IN THE COURT OF APPEALS OF IOWA

No. 0-441 / 99-1637
Filed September 13, 2000

IN THE INTEREST OF
L.A.F., Minor Child,

C.F., Father,
Appellant.

J.F., Mother,
Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Constance Cohen, Associate Juvenile Judge.

The father and mother of minor child L.A.F. appeal a district court order terminating their parental rights. **AFFIRMED.**

Ryan W. Moorman, West Des Moines, for appellant father.

J. Michael Mayer, Des Moines, for appellant mother.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, and Martha Johnson, Assistant County Attorney, for appellee-State.

Nicole Garbis Nolan, Des Moines, Guardian ad litem for minor child.

Considered by Mahan, P.J., Vaitheswaran, J., and Hayden, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 692.9206 (1999).

HAYDEN, S.J.

C.F. (father) and J.F. (mother) are the parents of L.A.F., born November 28, 1998. They appeal the decision of the juvenile court terminating their parental rights. The father claims there were not reasonable efforts to reunite him with L.A.F. He also claims there was not clear and convincing evidence the circumstances which led to the child in need of assistance adjudication continued to exist at the time of the termination hearing. The mother claims there was not clear and convincing evidence L.A.F. could not be returned to her custody. We affirm.

On November 30, 1998, L.A.F. was removed from the parents' custody and placed with the Department of Human Services (DHS) for placement in family foster care. There were immediate and grave concerns about the parents ability to provide for and protect L.A.F. on a full-time basis.

L.A.F's brother S.F., was born December 20, 1996. S.F. did not receive minimal, adequate care even though the parents were provided assistance and many services by DHS. He was hospitalized and diagnosed as failure to thrive. He improved rapidly while in the hospital and has continued to thrive in foster care.

S.F. was adjudicated to be a child in need of assistance (CINA) on March 11, 1997. Efforts to reunify S.F. with his parents failed. On May 12, 1998, the parents parental rights to S.F. were terminated. This termination was affirmed on appeal.

L.A.F. was placed in the same foster home that has adopted S.F., her brother. S.F. continues to thrive with his adoptive parents.

The DHS recognized the parents had disabilities as defined by the Americans with Disabilities Act and provided the parents with intensive psychiatric and therapeutic services.

The mother has been diagnosed with dependant personality order, immature, schizoid personality disorder, and dysthymic disorder, as well as having immature schizoid, paranoid, and self-defeating traits. The father suffers from schizoid personality disorder, with paranoid traits and border line intellectual functioning.

Many services have been provided this family since 1996, as follows:

> Court ordered supervision, DHS family foster care, supervised visitation, Eyerly Ball-Golden Circle Case Management for both parents, Generations, Inc. protective services, bus tokens, psychiatric services for the mother, individual therapy for the mother, individual therapy for the father Lutheran Social Services, Healthy Families, and sexual offender evaluation for the father.
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> Services previously provided to encourage the parents reunification with their son S.F. included foster care, visitation, individual therapy for both parents, medication for mental illness, Generations, Inc. Protective Service Program, psychiatric care for both parents, person to person and child protective treatment services.

The mother had suspected her oldest daughter was being sexually abused by a neighbor. She never reported the abuse and she also did not prevent her daughter from returning to that neighbor's home. She stated "her daughter had a mind of her own."

The father has a history of sexual abuse. He was convicted and imprisoned for sexual abuse of a minor in the past. He has repeatedly denied he did anything wrong and the mother believes him. He fails to acknowledge there may be any danger in the home.

The father has also been jailed on at least two occasions. He has continued to violate a no-contact order which was issued after a domestic assault against his ex-wife.

After hearing on the State's petition to terminate the parental rights to L.A.F., the juvenile court on September 29, 1999, terminated the parental rights of both the mother and father to L.A.F. under Iowa Code sections 232.116(1)(c), (f) and (g). Both parents appeal.

I. Scope of Review

The scope of review in termination cases is de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1994). The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa App. 1997). Our primary concern is the best interests of the children. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

II. Reasonable Reunification Efforts

Reasonable efforts were made prior to termination of parental rights. In each of their briefs the parents argue the issue of the reasonableness of reunification efforts was preserved by filing a timely notice of appeal.

The father argues it is unclear whether or not the parents received the proper visitation with L.A.F. The mother indicates she did not receive visitation according to the visitation schedule. There is no evidence in the record either parent requested additional or different services. When a parent argues there were inadequate services, but fails to demand services other than those provided, the issue is not preserved for appeal. *In re S.R.*, 600 N.W.2d 63, 65 (Iowa App. 1999). There is no evidence in this record either parent requested

additional or different services. The issue of adequacy of services must be raised prior to the termination hearing and prior to appeal. *Id.*

III. Sufficiency of the Evidence

There was clear and convincing evidence to support the juvenile court's decision to terminate the mother's and father's parental rights to L.A.F. Both parents' parental rights were terminated pursuant to section 232.116(1)(c), (f) and (g).

Iowa Code section 232.116(1)(c) provides a court may terminate parental rights when 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 a finding.
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> (2) Subsequent to the child in need of assistance adjudication, the parent's were offered or received services to correct the circumstances which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

Neither parent contests their son, S.F., a member of the same family, was adjudicated to be a child in need of assistance on March 11, 1997, because he did not receive minimal adequate care. S.F. was placed in foster care in January 1996, and never returned to the custody of his parents. After S.F. was adjudicated a child in need of assistance these parents received a multitude of services as set out on page three. These services were to help and correct the circumstances leading to the adjudication. However, these efforts failed and the parental rights to S.F. were terminated on May 12, 1998.

