IN THE COURT OF APPEALS OF IOWA

No. 0-128 / 99-1489
Filed March 29, 2000

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CLERK SUPREME COURT

IN THE INTEREST OF A.R., Minor Child,

R.R., Father

Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Gerald W. Magee, Associate Juvenile Judge.

Father appeals from the juvenile court order terminating his parental rights. **AFFIRMED.**

Charles H. Biebesheimer of Stillman, Goranson, Stone & Lovell, Clear Lake, for appellant.

Thomas J. Miller, Attorney General, and Kathrine S. Miller-Todd, Assistant Attorney General, for appellee-State.

Mark Young, Mason City, guardian ad litem for minor child.

Considered by Huitink, P.J., and Streit and Miller, JJ.

STREIT, J.

Robert appeals the termination of his parental rights claiming the juvenile court erred in finding he suffered from severe and chronic substance abuse, his prognosis for recovery was poor, and termination was in his daughter's best interests. Robert's substance abuse is both severe and chronic. Every attempt to overcome his addiction has led to relapse. The likelihood his daughter would be able to return to his care is poor. Termination is in his daughter's best interests, and the juvenile court is affirmed.

I. Background Facts & Proceedings.

In the winter of 1997 officers from the Mason City Police Department executed a search warrant at the home of Robert and his five-year-old daughter, Amanda. The officers found the home utterly filthy and discovered rolling papers, a pipe, a bowl containing marijuana, and scissors lying on the floor of the bedroom Amanda shared with her parents. The police also found another marijuana pipe on the kitchen table as well as methamphetamine and needles in her mother's purse. The child, although not present at the time of the search, later indicated to a social worker that she often watched her mother smoke a pipe and give herself shots. Robert admitted the drugs found in the home were within his daughter's reach. The parents were arrested, the department of human services filed a founded child abuse report against the parents for a denial of critical care, and Amanda was temporarily placed with her paternal grandmother. Amanda later returned to her parents' care.

After his arrest Robert entered extended outpatient substance abuse treatment, but was discharged a short time later when he tested positive for methamphetamine and for failing to meet expectations. A week later Amanda was adjudicated a child in need of assistance (CINA) and removed from the home when both parents tested positive for methamphetamine. After testing positive for drugs on two additional occasions, Robert again sought substance abuse treatment. This time, although testing positive for methamphetamine during his stay, he successfully completed the program. However, he twice tested positive for methamphetamine in the month following his discharge.

Almost a year after Amanda's CINA adjudication and placement, the parents agreed to abide by a concurrent plan that required they submit to random urinary analysis (UA), attend weekly Narcotics Anonymous (N.A.) sessions, and participate in psychological evaluations. The month immediately following Robert's signing of the concurrent plan, he failed to submit to random urinalysis on five occasions and only sporadically attended N.A. sessions. He did agree to a psychological examination, but the doctor's prognosis with regard to his substance abuse was that little change could be expected.

The State filed a petition for termination of parental rights. Two days later Robert was sentenced for possession with intent to deliver methamphetamine. The court placed him on probation for five years and ordered him to reside at a residential facility for 180 days. During the pendency of the termination proceedings, Robert failed to appear for random drug testing on four additional

occasions. The juvenile court terminated Robert's parental rights pursuant to Iowa Code sections 232.116(1)(k) and 232.116(1)(e) (1999).

Robert now appeals claiming the juvenile court erred in terminating his parental rights. He claims the juvenile court erred in finding he suffers from such a severe and chronic substance abuse problem as to prevent the return of Amanda and that termination is not in her best interests.

II. Standard of Review.

Appellate review of proceedings to terminate a parent-child relationship is de novo; thus, "it is our duty to review the facts as well as the law and adjudicate rights anew on those propositions properly preserved and presented to us." *In re O'Neal*, 303 N.W.2d 414, 422 (Iowa 1981). We accord weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses whom the court heard and observed firsthand, but we are not bound by those findings. *Long v. Long*, 255 N.W.2d 140, 143 (Iowa 1977).

III. Severe and Chronic Substance Abuse.

Iowa Code section 232.116(1)(k) permits the juvenile court to terminate the parent-child relationship if the court finds all of the following have occurred:

> (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.
>
> (2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.
>
> (3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

Robert claims the second and third factors were not met by clear and convincing evidence.

