IN THE COURT OF APPEALS OF IOWA

No. 0-138 / 99-1753
Filed April 28, 2000

FILED
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CLERK SUPREME COURT

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

L.M., Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Karla J. Fultz, Associate Juvenile Judge.

Father appeals from the juvenile court's termination of his parental rights to his daughter. **AFFIRMED.**

Michael Oliver, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, and Cory McClure, Assistant County Attorney, for appellee.

Michelle Miller, Des Moines, guardian ad litem for minor child.

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

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MAHAN, J.

Father appeals from the juvenile court's termination of his parental rights to his daughter. He contends the court erred in (1) finding the circumstances of physical or sexual abuse or neglect that led to the adjudication of the child as being a child in need of assistance still exist, (2) finding the child could not be returned to his custody, and (3) determining termination of his parental rights is in the child's best interest. We affirm.

LaVern is the father of Courtney who was born in October 1997. In April 1998, Courtney was removed from her parents' custody on the grounds they were homeless and the child was not receiving adequate care. She was placed in the temporary care of her paternal grandparents, Sharon and Norman.

In May 1998, the parties stipulated to Courtney being a child in need of assistance pursuant to Iowa Code sections 232.2(6)(c)(2) and (6)(n). In July 1998, the court determined Courtney's continued placement outside her parents' home was necessary and placement continued with her paternal grandparents. A review hearing was held in November 1998, and services were offered for the parents to allow them to remedy the circumstances which led to the adjudication. These services were either refused by the parents, or they did not fully cooperate with the services.

In the fall of 1998, an effort to transition Courtney back into her parents' home was made, but they failed to adequately parent her and supervised visits were again implemented. It was observed the parents consistently failed to provide Courtney with well balanced meals and food in appropriate sizes that

would not cause her to choke. Neither parent feels a need for additional parenting skills.

There is a history of domestic violence between Courtney's parents. In addition, Merry, Courtney's mother, has a history of mental health problems and was determined by her psychiatrist to be extremely ill-equipped to parent competently even after two years of services. There was a founded incident of child abuse against Merry for denial of critical care. Merry placed Courtney at risk of choking by propping the bottle to feed her and would not take the advice of a medical professional who recommended she not do this. LaVern does not confront Merry when she exhibits inappropriate parenting to Courtney. On more than one occasion a caseworker observed LaVern's failure to intervene when Merry inappropriately cared for Courtney during supervised visits.

The State filed a petition to terminate parental rights in April 1999. Merry voluntarily consented to a termination of her parental rights and does not appeal. LaVern's parental rights were terminated in October 1999, pursuant to Iowa Code sections 232.116(c) and (g). He appeals.

I. Standard of Review. Termination proceedings are reviewed de novo. Iowa R. App. P. 4; *In re M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993). Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. Iowa R. App. P. 14(f)(7); *M.M.S.*, 502 N.W.2d at 5. The primary interest in termination proceedings is the best interests of the child. Iowa R. App. P. 14(f)(15); *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). The State has the

burden to prove the allegations of the petition by clear and convincing evidence. Iowa Code § 232.96 (1999).

II. Termination. Under Iowa Code section 232.116(1)(c), the juvenile court can terminate parental rights if the court finds 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 finding.
>
> (2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstances which led to the adjudication, and the circumstances continues to exist despite the offer or receipt of services.

Iowa Code § 232.116(1)(c)(1) and (2).

LaVern does not dispute the first requirement. LaVern argues, however, he and Merry are now separated and since Merry's behavior was the primary reason for Courtney's removal, the circumstances that led to the adjudication do not still exist. Therefore, any concerns the Department of Human Services (DHS) or the court has regarding his ability to protect Courtney from Merry are moot.

Evidence indicates LaVern and Merry separated about one month prior to the termination hearing. However, LaVern admits this was done in order for him to have a better chance of getting Courtney back. LaVern testified at the termination hearing that he has not thought about whether to let Merry back into

his life or not but he would feel free to make that decision once he got Courtney back.

LaVern contends termination should be withheld. He relies on the argument if in the future he were to allow Merry back into his home, the child could be removed and termination could take place at that time. We disagree with this argument. We look to the child's immediate and long-range interests and consider what the future holds for the child if she were to be returned to her parents. *In re R.L.*, 541 N.W.2d 900, 903 (Iowa App. 1995). Our statutory termination provisions are preventative as well as remedial and are designed to prevent probable harm to a child. *Id.*

Courtney is a young child who has lived outside her parents' home for all but six months of her life, and she needs permanency. Evidence indicates to us LaVern can neither stand up to Merry nor has he completely separated himself from her. We do not believe LaVern can properly protect Courtney. By not terminating parental rights, there is a probability Courtney will have to go through the legal process again. Accordingly, we affirm the termination of LaVern's parental rights under section 232.116(1)(c).

LaVern further contends the court erred in terminating his parental rights under Iowa Code section 232.116(1)(g). This section permits the juvenile court to terminate parental rights if the court finds all of the following have occurred:

> (1) The child is three years of age of 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.

Iowa Code § 232.116(1)(g)(1),(2),(3), and (4). LaVern only contends the last requirement of this section was not met. He does not dispute the first three requirements.

When parental rights are terminated on more than one statutory ground, we need only find grounds to terminate under one of the sections in order to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa App. 1999). Although we do not need to address the second ground for termination, we find clear and convincing evidence supports the juvenile court's decision to terminate LaVern's parental rights under both sections 232.116(1)(c) and (g).

As was previously discussed, the conditions that led to the adjudication of Courtney being a child in need of assistance still exist. Therefore, we find Courtney cannot be returned to LaVern and the juvenile court's termination of his parental rights under section 232.116(1)(g) was also proper.

We find LaVern's argument it is not in Courtney's best interest to terminate his parent-child relationship to her to be without merit. We affirm the juvenile court.

AFFIRMED.