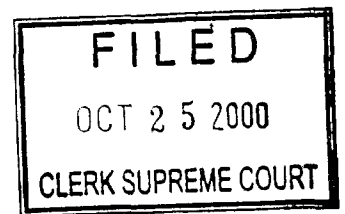


IN THE COURT OF APPEALS OF IOWA

No. 0-557 / 00-851
Filed October 25, 2000



**IN THE INTEREST OF
K.K., Minor Child,**

P.D., Mother,
Appellant,

K.K., Father,
Appellant.

Appeal from the Iowa District Court for Dickinson County, David C. Larson, District Associate Judge.

Mother and father separately appeal the termination of their parental rights. **AFFIRMED.**

Lonnie B. Saunders, Spirit Lake, for appellant-mother.

Pamela Wingert, Spirit Lake, for appellant-father.

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

Shannon Sandy of Sandy Law Firm, P.C., Spirit Lake, for minor child.

Considered by Sackett, C.J., and Streit and Vaitheswaran, JJ.

STREIT, J.

A mother and father appeal the decision of the district court terminating their parental rights. The mother claims the State failed to present clear and convincing evidence the child could not be returned to her care. The father claims the State did not present sufficient evidence to warrant termination of his parental rights and termination was not in the child's best interests. We affirm on appeal.

Korey and Peggy are the parents of Kameron, who was born in July 1997. Peggy has two children from a previous marriage. Between 1992 and 1997 the Iowa Department of Human Services (DHS) issued two reports of physical abuse and one report of denial of critical care against Peggy regarding these children. These two children now live with their father.

The relationship between Korey and Peggy involved domestic violence. In one incident, Korey kicked Peggy in the back because she was slow getting ready to drive him to work. In another incident, which happened while she was pregnant with Kameron, he got upset and grabbed her arms tightly. Korey and Peggy used methamphetamine and marijuana together.

Prior to Kameron's birth, Korey entered into a relationship with Bonnie, and this relationship also involved domestic violence. In March 1997 Korey pled guilty to domestic abuse assault after a fight with Bonnie. Korey and Bonnie had a child, Kyler. Even though Peggy was aware of Korey's history of domestic violence and his involvement with illegal drugs, in November 1997 she allowed Kameron to live with Korey and Bonnie.

In March 1998 Kyler received injuries consistent with shaken baby syndrome while in Korey's care. These injuries eventually led to his death. Korey was convicted of child endangerment causing serious injury. In May 1999 Korey was sentenced to prison for a term not to exceed ten years.

After Kyler's injuries, Kameron was removed from Korey's care and placed in foster care. Kameron was adjudicated to be a child in need of assistance under Iowa Code sections 232.2(6)(b) and (c)(2). Peggy was ordered to participate in parent and skill development services, counseling, individual therapy, and nursing services.

At the time Kameron was placed in foster care, Peggy was living with a married man. She did not take immediate steps to resume care of Kameron. Peggy had instability in her personal relationships, her employment, and her housing situation. Peggy attended one juvenile court hearing in the company of a man who was arrested at the courthouse for public intoxication. She admitted having a brief sexual fling with this man. Peggy continued to have contact with Korey until social workers specifically told her not to see him anymore.

Peggy had a psychological evaluation in July 1998. She has an adjustment disorder. She has a history of male dependent relationships. Korey also had a psychological evaluation. He has a history of drug use, borderline intellectual functioning, and problems with antisocial behavior. A psychosocial evaluation did not recommend returning Kameron to the care of either parent.

Kameron needs much care. He is extremely active, has special nutritional needs, and poor sleep patterns. Kameron suffers from asthma and needs

frequent nebulizer treatments. According to Dr. James Webb, Kameron's physician, Kameron's health situation is fragile. His foster parents have expressed an interest in adopting him.

In April 1999 the State filed a petition to terminate the parental rights of Peggy and Korey to Kameron. After the petition was filed, Peggy became more involved in services. At the time of the termination hearing, Peggy had maintained the same job and apartment for more than one year. She was participating in individual therapy and domestic abuse prevention counseling.

