates parental rights on more than one statutory ground, we may affirm the juvenile court's order on any ground we find supported by the record. *D.W.*, 791 N.W.2d at 707. The other grounds for termination are not challenged and therefore we need not discuss their existence. *See P.L.*, 773 N.W.2d at 40.

Amanda asserts that a guardianship should be established because Christina has indicated that she may allow the parents ongoing contact with the

children if parental rights are terminated. The juvenile court considered a guardianship and rejected it, as do we. Placement with a relative under a permanency order is not legally preferable to termination of parental rights. *See In re L.M.F.*, 490 N.W.2d 66, 67 (Iowa Ct. App. 1992). The State has an important interest in providing children with a "stable, loving homelife . . . as soon as possible." *P.L.*, 778 N.W.2d at 38. Guardianship does not provide the permanency that we conclude these children need and deserve.

Amanda argues on appeal that the juvenile court should have allowed her additional time to seek reunification. But the juvenile court noted in the termination order that "[n]either [Amanda nor Aaron] was asking for an extension of time to work towards reunification or for immediate reunification." As a general rule, an issue not presented in the juvenile court may not be raised for the first time on appeal. *In re T.J.O.,* 527 N.W.2d 417, 420 (Iowa Ct. App.1994). This claim was not raised before the juvenile court and we will not address it here.

Finally, the mother contends the juvenile court failed to review the statutory best interest factors, see Iowa Code § 232.116(2), or the factors that may preclude termination. *See id.* § 232.116(3). The record belies this claim. The court specifically addressed the matters and found the children's best interests lay in termination of parental rights and no factors weighed against termination. The juvenile court observed that J.W. has significant medical needs and neither Amanda nor Aaron "can meet his physical needs," nor do they assert that "they are able to work towards being fulltime custodians." The grandmother

has the capability to provide the child's needs and is willing to adopt and provide permanency. Upon our de novo review, we agree.

B. Aaron's appeal—J.W.

Aaron asked the court not to terminate his parental rights, but to consider a guardianship with his mother being J.W.'s guardian.

On appeal, he contends that the services offered to him by DHS were ineffective and insufficient due to an undiagnosed mental disability. The record is otherwise. An Easter Seals case manager and service coordinator testified on behalf of Aaron. Aaron was referred to Easter Seals by the Central Iowa Shelter and Services in October 2012 due to his "multiple needs and diagnosed disability of intellectual disorder." A service coordinator had been helping Aaron to gain housing, access community living services from Mainstream Living, and utilize integrated support services from Community Support Advocates. Aaron arranged to have Mainstream to act as his payee as of March 2013. The service coordinator testified Aaron would have benefitted more if these services had been in place earlier. But DHS workers had been working with Aaron and Amanda with issues of housing and budgeting since the beginning of this CINA case. Aaron had been encouraged to get a payee for more than a year. Aaron's mental challenges were known for many years—he was receiving disability payments for them. The services he contends were not adequate were offered and he did not take advantage of them.

Aaron argues the State has failed to prove that statutory grounds for termination exist. However, there is clear and convincing evidence for

termination under section 232.116(1)(h). Aaron concedes, as he must, that the first three elements have been proved: J.W. was three years old at the time of the termination hearing, had been adjudicated CINA, and had been out of his father's custody for at least six consecutive months. He argues the State failed to prove that J.W. could not be returned to his care at present, but at trial the father did not assert he could care for his son. He contends on appeal that his case manager testified that with appropriate services in place, he would be able to care for his child. The only testimony we find that possibly supports that proposition is the following statements by Abby Freese of Central Iowa Shelter and Services:

> Q. Would it be your opinion, based upon your background and your work with individuals like [Aaron], that if appropriate services were put in place, that he could continue to progress? A. Yes, I do believe that.
> Q. And would he be in a position where he could eventually help resume some care of for his son? A. Yes, I believe that is possible.

This testimony is a far cry from showing Aaron can presently care for his child. We find clear and convincing evidence satisfying all elements for termination under section 232.116(1)(h).

Aaron also argues that termination is not in the child's best interests and because the child is in a relative's care termination need not occur. We have already rejected this argument with respect to the mother and we do so again for the same reasons.

C. Michael's appeal—J.D.

Michael's parental rights were terminated pursuant to Iowa Code section 232.116(1)(d), (f), and (i). He challenges only termination under paragraph (i). But he does not contest that the other statutory grounds exist and Michael testified he was not currently ready to care for J.D.

Michael argues that his progress is indicative of his motivation and he should be granted more time to seek reunification and that the court erred in finding termination was in J.D.'s best interest.

In determining the 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." *P.L.*, 778 N.W.2d at 37. And 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). 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 acknowledge that Michael has made efforts to become a more responsible parent and that he has made progress in dealing with his substance abuse, housing, and employment issues. He had progressed to semi-supervised visits and had one overnight visit supervised by his sister. However, Michael

acknowledged he had not been consistent in making or attending J.D.'s medical and counseling appointments—matters critical to the child's health and wellbeing.

J.D.'s individual therapist testified that J.D. came to her to address extreme temper tantrums during which he was physically aggressive with others. She stated that early on in their sessions J.D. talked to her about witnessing his father engaged in domestic violence with his mother. She stated Michael had attended perhaps three of the weekly sessions she has had with J.D. over a nine-month period. She also testified J.D. was "quite angry with his dad for not being there on time when he said he's going to be there." She diagnosed J.D. with posttraumatic stress disorder. The therapist testified that J.D. had been "physically aggressed by his mother with spanking with the belt." Other trauma in his life included the ongoing medical procedures related to his leukemia. She testified it was very important for J.D.'s caregiver to be attuned to his mental health diagnosis and therapy because awareness or lack thereof affects how they "interact with [J.D.] on a daily basis, and their expectations of his behavior and how to manage that."

We agree with the juvenile court that the termination of Michael's parental rights presents a difficult decision because of his personal progress. However there is evidence that the progress has recently stalled, and J.D. has waited more than sixteen months for his father to be able to be a parent. Under the circumstances presented in this case, we cannot maintain a relationship where there exists only a possibility the father will become a responsible parent sometime in the unknown future. The child deserves the permanency that

termination and adoption can provide. The bond between father and child does not preclude termination here.

We affirm on all appeals.

AFFIRMED ON ALL APPEALS.