

IN THE COURT OF APPEALS OF IOWA

No. 3-697 / 13-0819

Filed July 24, 2013

**IN THE INTEREST OF J.C. and C.C.,
Minor Children,**

J.C., Father,
Appellant,

A.F., Mother,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Daniel L. Block, District Associate Judge.

A mother and father appeal the termination of their parental rights.

AFFIRMED.

Brett H. Schilling of Schilling Law Office, P.C., Waterloo, for appellant father.

Sara Kersenbrock of Kersenbrock Law Office, Waterloo, for appellant mother.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kathleen A. Hahn, Assistant County Attorney, for appellee.

Timothy Baldwin, Waterloo, attorney and guardian ad litem for minor child.

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

DANILSON, J.

Amy is the mother and Joshua is the father of two girls, J.C. born in December 2010, and C.C. born in February 2012. The parents' rights were terminated pursuant to Iowa Code section 232.116(1)(d), (h), and (i) (2013).¹

¹ Iowa Code section 232.116 provides in relevant part:

1. Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds:

(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.

They separately appeal. We affirm, concluding the parents' lack of explanation for fractures suffered by one of the children at a time when both parents were the sole caretakers of the children supports termination.

Our review of termination of parental rights proceedings is de novo. *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 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.*

Both parents contend the statutory criteria for a termination of parental rights have not been met, termination is not in the children's best interest, and the juvenile court should have allowed them more time to seek reunification.

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. With respect to Iowa Code section 232.116(1)(h), both parents dispute only the fourth element, contending there is not clear and convincing evidence that the children cannot be returned to their custody at the present time. We disagree.

The family came to the attention of the Iowa Department of Human Services on May 3, 2012, when the mother brought C.C. to the emergency room for cold symptoms. Medical personnel discovered the child had suffered

nineteen fractures during her young life, including fractures to her right and left femurs, right and left tibia, and several ribs. The family had moved to the area recently from Pennsylvania. The injuries appeared to be several weeks old. The parents acknowledged being the infant's sole caretakers, but had no explanation for the child's injuries, and did not initially even concede the child had sustained injuries. Testing was done to determine if C.C. had brittle bone disorder, which came back negative. It was determined the injuries were non-accidental.

The children were removed from the parents in May and were adjudicated children in need of assistance (CINA) in September. The parents have received numerous services, but have not moved beyond supervised visits because they continue to deny any responsibility for, or knowledge of, C.C.'s injuries. Both parents have mental health issues that call for continued treatment.² While each parent contends the children could be returned to their care at present, in light of the unexplained numerous injuries sustained by C.C. in their care, there remains a risk of physical injury or neglect.³

The parents' therapist did not disagree:

Q. Mr. Gates, if the factual scenario presented and the weight of the evidence would indicate to you that professionals had

² The father has been diagnosed with adjustment disorder with depressed mood, ADHD, ODD, and possible conduct disorder. Individual psychotherapy has been recommended to address past trauma. The mother has been diagnosed with adjustment disorder with depressed mood and low cognitive functioning. It was recommended that she participate in individual psychotherapy to address past trauma. We hope the parents continue to participate in therapies to address these ongoing concerns.

³ The parents argue that the State has not proved what caused the injuries to C.C. Yet, it is uncontested the parents were the child's sole caretakers and the child sustained numerous non-accidental fractures while in their care. Either one or both inflicted the injuries, or the parents provided inadequate supervision allowing numerous non-accidental fractures. In either case, the children remain at risk.

made a determination, as well as the court, that 19 fractures that this child [C.C.] suffered when she was a matter of weeks old, that they were intentionally inflicted and the child was in their parents' sole care, is there anything that you could see evolving from treatment that could address this concern? A. Because of the lack of knowledge as to where—how those injuries were committed, um, I think that would be very difficult to be able to respond to that. I did probe as much as possible and I did not receive from either of them acknowledgment that they had committed that assault or those assaults.

In most cases that I've worked with, you can usually tell—usually tell. It's not a perfect science, so I don't have that ability to say yes, they're lying, they're telling the truth, but I don't know of any further treatment that's going to make that safe for the children in that respect.

He was also asked if in light of the services offered there was “no problem recommending that they [the parents] have their kids and move on from here.” He responded, “No, I would not say . . . that there's no problem. The child received some injuries in some fashion and unless and until we know how that occurred, we have to be very careful and I would be very careful if I were making that decision.”

Our case law is in accord with Gates' testimony. See *In re K.M.R.*, 455 N.W.2d 690, 691-92 (Iowa Ct. App. 1990) (noting it is proper to consider “the parents' inability to admit to the abuse and failure to protect the children from abuse as a factor supporting termination of parental rights”); accord *In re C.H.*, 652 N.W.2d 144, 150 (Iowa 2002) (noting a parent's failure to address the parent's role in abuse may hurt the parent's chances of regaining custody). “The requirement that a parent acknowledge and recognize abuse is essential for any meaningful change to occur.” *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). Although the court ordered the father to cooperate with reunification

services, follow through with mental health evaluation recommendations, and participate in anger management counseling, these services “are not likely to be effective” as long as the father continues to deny the abuse of A.P. and his part in it. *Id.*; see *In re H.R.K.*, 433 N.W.2d 46, 50 (Iowa Ct. App. 1988) (stating meaningful change cannot occur without a parent’s recognition of the abuse).

Here the circumstances giving rise to adjudication still exist because the parents remain steadfast in their lack of an explanation for the injuries. Both children would be in imminent danger if returned to their parents because the parents served as the children’s sole caretakers at a time when one of the children suffered nineteen fractures. The medical evidence established no other cause for the injuries other than abuse. These facts support the conclusion that the grounds for termination were shown by clear and convincing evidence.

Because no treatment is suggested that will lessen the risk to the children, we also conclude the juvenile court did not err in rejecting the parents’ request for an extension of time. See Iowa Code § 232.104(2) (allowing an order to continue placement for additional six months following a permanency hearing, but noting the order “shall enumerate the specific factors, conditions, or expected behavioral changes which comprise the basis for the determination that the need for removal of the child from the child’s home will no longer exist at the end of the additional six-month period”); *In re A.A.G.*, 708 N.W.2d 85, 92-93 (Iowa Ct. App. 2005) (“In order to continue placement for six months, the statute requires the court to make a determination the need for removal will no longer exist at the end of the extension.”).

The children are in a pre-adoptive foster home where they are doing very well. They have been integrated into that family. The statutory best-interest factors support termination of parental rights. See Iowa Code § 232.116(2) (requiring the court to “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,” which may include “whether the child has become integrated into the foster family to the extent that the child’s familial identity is with the foster family, and whether the foster family is able and willing to permanently integrate the child into the foster family”).

Because there is clear and convincing evidence that grounds for termination exist under section 232.116(1), termination of parental rights is in the children’s best interests pursuant to 232.116(2), no exception to termination exists as provided in 232.116(3), and an extension is not warranted, we affirm the termination of both parents’ parental rights.

AFFIRMED.