The juvenile court entered an order on April 18, 2000, terminating the parental rights of Korey and Peggy to Kameron. The court terminated Peggy's rights under section 232.116(1)(g). The court determined Kameron could not be returned to Peggy's care at that time. The court expressed grave concerns about Peggy's ability to care for Kameron's medical needs. The court terminated Korey's parental rights under sections 232.116(1)(d), (g), and (m). The court noted Korey could not care for Kameron because he was in prison, and also found Kameron would be in imminent danger if returned to Korey's care. Korey and Peggy appealed the juvenile court decision.

I. Scope of Review.

The scope of review in termination cases is *de novo*. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa App. 1997). 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 child. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

II. Peggy.

Peggy contends the State did not present sufficient evidence to show Kameron could be returned to her care at the time of the termination hearing. She argues she had achieved stability in her job and residence and that she was cooperating with services.

There is clear and convincing evidence to show Kameron could not be returned to Peggy's care at the present time. While two social workers testified Kameron could be returned to Peggy's care following a short transition period, two DHS workers testified Kameron could not be safely returned. Additionally, another social worker, who completed a permanency assessment, did not recommend returning Kameron to Peggy. The juvenile court found the testimony of Dr. Webb most compelling. Dr. Webb had serious concerns about Peggy's ability to care for Kameron's special medical needs. We give weight to the fact findings of the juvenile court, especially on matters of credibility. See Iowa R. App. P. 14(f)(7).

Peggy did not make any real progress with services until after the petition to terminate her parental rights was filed. There are still serious concerns about whether Peggy would be able to care for Kameron's health problems. Kameron needs constant monitoring to keep his asthma under control. In addition, there were questions about whether Peggy had overcome her male dependency or was merely hiding her male relationships from service workers. Peggy's domestic abuse counselor had recently seen Peggy renting a videotape with a

man with a history of domestic abuse. For all of these reasons, we determine Peggy's parental rights were properly terminated under section 232.116(1)(g).

III. Korey.

A. Sufficiency of the Evidence.

Korey also claims the State did not present sufficient evidence to warrant termination of his parental rights. One of the grounds for termination of Korey's parental rights was section 232.116(1)(g), which requires a finding there is clear and convincing evidence the child cannot be returned to the parent at the present time.

Korey was in prison for child endangerment at the time of his termination hearing, and it is clear Kameron could not be safely returned to his care. Even if Korey was not in prison, he would present a danger to Kameron due to the fact Tyler received fatal injuries in Korey's care. Furthermore, Korey has a history of domestic abuse, and he has taken no steps to address this problem. Korey's parental rights were properly terminated under section 232.116(1)(g).

B. Other Code Sections.

When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996). Because we have found Korey's parental rights were properly terminated under section 232.116(1)(g), then we need not address his claims regarding sections 232.116(1)(d) and (m). However, we find there is sufficient evidence to terminate his parental rights under these grounds as well.

C. Best Interests.

Korey asserts it is not in Kameron's best interests to terminate his parental rights. He claims his parental rights have been terminated merely because Kameron bonded with the foster family.

Even if the statutory requirements for termination of parental rights are met, the decision to terminate must still be in the best interests of the child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). In determining the best interests of a child, the court looks to the child's long-range and immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). The court must consider the physical, mental, and emotional condition and needs of the child in deciding to terminate parental rights. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa App. 1996).

We find termination of Korey's parental rights is in Kameron's best interests. Kameron's half-brother, Kyler, received injuries consistent with shaken baby syndrome while in Korey's care and died from those injuries. Korey is presently in prison on a conviction for child endangerment. Through his own actions, Korey has been unable to participate in Kameron's life and he has not bonded with the child.

We affirm the decision of the district court that terminated the parental rights of Korey and Peggy to Kameron.

AFFIRMED.