

IN THE COURT OF APPEALS OF IOWA

No. 6-652 / 06-1025
Filed September 7, 2006

**IN THE INTEREST OF D.R. and D.R.,
Minor Children,**

A.S., Mother,
Appellant,

D.R., Father,
Appellant.

Appeal from the Iowa District Court for Benton County, Jane F. Spande,
District Associate Judge.

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

AFFIRMED.

Jeffrey Logan of Curran Law Office, Ottumwa, for appellant mother.

Raymond Lough, Vinton, for appellant father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, David C. Thompson, County Attorney, and Anthony Janney,
Assistant County Attorney, for appellee State.

Dennis Mathahs, Marengo, for minor children.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

MAHAN, J.

April and Dennis appeal from the termination of their parental rights. April argues (1) the district court erred by blaming her for the domestic violence within the home and (2) the State failed to provide reasonable family reunification services when law enforcement did not enforce no-contact orders against Dennis. Dennis argues the State failed to provide clear and convincing evidence supporting the termination of his parental rights. Both parents argue the district court erred in determining termination is in the children's best interest. We affirm.

I. Background Facts Proceedings

April and Dennis are the parents of both a son born in October 2001 and a daughter born in June 2003. The parents' relationship has been marked by repeated incidents of violence and drug use. Law enforcement responded to a report of domestic violence on July 29, 2004. They found April had sustained injuries, including bites from the family dog.¹ As a result, the State filed a child-in-need-of-assistance (CINA) petition on September 20, 2004. Both children were adjudicated CINA as to the interests of their father on October 19, 2004. April contested the CINA petition, however, and another hearing was set to determine her interests. As of the initial hearing, April had not allowed the children's attorney to contact them or inspect the home.

Law enforcement responded to another domestic violence incident between April and Dennis on October 24, 2004. Dennis was charged with

¹ This is not the first time such an incident occurred. In July 2002 Dennis pleaded guilty to non-domestic abuse against April. During that assault, April ran toward the door in order to get away from Dennis, but was attacked by the dog. Dennis grabbed April by the hair and throat and threatened to throw her down the stairs.

domestic assault. He was ordered to have no contact with April. The children remained with April, who consented to allow contact with their attorney. She stipulated to the children's CINA adjudication on December 7, 2004. The juvenile court ordered no contact between the parents, required the parents to participate in domestic violence and substance abuse counseling and treatment, and provided for supervised visits with Dennis.

On February 10, 2005, Dennis pleaded guilty to possession of methamphetamine and marijuana found in a toolbox in his vehicle. The same day he pleaded guilty to assault causing bodily injury (domestic abuse) for his July 29, 2004 assault on April.

On February 25, 2005, April and the children were at Dennis's residence in violation of the no-contact order and case plan. The Iowa Department of Human Services (DHS) obtained an ex parte emergency removal order for the children on February 28, 2005. April absconded with the children, switching vehicles and cell phones to avoid apprehension. The children were located at their maternal grandmother's home on March 11, 2005. At the emergency removal hearing, the juvenile court ordered the parents to obtain substance abuse evaluations and begin urine and hair stat testing. The court also ordered psychological evaluations.

April was uncooperative and agitated at her psychological evaluation in May 2005. She left before a urine sample could be taken for urinalysis. By late summer 2005, however, she was providing clean urinalyses, following services, and exhibiting appropriate parenting skills. Her visitation with the children had increased from supervised, to semi-supervised, to unsupervised, to overnight.

Dennis tested positive for methamphetamine, marijuana, and amphetamine in April 2005. He tested positive for methamphetamine again in June 2005. He completed batterer's education and participated in anger management therapy. Psychological reports indicate, however, that he denies using drugs in the last seven to eight years, and blames others for his family situation. Initially, his visits with the children were at his home. After he became aggressive and hostile toward the service provider in June 2005, the visits were moved to a different location. By late summer, Dennis's visits were going so smoothly that the provider recommended both longer visits and a return to Dennis's home. That recommendation never came to fruition, however, because a sheriff's deputy reported seeing Dennis and April together in violation of the no-contact order. The couple's situation with regard to their children then began to deteriorate.