Services have continually been offered to these parents and they have either failed to participate and\or benefit from them. Despite the parents' compliance with many of the rehabilitative services, providers during more than three years of services, have questioned their ability to "incorporate this information into the care of a child on a full time basis." One of the father's case workers testified, "he certainly has the ability to go through the motions, to complete the requirements of the case plan." The worker further questioned the father's ability and\or desire to "internalize" and ultimately benefit from such information.

One of the service providers made the following assessment about the parents. She reported the parents have been provided with a wide array of rehabilitative services aimed at providing them with the skills necessary to provide their children with safe, stable, and secure environment they so desperately need and rightly deserve. She did not question the parents' love for their daughter L.A.F. However, she had grave concerns about the parents' ability to provide any child with a safe, stable, and secure home environment in which their physical, emotional, and developmental needs would be met on an ongoing basis. Despite additional rehabilitative services to the parents, they will never be in a position to provide L.A.F. with the permanency she desperately needs.

The juvenile court's decision to terminate the parents' parental rights to L.A.F. pursuant to Iowa Code section 232.116(1)(c) is supported by clear and convincing evidence.

The juvenile court also terminated the parental rights of these parents under Iowa Code section 232.116(1)(f). This subsection provides the court may order the termination of parental rights if the following have occurred:

> (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (2) The court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family.
> (3) There is clear and convincing evidence the parents to continue to lack the ability or willingness to respond to services which would correct the situation.
> (4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

Iowa Code § 232.116(1)(f).

Termination under section (f) is permitted without waiting for a specific period of time following removal when parental rights involving another child in the family have been terminated, the parent continues to lack the ability or willingness to respond to services and any services to correct the problem would be futile. *In re M.B.*, 553 N.W.2d 343, 346 (Iowa App. 1996). Both standards focus on the parental response to services. *Id.*

Such a prior adjudication will ordinarily have provided a useful insight concerning the parents' ability to function within the goals of any earlier permanency plan. *In re L.H.*, 480 N.W.2d 43, 46 (Iowa 1992). The need to show, as grounds for termination under Section 232.116(1)(f), that an "additional period of rehabilitation would not correct the situation," requires a prior effort to formulate and implement a rehabilitative permanency plan under section 232.102(6). *Id.* Elements contained in subsections three and four under this section are the only ones at issue here. We determine the termination of the

parents' parental rights to L.A.F. pursuant to this code section is supported by clear and convincing evidence.

The juvenile court finally terminated the parents' parental rights to L.A.F. under Iowa Code section 232.116(1)(g). This section provides a court may terminate parental rights when the court finds all of the following have occurred:

> (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 of the last six consecutive months and any trial period at home has been less than thirty days.
> (4) There is clear and convincing evidence 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).

Only element four is at issue here. Both parents claim L.A.F. could be returned to either or both of their custody at the time of the termination hearing.

A child cannot be returned to parental care within the meaning of section 232.102 if the child would be placed in danger of physical abuse or any other harm that would warrant a CINA adjudication. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). The threat of a CINA harm will warrant continuance of child and foster care and justify a termination of parental rights under section 232.116(1)(g). *Id.* It need not be the harm that led to the child's initial out of the home placement. *Id.*

A child can not be returned to the custody of the parent, within the meaning of section 232.116(1)(g), when any one of the grounds listed in section 232.2(6) can be proven by clear and convincing evidence. *In re B.K.J., Jr.*, 483 N.W.2d 608, 610 (Iowa App. 1992). We determine there is clear and convincing

evidence L.A.F. can not be returned to the custody of her parents as provided in section 232.102.

The father submits, in order to terminate his parental rights, there must be clear and convincing evidence the circumstances which led to CINA adjudication continued to exist at the time of the termination hearing. The father cites no statutory or case authority to support this contention. In fact, it is not supported by current case law.

Proof by clear and convincing evidence of any one of the types of adjudicatory harm is sufficient to support termination. *In re A.M.S.*, 419 N.W.2d 723, 725 (Iowa 1988). The proof must only show that any of the alleged definitional grounds of CINA exist at the time of the termination hearing. *Id.*

We determine L.A.F. would not be safe from adjudicatory harm if she were returned to either of her parents. Even after a multitude of services, designed to reunite them with their son, S.F. and then their daughter L.A.F., both parents remain unable to grasp and apply what they have learned to safely parent. There has been little, if any progress by these parents.

Our primary concern is the best interests of the child. *In re R.L.F.*, 437 N.W. 2d 599, 600 (Iowa App. 1989). The court must look to the child's long range as well immediate, interests. *Id.* Consideration is given to what the future holds for the child if returned to his or her parents. *Id.* at 601. Insight in to this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care the parent is capable of providing. *Id.*

The termination statute is preventative as well as remedial. The statute mandates action to prevent probable harm to children and does not require delay until the harm is done. *In re Dameron,* 306 N.W.2d 743, 745 (Iowa 1981).

The crucial days of childhood can not be suspended in parentless limbo while the mother and father experiment with ways to face up to their own problems. *In re J.L.W.,* 570 N.W.2d 778, 781 (Iowa App. 1997).

The record shows the service providers continue to have to go over the same areas about child care, child safety, and many other matters with both parents the same as when the services were first initiated. L.A.F. is a very young child, less than two years old, and has been in foster care her entire life. She is adoptable and is in need of permanency. It is apparent from the parents' failure to improve L.A.F. can not get this permanency from either of them.

We hold termination of parental rights to L.A.F. was proven by clear and convincing evidence. We affirm the juvenile court in all respects.

AFFIRMED.