IN THE COURT OF APPEALS OF IOWA

No. 3-655 / 13-0785
Filed July 24, 2013

IN THE INTEREST OF J.H. and J.H.,
Minor Children,

J.H., Mother,
Appellant,

J.H., Father,
Appellant.

Appeal from the Iowa District Court for Scott County, Cheryl Traum, District Associate Judge.

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

Angela Fritz-Reyes, Davenport, for appellant-mother.

Martha L. Cox, Bettendorf, for appellant-father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, Michael J. Walton, County Attorney, and Julie A. Walton, Assistant County Attorney, for appellee.

Barbara Maness, Davenport, attorney and guardian ad litem for minor children.

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

BOWER, J.

A mother and father appeal the termination of their parental rights to their children. They each contend the State failed to prove the grounds for termination by clear and convincing evidence. They also contend that termination is not in the children's best interests.

Upon our de novo review, we find clear and convincing evidence supports termination under Iowa Code section 232.116(1)(h) (2013). We further find termination is in the children's best interests. Accordingly, we affirm on both appeals.

I. Background Facts and Proceedings.

The children at issue came to the attention of the Department of Human Services (DHS) in May 2012 following allegations of domestic violence between the mother and father. At the time, the older child was two years old and the younger child was a newborn. The report of physical abuse was not confirmed, but a child protective assessment against the mother for denial of critical care for failing to properly supervise the children was founded.[1] Citing the concerns

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[1] The mother alleges she has appealed the DHS's findings and requests that this court delay deciding this appeal until the administrative appeal is decided, arguing the allegations contained in the assessment are the basis of the CINA case. The underlying grounds of adjudication in CINA cases have important legal implications beyond the adjudication. *In re L.G.*, 532 N.W.2d 478, 480 (Iowa 1995). However, the mother has not appealed the CINA adjudication. Furthermore, the adjudicatory order notes the court took judicial notice of, or received into evidence, the DHS's August 16, 2012 report to the court, the child protective assessment, a report from the guardian ad litem, other court documents such as various attachments to the CINA petition and the court's removal order, and sworn testimony. Because (1) the assessment is not the sole basis for the CINA adjudication, (2) the mother does not appeal the CINA adjudication, and (3) the termination may be affirmed on grounds that do not require specific findings in the CINA adjudication, *cf.* Iowa Code § 232.116(1)(d) (requiring a finding the child has been

about the parents' mental health issues and their lack of stable housing, the children were removed from the home in June 2012.

The children were adjudicated to be children in need of assistance (CINA) in September 2012 because of concerns regarding the parents' mental health issues, lack of housing, and domestic violence.[2] However, this was not the parents' first experience in a CINA proceeding. The older child had been removed from the home in November 2010 and adjudicated CINA in December 2010 due to safety concerns stemming from the parents' history of domestic violence, substance abuse, and mental health issues. That CINA case was dismissed in March 2012, just months before the events that led to the current proceedings.

In November 2012, the parents obtained safe and appropriate housing through a program in Illinois. Following the move to Illinois, the father lost access to the mental health services he was receiving in Iowa. He is diagnosed with schizoaffective disorder, bipolar subtype.

The mother is diagnosed with major depressive disorder and post-traumatic stress disorder. She was not taking her prescribed medication at the time of the termination hearing because she was nine months pregnant with a third child. While she had attended mental health services appointments in

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physically or sexually abused or neglected), we decline to postpone a decision in this matter.

[2] The adjudicatory order also notes the parents had "missed many" of the supervised visits they had been offered with the children and refused to allow the children to attend play therapy sessions.

January and February of 2013, the mother admits that she only participates in services because of the DHS's expectations.

Service providers remained concerned about the mother's and father's parenting skills. The mother and father fail to demonstrate an understanding of age-appropriate expectations for their children. This is particularly true of the mother, who becomes easily frustrated with the older child's behavior. While the father appears to have a better understanding of age-appropriate expectations than the mother, he disengages when the mother becomes upset rather than protecting the children. The parents never progressed to unsupervised visits with the children. Additionally, the father—who was offered more visits than the mother—missed nearly half of the visits because he did not wish to participate without the mother.

The State filed a petition to terminate the mother's and father's parental rights on January 29, 2013. Termination hearings were held in March and April of 2013. On April 10, 2013, the juvenile court entered its order terminating both parents' rights pursuant to Iowa Code sections 232.116(1)(d), (h), and (i).

II. Scope and Standard of Review.

We review termination proceedings de novo. *In re A.B.*, 815 N.W.2d 764, 773 (Iowa 2012). We are not bound by the juvenile court's fact-findings, although we do give them weight—especially when assessing witness credibility. *Id.*

Termination of parental rights under Iowa Code chapter 232 follows a three-step analysis. *See In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). The first step is to determine whether a ground for termination under section 232.116(1) is

established. *Id.* If so, the court then applies the best-interest framework set out in section 232.116(2) to determine 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 of the factors set out in section 232.116(3) weigh against termination of parental rights. *Id.*

We will uphold a termination order if clear and convincing evidence supports the grounds for termination under section 232.116. *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011). Evidence is "clear and convincing" where there are no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.*

III. Analysis.

The mother and father each separately appeal the termination of their parental rights. However, they raise the same issues on appeal: whether the State met its burden of proving the grounds for termination and whether termination is in the children's best interests. The mother also challenges the constitutionality of our expedited appeal process under chapter 232.