We look to Robert's prior acts in determining whether he suffers from a substance abuse problem and if that problem presents a danger to himself or others. *See In re A.J.*, 553 N.W.2d 909, 914 (Iowa App. 1996). If there is a substance abuse problem, we must then determine whether the prognosis indicates Amanda can be returned to Robert's care within a reasonable time. *See id.*

Robert began using drugs between the ages of eleven and thirteen. His drug usage has included marijuana, crack, cocaine, acid, methamphetamine, and opium. He has been charged with possession of controlled substances. He has attended substance abuse treatment on three separate occasions but has been unable to resist the lure of illicit substance abuse by continually relapsing. Since the department of human services' involvement with Robert, he has tested positive for drug use on seven occasions and has failed to submit UAs on a total of twelve occasions. Regardless of which definition Robert would have this court employ, his substance abuse is both severe and chronic.

Not only is his substance abuse severe and chronic, but his inability to control this addiction is harmful to himself and others. Robert's addiction is clearly harmful to himself as evidenced by his past and present involvement with the criminal justice system, not to mention the well-documented deleterious physical effects of long-term substance abuse. However, of even greater import is the harmful effect his substance abuse has on his daughter. Throughout the

course of these proceedings, Robert has consistently denied his substance abuse affects his ability to parent or has proved harmful to Amanda. Yet when the Mason City Police Department executed the search warrant at Robert's home, drugs and paraphernalia were spread across the floor of Amanda's bedroom. Robert candidly admitted the drugs were within her reach. Simply because Amanda has not yet stumbled into her father's nefarious affairs does not mean the state should shield its eyes until such time as Amanda impales herself on a hypodermic needle or inhales vast quantities of toxins. *See In re I.L.G.R.*, 433 N.W.2d 681, 689 (Iowa 1988) (holding the state must act to prevent probable harm and need not delay until actual physical harm has occurred). The evidence is clear and convincing Robert has a severe and chronic substance abuse problem that tolls harmful effects on himself and others.

Finally, Robert's prognosis that Amanda can be safely returned to his care is poor. He has habitually failed to remain drug free despite the bleak reality that his continued use would result in a forfeiture of his personal liberty rights and quite possibly the termination of his parental rights. Robert's actions coupled with the poor prognosis offered by the psychologist who examined Robert provides clear and convincing evidence Amanda will not be able to be safely returned to her father's care. Because the elements of Iowa Code section 232.116(1)(k) are met by clear and convincing evidence, the termination is affirmed.

Although "we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm," we also find the juvenile court

properly terminated Robert's parental rights under Iowa Code section 232.116(1)(e). *In re S.R.*, 600 N.W.2d 63, 64 (Iowa App. 1999) (citation omitted). Section 232.116(1)(e) permits the juvenile court to terminate the parent-child relationship if the court finds all of the following have occurred:

> (1) The child is four years of age or older.
>
> (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 twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
>
> (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

Robert does not dispute the first three factors are supported by clear and convincing evidence. He only claims the juvenile court erred in finding Amanda cannot be safely returned to his care. Based on our above discussion of Robert's past and present struggles with substance abuse, we also find there is clear and convincing evidence to support the proposition Amanda cannot be safely returned to her father's care.

IV. Amanda's Best Interests.

Even if the statutory requirements for termination are met, the decision to terminate must still be in the best interests of the child. *In re N.H.*, 383 N.W.2d 570, 574 (Iowa 1986); *In re D.W.K.*, 365 N.W.2d 32, 34-35 (Iowa 1985). The best interests of the child are paramount considerations in determining whether to terminate parental rights. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *In re*

N.H., 383 N.W.2d at 574. We give primary consideration to the physical, mental, and emotional condition and needs of the child. *In re J.W.D.*, 456 N.W.2d 214, 217 (Iowa 1990).

Termination of Robert's parental rights is in Amanda's best interests. Robert claims an emotional bond to Amanda, but his perilous endangerment of Amanda countermands even the most tender emotional bond. Robert continues to deny his substance abuse placed his daughter in an imminently dangerous situation. He does not recognize the effect substance abuse has on his ability to parent nor does he realize how dangerous a panoply of drugs strewn throughout the house is to an inquisitive child. Amanda cannot endlessly await Robert's perpetual attempts to conquer his addiction. The threat of imprisonment and the possibility of losing a daughter have failed to quench his thirst for illegal substances. It is in Amanda's best interests to terminate Robert's parental rights. The juvenile court is affirmed.

AFFIRMED.