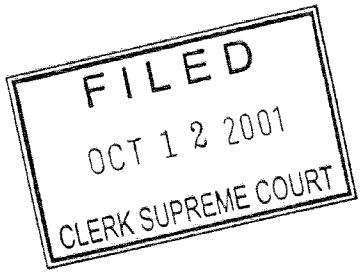
IN THE COURT OF APPEALS OF IOWA

No. 1-504/ 01-0161
Filed October 12, 2001



IN THE INTEREST OF D.P., Jr., Minor Child,

B.P., Mother,
Appellant,

D.P., Sr., Father,
Appellant.

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

Mother and father appeal separately from the juvenile court order terminating their parental rights. **AFFIRMED ON BOTH APPEALS.**

David Pargulski and Tiffany Koenig, Des Moines, for appellant mother.

Bryan J. Tingle, Des Moines, for appellant father.

Thomas J. Miller, Attorney General, M. Elise Pippin, Assistant Attorney General, Leslie C. Ayers, Legal Intern, and Jon Anderson, Assistant County Attorney, for appellee-State.

Marla Suddreth of Borseth, Genest & Suddreth Law Office, Altoona, for minor child.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

MAHAN, J.

A mother and father separately appeal the termination of their parental rights to their son. The mother claims the evidence does not support the statutory grounds for termination and it is not in the child's best interest. The father makes the same claims and also claims the child could safely be returned to the mother's care. He also argues he should be given more time to resolve his substance abuse problem. We affirm on both appeals.

Background facts and proceedings

Daniel and Bobbi are the parents of Daniel, Jr., born July 10, 1998. Daniel and Bobbi were married at all times relevant to this case. DHS removed Daniel, Jr. (Danny) from his parents care on February 29, 2000, after a founded report of denial of critical care and lack of supervision. On June 30, 2000, he was adjudicated to be in need of assistance under Iowa Code sections 232.2(6)(b) and (n).

Daniel uses marijuana and methamphetamine. He was unemployed at the time of the removal. After all but one of the UAs Daniel provided tested positive for drugs, Daniel stopped responding to random UA requests from DHS. By the time of the termination hearing, Daniel had not successfully completed substance abuse treatment. Daniel participated in counseling.

Danny is Bobbi's fourth child. She gave up her parental rights to her first child. Her rights to her second child were terminated in 1995, after the child was removed because of physical abuse. Bobbi was unable to control her temper. She slapped, shook, and threw her six-month-old daughter down on the couch.

Bobbi's third child died of SIDS, although the father of that child alleged Bobbi had threatened to kill the child just before the child died. Her temper and lack of parental skills were evident in her relationship with Danny. Bobbi told social workers she hated Danny and found his behavior to be uncontrollable. Bobbi participated in counseling, but did not complete her psychosocial evaluation or maintain stable employment and housing.

The parents did not provide suitable, clean housing. They were dependent on relatives for support such as food and diapers. Neither parent had maintained employment with any consistency. They moved frequently and often depended on family or friends for housing.

DHS offered both parents family preservation services, parenting classes, assertiveness classes, individual therapy, supervised visitation, and psychosocial evaluations. It also offered Daniel substance abuse evaluation and treatment. Both parents participated in supervised visitation, although late in the case, they were having separate visitation because they could not get along together.

The court confirmed Danny's placement in foster care and found DHS made reasonable efforts to reunite the family after a dispositional hearing on August 14, 2000. The State filed a termination petition September 14, 2000. The State sought to terminate Daniel, Sr.'s rights under Iowa Code sections 232.116(1)(c), (d), (g), and (k), and Bobbi's parental rights under sections 232.116(1)(c), (d), (f), and (g). The juvenile court terminated Daniel's and Bobbi's parental rights on the grounds pled. The court noted Daniel had a drug problem, was unemployed, and had no independent housing except with his

mother, and Bobbi has not maintained stable employment and housing. It also found she had not taken responsibility for the abuse of her daughter, she continued to have contact with Daniel despite her assertions she is afraid of him, and she continued to have contact with a known sexual perpetrator.

Claims on appeal

Bobbi. She claims clear and convincing evidence does not support any of the grounds for termination. She argues she responded to and benefited from the services offered, so the circumstances which led to the adjudication no longer exist. She contends she maintained significant and meaningful contact with Danny through visitation and complying with services. She claims he could be returned to her care because she now had suitable housing and employment and she had implemented what she had learned from the services offered. Bobbi argues an additional period of time with services would correct the situation and allow her to show she can be a good parent. She also claims termination was not in Danny's best interest because he knows her, he responds to her during visitation, and he "is entitled to learn who his mother is and to bond with her."

Daniel, Sr. He claims clear and convincing evidence does not support any of the grounds for termination. Daniel argues the circumstances which led to Danny's removal no longer exist because he has "accepted and was ready to address the issues he faced and was ready for the return of his child." Like Bobbi, Daniel contends he maintained significant and meaningful contact with Danny through visitation and complying with services. Daniel claims Danny could be returned to Bobbi's care, so termination of his parental rights under

232.116(1)(g) was improper. He argues he should have a reasonable amount of time to address his substance abuse problem. He also claims termination is not in Danny's best interest because Danny knows him and Daniel feels close to Danny.