A. The mother's appeal.

The mother first contends the expedited appeal process set forth Iowa Rule of Appellate Procedure 6.201(1)(b)—which allows an appellant only fifteen days from filing a notice of appeal to file the petition—violates her due process rights under the United States Constitution. She argues the short period of time afforded to submit a petition limits her ability to meet and consult with her

attorney, as well as thoroughly review the trial transcript. This court has already rejected such a challenge to our appellate rules concerning appeals in termination cases. *See In re R.R.K.*, 649 N.W.2d 18, 22 (Iowa Ct. App. 2002). While we acknowledged the rules limit the time for counsel to closely review the transcript, we found this was mitigated by dispensing with the requirements of filing a traditional proof brief and requiring trial counsel to bring the petition on appeal. *Id.* at 21.

> Trial counsel's presence and participation at the termination hearing facilitates counsel's ability to identify and raise issues on appeal. In addition, trial counsel has a copy of all exhibits introduced at trial as available resources when preparing the petition on appeal. While full briefing requires counsel to scour the transcript for factual inconsistencies and legal error, the new rules do not require citation to the record. Rather, a brief recitation of the material facts is set forth, and legal issues are raised with supporting authority. The appellate court then proceeds to conduct its de novo review of the trial court's ruling, using the record and transcript provided to it. As a protection to the parties, should the appellate court determine an issue requires expanded argument, the rules allow it to order full briefing.

Id. In conformity with our ruling in *R.K.*, we reject the mother's constitutional claim. Although the mother requests that we order full briefing, we find the issues before us do not require it.

The mother contends the State failed to prove the grounds for termination under sections 232.116(1)(d), (h), and (i) by clear and convincing evidence. Although the mother's parental rights were terminated on all three grounds, we need only find sufficient grounds exist to terminate on one of these sections to affirm. *See In re S.R.*, 600 N.W.2d 63, 64 (Iowa 1999).

Termination is appropriate under Iowa Code section 232.116(1)(h) where the court finds:

> (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.

There is no dispute the first three elements of this section have been proved. The question is whether the children can be safely returned to the mother's custody.

We find the children cannot be returned to the mother's care because clear and convincing evidence shows the mother still poses a risk to the children's safety. The juvenile court made the following findings, which we adopt as our own:

> There continue to be concerns regarding the mother's ability to control her behaviors. The mother has consistently shown her inability to control herself in the courtroom. She is easily frustrated when she disagrees with what is being said. She has been disruptive and aggressive during visits to the point of being combative. She has been verbally abusive to the provider. During one visit she shut a door, held onto the handle, and would not allow the provider to enter the visit room. In other visits she attempted to take the children from the visit and the provider had to call for police assistance, and she was verbally abusive to the provider to the point where the provider was afraid for her safety. Due to the mother's behaviors, the provider no longer felt safe when providing transportation to the parents.

When asked at the termination hearing whether she was able to control her anger, the mother testified that she "[m]ight not control it to what they think it should be, but who are they?"

Additionally, the record shows the mother often disagreed with the providers about how to parent her children and refused to listen to their suggestions. As a result, the mother never progressed beyond supervised visitation with the children. Given the concerns that continue to exist about her parenting abilities, we find that returning the children to the mother's care would place them at risk of the type of harm that would lead to another CINA adjudication. Accordingly, there is sufficient evidence to terminate the mother's parental rights under section 232.116(1)(h).

Finally, the mother contends the State failed to meet its burden in proving termination is in the children's best interests. In determining the children's best interests, 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." *In re P.L.*, 778 at 39.

We find termination of the mother's parental rights is in the children's best interests. As stated, the children cannot be safely returned to the mother's care. Further, the mother's failure to understand the children's growth and development and to have reasonable expectations for them will inhibit the children's long-term growth. She has not demonstrated an ability to be nurturing; at trial a service provider testified the mother has berated the three-year-old child

for such things as wanting attention, called the child a "brat," and referred to the child as "broken." The older child, at age three, was already showing signs of aggression as a result of the mother's behavior. The record does not convince us that the mother can meet the children's physical, mental, and emotional needs.

For the foregoing reasons, we affirm the order terminating the mother's parental rights.

A. The father's appeal.

The father also appeals the termination of his parental rights. Like the mother, he contends the State failed to prove the grounds for termination by clear and convincing evidence. However, we find—as we did with the mother—that there is sufficient evidence to terminate the father's parental rights pursuant to section 232.116(1)(h).

Although the father has shown better parenting skills than the mother, the children cannot be safely returned to his care. The record reveals that when the mother becomes frustrated, the father disengages rather than intervening on the children's behalf and cannot be counted on to protect the children. The father also refused to participate in half of the visits offered to him because the mother would be absent, which raises concerns about the father's ability to put the children's needs ahead of this relationship. Finally, the father's move to Illinois caused an interruption in his mental health treatment; between his move in November 2012 and the time of termination some months later, he had only completed intake and one psychiatric appointment.

We likewise find termination of the father's parental rights is in the children's best interests. The mother and father are married and intend to stay married. Because of the mother's instability and difficulty controlling her anger when frustrated, there are concerns about the children's safety. The father cannot be relied upon to protect the children from their mother when she becomes upset. He has demonstrated he cannot minister to the children's long-term growth or meet the children's physical, mental, and emotional needs given his unwillingness to put the children's needs ahead of his continued relationship with the mother.

Because we find termination is appropriate under section 232.116(1)(h) and is in the children's best interests, we affirm the order terminating the father's parental rights.

AFFIRMED ON BOTH APPEALS.