In August 2005 April tested positive for methamphetamine. In October 2005 April alleged that Dennis attempted to run her vehicle off the road. In that same month, she provided a diluted urinalysis. Service providers became concerned that April was both seeing Dennis again and engaging in illegal drug use. The children began exhibiting sexual behaviors they had previously only displayed when first placed in foster care. The State filed for termination of Dennis's and April's parental rights.

Trial was set for February 17, 2006. Due to improved performance, however, April's service provider recommended she be given an additional ninety days to achieve reunification. The family's situation nonetheless deteriorated. After a drug screening on February 26, 2006, Dennis was found to have a fake

penis designed to deliver urine sewn into his underwear. April moved to another town without telling DHS. She reported Dennis came to her home and left methamphetamine for her, which she then took. The relapse resulted in a positive urinalysis on April 17, 2006. The couple's son reported watching a movie with his mom, dad, and dog while his sister slept. April allowed her brother, who is friends with Dennis and an admitted drug user, to stay in her home. She also reported to law enforcement that Dennis had been sending her threatening and sexually explicit voice mail messages and text messages. These messages occurred until the time of trial.

The district court determined both that reasonable efforts had been made to reunify the children with their parents and that termination was in the children's best interests. It terminated the parents' rights with regard to their son and daughter pursuant to Iowa Code sections 232.116(f) and 232.116(h) (2005), respectively. April and Dennis appeal.

II. Standard of Review

We review the termination of parental rights *de novo*. *In re D.G.*, 704 N.W.2d 454, 456 (Iowa Ct. App. 2005). The State must prove the circumstances for termination by clear and convincing evidence. *In re L.E.H.*, 696 N.W.2d 617, 618 (Iowa Ct. App. 2005). Our primary concern is the best interests of the children. *Id.* In determining the children's best interests, we look to both long-term and immediate needs. *Id.*

III. Merits

According to Iowa Code section 232.116(f), parental rights may be terminated if the court finds:

- (1) The child is four years of age or older.
- (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 twelve of the last eighteen months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

According to Iowa Code section 232.116(h), parental rights may be terminated if 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.

April alleges first that the district court incorrectly punished her for being the victim of domestic violence and second that the State failed to provide reasonable services by failing to enforce existing no-contact orders. Third, Dennis claims the State failed to show clear and convincing evidence that his parental rights should be terminated. Finally, both parents argue termination is not in the children's best interests.

First, the record indicates service providers had concerns throughout this case that April was having contact with Dennis. Testimony from both service providers and law enforcement further indicates that not all of this contact was against April's will. Though we share the district court's empathy for April's situation, we echo its admonition that the court's responsibility in this case is to

the children. April admits she does not believe she can keep herself safe from Dennis. Though service providers testified her parenting skills can be good, we do not know how she would keep her children safe while exposing them to the physical and emotional damage of a violent relationship. Further, April's own drug use and association with drug users puts the children in danger. We are persuaded that the district court did not punish April for being a victim of domestic violence.

Second, April never requested additional services, and never argued before the district court that the services she received were inadequate. Evidence shows she had voluntary contact with Dennis in violation of the no-contact order. This issue is therefore not preserved for our review. *In re S.R.*, 600 N.W.2d 63, 65 (Iowa 1999).

Third, the record shows clear and convincing evidence to support terminating Dennis's parental rights. Dennis has exhibited violent behavior toward the children's mother and the DHS service provider. He has repeatedly violated no contact orders. He denies drug use in spite of several positive tests. He even attempted to fake a drug test. Nevertheless, he refuses to take responsibility for his actions and continually blames others, including April and DHS, for his situation. He does not ask that the children be returned to his care. Given his past behavior, it is clear that due to his drug use, anger management issues, and penchant for violence, they cannot be returned to his care in the near future. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000) (noting that a parent's past behavior can be indicative of future performance). We agree with the district

court that clear and convincing evidence supports the termination of Dennis's parental rights.

Finally, given the parents' violent and unstable relationship, April's inability to stay away from Dennis, Dennis's aggressive behavior, and both parents' drug use, we conclude termination is indeed in the children's best interests.

The juvenile court's ruling terminating April's and Dennis's parental rights is affirmed.

AFFIRMED.