Discussion

We review termination cases de novo. *In re S.J.*, 620 N.W.2d 522, 524 (Iowa Ct. App. 2000). The State must show grounds for termination by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa Ct. App. 1997). 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 S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

Iowa Code section 232.116(1)(c). This section provides for termination if "the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services." Iowa Code § 232.116(1)(c)(2). Although substance abuse evaluation and treatment was offered, Daniel has not successfully participated in substance abuse treatment. He continues to struggle with illegal drugs. Clear and convincing evidence supports terminating his parental rights on this ground.

Bobbi has participated in some counseling and claims she has changed. Yet she had not progressed to unsupervised visitation and had not demonstrated to service workers she had overcome the anger and violence problems which led

to Danny's removal and the termination of Bobbi's parental rights to her daughter. Although the initial removal was based on abuse rather than neglect, there was concern the parents were dependent on relatives to provide such necessities as diapers. Bobbi testified, after paying rent, she did not even have enough money left to buy a postage stamp. She was unemployed at the time of the termination. Clear and convincing evidence supports terminating her parental rights on this ground.

Iowa Code section 232.116(1)(d). This section requires parents to maintain "significant and meaningful contact" with the child. Iowa Code § 232.116(1)(d)(3). Both parents participated regularly in supervised visitation, although late in this case, it was separate visitation because they could not get along. Both maintained regular contact with Danny. However, it was not "significant and meaningful" as provided in the statute and case law. Neither parent provided financially for Danny after his removal. Daniel did not make reasonable efforts to comply with the requirements of the case permanency plan, to deal with his substance abuse, in order to be able to resume care of Danny. Bobbi did participate in some counseling, but did not maintain stable housing or employment. She offered only excuses for her failure to complete the requirements of the case permanency plan. Neither parent made a "genuine effort" to complete the responsibilities of the case plan. We affirm termination of both parents' rights on this ground.

Iowa Code section 232.116(1)(f). This section provides for termination if "the parent continues to lack the ability or willingness to respond to services" and

"an additional period of rehabilitation would not correct the situation." Iowa Code § 232.116(1)(f)(3) and (4). Bobbi claims, without any citation to the record that she is cooperating and can cooperate with services. She argues an additional period of time with services would correct the situation. She has attended counseling but does not appear to have benefited from it. Although she claims to be afraid of Daniel because of his drug use and abuse, she continues to have contact with him. She offers excuses, such as not being able to afford a postage stamp, for her failure to comply with requirements of the case permanency plan. Her last long-term employment was in 1991. Danny has waited long enough for his mother to respond to services and resume parenting him. "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). We affirm termination of Bobbi's parental rights on this ground.

Iowa Code section 232.116(1)(g). Daniel does not claim Danny could be returned to his care at the time of the termination hearing. He acknowledges he has an untreated substance abuse problem. Rather, Daniel claims Danny could be returned to Bobbi's care, and that should be sufficient to prevent termination of his parental rights. Daniel and Bobbi are estranged. Daniel has an ongoing substance abuse problem he refuses to deal with, other than to admit it. Danny could not be returned to his father's care, which is sufficient to support termination of Daniel's parental rights on this statutory ground.

Although Bobbi had an apartment at the time of the termination hearing, she had no job and no money. She had not completed the requirements of the

case permanency plan or demonstrated consistent change in how she reacts to Danny. He would be at risk of adjudicatory harm if returned to her care. The requirements of Iowa Code section 232.116(1)(g)(4) are met "when the child cannot be returned to the parental home because the definitional grounds of a child in need of assistance, Iowa Code section 232.2(6), exist." *See In re A.M.S.*, 419 N.W.2d 723, 725 (Iowa 1988). If any one of the grounds listed in section 232.2(6) can be proven by clear and convincing evidence, there is a sufficient basis for terminating the parent's rights. *See In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990); *In re R.L.*, 541 N.W.2d 900, 903 (Iowa Ct. App. 1995). Termination on this ground was proper.

Iowa Code section 232.116(1)(k). Daniel does not claim he does not have "a severe, chronic substance abuse problem." Iowa Code § 232.116(1)(k)(2). Rather, he claims the record does not support a finding he is a danger to himself or others because of his substance abuse. *See id.* Daniel's inability to provide for his family and the risks to a small child like Danny if Daniel were under the influence of an illegal substance while caring for him satisfy the requirements of this section. He asks for more time to address his problem. We consider the treatment history of a parent to assess the likelihood the parent will be in a position to parent the child in the foreseeable future. *See In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). We affirm the termination on this ground.

Best interest. Both parents claim terminating their parental rights is not in Danny's best interest. Our primary concern is the best interest of the child. *In re R.L.F.*, 437 N.W.2d 599, 600-01 (Iowa Ct. App. 1989). A child's rights and needs

are paramount in parental termination proceedings. *In re S.A.*, 502 N.W.2d 23, 25 (Iowa Ct. App. 1993). Looking at Danny's long-range, as well as immediate, interest, we find termination of Daniel's and Bobbi's parental rights in Danny's best interest. The statutory period of patience for the parents is long past.

For the reasons set forth above, we affirm the termination of Daniel's and Bobbi's parental rights to Danny on all the grounds cited by the juvenile court.

AFFIRMED ON BOTH APPEALS.