

IN THE COURT OF APPEALS OF IOWA

No. 7-669 / 07-1174
Filed September 19, 2007

IN THE INTEREST OF C.E., Minor Child,

C.E., Minor Child,
Appellant,

STATE OF IOWA,
Appellant.

Appeal from the Iowa District Court for Scott County, John G. Mullen,
District Associate Judge.

The attorney and guardian ad litem for a child appeals, and the State also
appeals, a juvenile court order denying a petition to terminate the parental rights
of the child's father. **REVERSED AND REMANDED.**

Lauren M. Phelps, Bettendorf, for appellant minor child.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Gerda Lane, Assistant County Attorney, for appellant State.

Lucy Valainis, Davenport, for appellee mother.

Cheryl Fullenkamp, Davenport, for appellee father.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MILLER, J.

Jennifer is the mother, and Robert the father, of Christopher, born in August 2001. In April 2007 Christopher's attorney and guardian ad litem (hereafter "guardian ad litem") filed a petition seeking termination of Robert's parental rights. The guardian ad litem alleged as statutory grounds for termination Iowa Code sections 232.116(1)(d), (e), (g), (i), and (m) (2007). Following a late June 2007 hearing, in a June 29, 2007 order the juvenile court stated it was not satisfied clear and convincing evidence established that Christopher's best interests would be served by termination of Robert's parental rights and denied the petition. In doing so the court did not address or decide whether the evidence proved any one or more of the five statutory grounds for termination the guardian ad litem alleged to exist.

Christopher's guardian ad litem appeals, and the State of Iowa also appeals, the juvenile court order. The guardian ad litem claims, in part, that the juvenile court erred because (1) the evidence proved the statutory grounds for termination pursuant to sections 232.116(1)(d), (e), (g), and (i), and (2) clear and convincing evidence shows that Christopher's best interest is served by termination of Robert's parental rights. The State somewhat similarly claims that (1) the facts found by the juvenile court clearly support the grounds for termination, and (2) the juvenile court erred in concluding that termination of Robert's parental rights is not in Christopher's best interests. We reverse and remand.

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

In re C.B., 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

Robert is thirty-five years of age. In 1998 his parental rights to two other children whom he had physically abused were terminated.

In September 2005 Christopher was in Robert's custody pursuant to an order in another legal proceeding. Christopher came to the attention of the Iowa Department of Human Services (DHS) based on allegations that Robert had physically abused him, by punishing him in a manner resulting in bruising of his arms. An investigation resulted in a founded child abuse report. Robert was charged with child endangerment, pled guilty in February 2006, and received a suspended sentence and probation.

Sometime in early 2006 the order that had placed Christopher in Robert's custody expired. Christopher had been with Robert for one to two years. Christopher was four and one-half years of age, but was seriously developmentally delayed, performing at the two and one-half year level. In April 2006 Jennifer began keeping Christopher with her, expressing concern regarding Robert's abuse and neglect as well as Robert's threats to abscond with Christopher.

The DHS began providing services to Robert in December 2005. Services included family centered services and parenting skill development. Services also

included anger management instruction, as Robert had serious anger management problems.

Robert is unable to read. Service providers therefore used verbalization, role modeling, and workbooks to help him understand the information and concepts they were attempting to convey. Robert was sporadic in his utilization of offered services, missing appointments and being unmotivated. He refused to take medication prescribed to help him control his regular and frequent anger outbursts. Attempts to provide services continued until Robert's arrest in early August 2006, discussed below. In the opinion of service providers and the DHS, the attempts to provide services were unsuccessful, Robert had made no progress in dealing with his anger, and no additional services would make Robert a safe caregiver for Christopher.

In June 2006 the State filed a petition alleging Christopher to be a child in need of assistance (CINA). In September 2006 the juvenile court adjudicated him a CINA, pursuant to Iowa Code section 232.2(6)(b) (2005) (child whose parent has physically abused the child or is imminently likely to do so). In its adjudication order the court placed Christopher in Jennifer's legal custody, where he has thereafter remained. By late October 2006 Christopher, who had been with Jennifer since early April 2006, was doing well, had made great progress, and was nearing age-appropriate developmental targets.

In August 2006 Robert was arrested and charged with sexual abuse in the second degree. The arrest arose out of a DHS investigation conducted as a result of allegations that Robert had sexually abused, by digital penetration, his girlfriend's four-year-old daughter. Robert admitted to the DHS investigator that

he had done so. At the time of the late June 2007 termination hearing Robert remained in jail awaiting trial or other disposition of the sexual abuse charge. In the period of almost one year following his arrest Robert had no contact or communication of any kind with Christopher, and had apparently made no effort to do so. He had provided no support, financial or otherwise, for Christopher.

At the termination hearing Christopher's guardian ad litem, the State, service providers, the DHS, and Jennifer all recommended or requested termination of Robert's parental rights.

Upon our de novo review we find clear and convincing evidence proved the statutory grounds for termination pursuant to Iowa Code sections 232.116(1)(d) (child adjudicated CINA for physical abuse by parent, circumstance continues despite services), (e) (child adjudicated CINA, child removed from parent at least six months, parent has neither maintained meaningful contact with child nor made reasonable efforts to resume care of child), and (g) (child adjudicated CINA, parent's parental rights to another child have been terminated, parent lacks ability or willingness to respond to corrective services, additional period of rehabilitation would not correct situation) (2007). We need not decide whether the section 232.116(1)(i) grounds were also proved. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (holding one statutory ground will suffice for termination).

We respectfully disagree with the juvenile court's finding that clear and convincing evidence does not demonstrate that Christopher's best interest would be served by termination of Robert's parental rights. The court found that Robert was a violent person, and unable to change. It found he had an anger

management problem, and was unable to change. Both findings are fully supported by the evidence and we adopt them as our own. The court declined to terminate Robert's parental rights, in whole or large part upon its further findings that there was "no alternative father for this child," and that the child had "no connection with any other male father figure."

The evidence shows Robert has a lengthy history of repeated violence toward small children. Such violence goes back to at least 1998. It continued in the form of his abuse of Christopher in 2005 and his admitted sexual abuse of a four-year-old in 2006. Tellingly, the admitted-to 2006 incident occurred while Robert was on probation following a criminal conviction for his endangerment of Christopher. Robert has been unable or unwilling to make changes in his parenting and related behavior. He poses a threat to any small child with whom he has continuing contact. The evidence clearly demonstrates Robert will not be able to appropriately parent Christopher in the future.

We find clear and convincing evidence shows that termination of Robert's parental rights is in Christopher's best interest. This determination is not affected by the fact Christopher is in the custody of a relative, his mother, Jennifer. Iowa Code section 232.116(3)(a), which provides that the court need not terminate the relationship between a parent and a child if the court finds that a relative has custody of a child, is permissive, not mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). When the statutory grounds for termination of parental rights exist, the needs of a child are generally promoted by termination. *In re L.M.F.*, 490 N.W.2d 66, 68 (Iowa 1992). Such is the case here.

We reverse the order of the juvenile court and remand for an order terminating Robert's parental rights to Christopher and such further proceedings as may be appropriate.

REVERSED AND REMANDED.