

IN THE COURT OF APPEALS OF IOWA

No. 7-518 / 07-0947
Filed August 8, 2007

**IN THE INTEREST OF E.P.S. and A.K.S.,
Minor Children,**

**L.R.S., Jr., Father,
Appellant.**

Appeal from the Iowa District Court for Jones County, Fae Hoover-Grinde,
District Associate Judge.

A father appeals from the order terminating his parental rights to two
daughters. **AFFIRMED.**

Craig Elliott, Anamosa, for appellant father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Connie S. Ricklefs, County Attorney, and Robert Hruska,
Assistant County Attorney, for appellee State.

Carla Garrels-Pearson, Cedar Rapids, for appellee mother.

Janette Voss, Anamosa, guardian ad litem for minor children.

Considered by Huitink, P.J., and Vogel and Baker, JJ.

VOGEL, J.

Leo is the father of Ashlee, who was born in 1991, and Elizabeth, who was born in 1992. The Iowa Department of Human Services (DHS) became involved with the family in 2004 when Leo threatened to burn down the family house by dousing it and the surrounding areas with gasoline, ultimately forcing Ashlee and Elizabeth to put out the flames. Based on this incident, as well as Leo's history of substance abuse, mental health problems, and domestic violence, Ashlee and Elizabeth were adjudicated to be in need of assistance, pursuant to Iowa Code sections 232.2(6)(c) and (n) (2003). The girls initially remained in their father's custody, but when indications arose that Leo was resuming his substance abuse, DHS removed Ashlee and Elizabeth and placed them with Tracy Koob, Leo's former girlfriend, and the woman who Ashlee and Elizabeth, for the past ten years, considered to be their "mother."¹

In November of 2006, Leo showed up at Tracy's place of employment and threatened her with a box cutter. Based on this incident he was charged with attempted murder, willful injury, and going armed with intent. On January 2, 2007, the State filed a petition seeking to terminate Leo's parental rights. Following a hearing, the court granted the State's request and terminated Leo's rights under Iowa Code sections 232.116(1)(e), (f), and (l) (2005). Leo appeals from this order.

We review termination orders de novo. *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). Our primary concern in termination proceedings is the best

¹ Ashlee and Elizabeth's mother has had little to no contact with them during their life, and had her parental rights terminated in this proceeding. She has not appealed.

interests of the children. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). While the district court terminated the parental rights on more than one statutory ground, we will affirm if at least one ground has been proved by clear and convincing evidence. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

Leo first maintains the State failed to produce clear and convincing evidence sufficient to support termination under any of the grounds alleged. Upon our de novo review of the record, we disagree. Section 232.116(1)(f) requires, among other elements, clear and convincing proof that the children cannot be returned to the parent's home without risk of adjudicatory harm. Leo clearly would present a danger to both children, were they to be returned to his care. As noted, an arson event precipitated the children's removal from his care. After removal and during the CINA proceedings, Leo's long history of substance and alcohol abuse, as well as mental health issues and violent tendencies were exposed. At the time of trial, Leo was awaiting trial on attempted murder charges after violently confronting Tracy with a dangerous weapon.² This propensity for violence and unpredictable behavior simply is too great to warrant a safe return of the children in the immediate future. *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially) (stating children's safety and their need for a permanent home are the defining elements in a child's best interests).

Although arguably not preserved for appellate review, see *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999), we reject Leo's contention that the State

² Tracy briefly testified about the event as follows:

I was working behind the counter and Leo . . . came in behind the counter and cornered me into the drive-through area and had a blade in his hand. He held me with his left hand with the blade towards my throat with his right hand.

failed to provide reasonable services to reunify him with the children. Leo participated in inpatient substance abuse treatment on at least two occasions and completed an extended outpatient treatment program. However, he continued to consume alcohol and tested positive for the presence of drugs after he completed treatment. DHS also provided family-centered services as well as parenting skill development and individual therapy for Leo. Although he has been diagnosed with depression and schizoaffective disorder, Leo has not taken advantage of the mental health treatment options given to him. Despite participating in a regimen of treatment and other services, Leo has not made any significant progress towards being able to safely parent his children.

Finally, we conclude the court properly found termination of Leo's parental rights to be in Ashlee's and Elizabeth's best interests. A child's safety and the need for a permanent home are the primary concerns when determining a child's best interests. *In re J.E.*, 723 N.W.2d at 801. Both the arson incident and the incident with Tracy were done after Leo had consumed alcohol. Without more assurance his substance abuse problems and violence are in his past, the girls cannot be returned to Leo's custody. With this safety consideration squarely in mind, we affirm the termination of Leo's parental rights to Ashlee and Elizabeth.

AFFIRMED.