

IN THE COURT OF APPEALS OF IOWA

No. 8-959 / 08-1653
Filed December 17, 2008

**IN THE INTEREST OF A.W. and D.W.,
Minor Children,**

**C.S.W., Father,
Appellant.**

Appeal from the Iowa District Court for Cedar County, Gary P. Strausser,
District Associate Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Theresa Seeberger, West Branch, for appellant father.

Dennis R. Mathahs, Marengo, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Sterling L. Benz, County Attorney, and Jeffrey L. Renander,
Assistant County Attorney, for appellee State.

Don Schroeder, West Liberty, for minor children.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

DOYLE, J.

A father appeals from the juvenile court order terminating his parental rights to his children. Upon our de novo review, we affirm.

I. Background Facts and Proceedings.

C.W. is the father and J.W. is the mother of A.W. and D.W.¹ Both parents are low-functioning and have been recipients of the Mental Retardation Waiver.² C.W. also receives SSI disability benefits.

The children were born prematurely in July 2007 and spent two months in the intensive care unit at the University of Iowa Hospitals and Clinics. While the children were hospitalized, they came to the attention of the Iowa Department of Human Services (Department) based upon concerns that J.W. could not safely care for the children. At that time, the children's paternity was unknown. The State then filed a petition asserting the children were children in need of assistance (CINA). Subsequently, J.W. became involved with a private adoption agency, and the State withdrew its petition. When the children were released from the hospital, they were placed with Hillcrest Family Services for pre-adoptive foster care placement, and J.W. signed over guardianship to Hillcrest Family Services.

Thereafter, C.W. was found to be the biological father of the children. C.W. was not agreeable to signing over guardianship, which would have given Hillcrest Family Services the ability to place the children for adoption. The State

¹ J.W. consented to the termination of her parental rights and has not appealed.

² The Mental Retardation Waiver pays for services to persons with a primary diagnosis of mental retardation who would otherwise require care in a medical institution.

then re-filed its CINA petition, and the children remained in the foster-to-adopt home.

In January 2008 the children were adjudicated CINA by stipulation of the parties. C.W. was offered a variety of services, including supervised weekly visitation with the children and parenting skills development with a care coordinator. C.W. was also referred to community-based programs to support independent living skills and case management within his community. C.W. minimally participated in the services offered and did not follow-up with the referrals to community-based programs.

The State filed a petition to terminate the parents' parental rights on July 18, 2008. On September 8, 2008, J.W. voluntarily terminated her parental rights. Following a contested termination hearing regarding C.W.'s parental rights, the juvenile court in an order filed October 6, 2008, terminated C.W.'s parental rights to the children pursuant to sections Iowa Code sections 232.116(1)(h) (2007) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home) and 232.117. C.W. appeals.

II. Scope and Standards of Review.

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). Although we give weight to the juvenile court's findings of fact, we are not bound by them. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). The grounds for termination must be supported by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). We are primarily concerned with the children's best interests in termination proceedings. *In re*

J.L.W., 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). Even when the statutory grounds for termination are met, the decision to terminate parental rights must reflect the children's best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). When we consider the children's best interests, we look to their long-range as well as immediate best interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997).

III. Discussion.

A. Statutory Grounds.

C.W. first contends the State failed to prove the statutory grounds for termination of his parental rights under Iowa Code section 232.116(1)(h)(4). Specifically, C.W. asserts the State failed to prove by clear and convincing evidence that the children could not be returned to the father's custody because the father has not committed any prior acts of harm to the children and the father enjoys and cares for the children during his visits. For the reasons that follow, we disagree.

The record reveals that weekly visitation and parenting skills training were provided to C.W. during the pendency of this case. Although it is true that C.W. has never harmed the children, C.W. has always had either his mother or his fiancée present to assist him in caring for the children during his weekly visitation with the children and cancelled the visitation when his mother or fiancée were not available to be present. Even with his mother's and his fiancée's assistance, C.W. remains unable to retain the parenting skills that he has been taught from visit to visit and continues to have difficulty in carrying out basic baby care. C.W. continues to require instruction about how to prepare a bottle. He regularly

forgets to wipe and clean the children while changing their diapers and must be reminded to do so. He has teased the children with their bottles during feedings by pulling them away from their mouths, and giggled when the children got upset. He failed to hold the bottle for the children while they eat. Moreover, C.W. has exhibited unrealistic expectations for the children given their young age. When asked at the hearing what kinds of things he would plan for the children if he had them all the time, C.W. answered that he would “go out and take them to movies and take them out to eat and everything.” Additionally, there are two founded reports of child abuse against C.W. involving other children.³

We note that “[t]he threat of probable harm will justify termination.” *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992). Upon our de novo review, we agree with the juvenile court’s determination that C.W. “lacks the basic ability to parent the children” and “the children are likely to suffer neglect if placed in [C.W.’s] care.” Because the record reveals that the circumstances that led to the CINA adjudication continue to exist and the children cannot be safely returned to C.W.’s care, we conclude clear and convincing evidence supports the juvenile court’s decision to terminate C.W.’s parental rights under section 232.116(1)(h).

B. Abuse of Discretion.

C.W. also contends the juvenile court abused its discretion by terminating his parental rights. C.W. maintains that under the unique facts of the case, termination of his parental rights was premature. Once again, we disagree.

³ The Department found that C.W. allowed a known, registered sex offender to be around two young children he was watching in his home. The Department also found that C.W., after becoming upset with a child over the loss of a cell phone, bent the child’s leg upward toward her face, causing the child to scream in pain. C.W. denied these founded reports at the termination hearing.

It is clear C.W. loves the children and would like to develop a relationship with them. However, upon our review of the record, it is apparent that serious concerns still exist regarding C.W.'s ability to provide adequate care for the children. Although C.W. enjoys his visitation with the children, C.W. continues to have difficulty in carrying out basic baby care, as outlined above. Furthermore, the evidence does not support the conclusion that additional time would allow the children to be returned to C.W.'s care.

The children have been placed in a foster-to-adopt home, the same family with which the children were originally placed by the private adoption agency following their birth and release from the hospital, and are doing very well. Thus, there is a strong likelihood that the children will be adopted and remain together. The children deserve stability and permanency, which C.W. cannot provide. See *In re C.D.*, 509 N.W.2d 509, 513 (Iowa Ct. App. 1993). Consequently, we conclude termination is necessary. See *K.F.*, 437 N.W.2d at 560.

IV. Conclusion.

Because we conclude clear and convincing evidence supports the juvenile court's decision to terminate C.W.'s parental rights under section 232.116(1)(h) and the evidence does not support the conclusion that additional time would allow the children to be returned to C.W.'s care, we affirm the order of the juvenile court terminating C.W.'s parental rights.

AFFIRMED.