IN THE COURT OF APPEALS OF IOWA

No. 1-588 / 01-580
Filed September 12, 2001

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CLERK SUPREME COURT

IN THE INTEREST OF N.C., J.S. and J.S., Minor Children,

W.S., Father of J.S. and J.S.,
Appellant,

T.H., Mother,
Appellant.

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

Father and mother appeal separately from the juvenile court order terminating their parental rights. **AFFIRMED.**

Elias S. Gastelo, Jr. of Benzoni & Mains Law Office, P.L.C., Des Moines, for appellant father.

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

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

Michelle Miller, Des Moines, for minor children.

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

HECHT, J.

A mother and father appeal separately from the juvenile court order terminating their parental rights. The mother claims the court should have exercised its discretion not to terminate her parental rights to her daughter because of the close parent-child bond. The father claims there was no evidence his substance abuse problem would place his children at risk if returned to his care. We affirm on both appeals.

Background facts.

Tanya is the mother of Nichole, born in July 1987, and twins Jakob and Jordan, born in November 1998. Wyatt is the father of Jakob and Jordan. Timothy, the father of Nichole, is not involved in this appeal.

Nichole and the twins were removed from the family home after Nichole discovered suicide notes written on the walls of the home and called 911. Tanya has a history of mental problems and is diagnosed with bipolar disorder. She began using alcohol at age eight and illegal drugs at age twelve. She has a history of substance abuse, including heroin, and psychiatric hospitalizations. Wyatt has a substance abuse problem with marijuana and methamphetamine. He has been resistant to substance abuse treatment and admits to an ongoing problem.

Termination proceedings.

The State petitioned to terminate Tanya's parental rights to Nichole under Iowa Code section 232.116(1)(k). It petitioned to terminate Tanya's and Wyatt's parental rights to the twin boys under Iowa Code section 232.116(1)(g). The

juvenile court found the children would suffer adjudicatory harm if returned to either parent at the time of the termination hearing. It found neither parent could care even for their own needs and they lacked insight into how their problems affect their children. The court also found termination to be in the children's best interest:

> Jakob and Jordan are placed together in a pre-adoptive home where they are loved and protected by parents who are willing to make a lifelong commitment to them. Nichole is understandably "torn" about termination. For many of her thirteen years, she has been the parent. She wants to go home, but knows intellectually that it is not possible. She is struggling with loyalty issues and concern for her mother. She likes living in foster care where she feels safe. . . . In order for her to have an opportunity to reclaim her childhood, she needs to be able to look forward. She needs to know she will have a stable home; a home in which she is the child; a home where adults take care of the children. She needs to know it is not her work to make her mother well. She needs a chance to be a child.

Appellate claims.

Tanya does not appeal the termination of her parental rights to Jakob and Jordan. Nor does she challenge the statutory grounds for termination of her parental rights to Nichole. She claims the court should have exercised its discretion under section 232.116(3) not to terminate her parental rights to Nichole because of the close parent-child bond.

Wyatt challenges the conclusion the requirements for termination in section 232.116(1)(g)(4) were met. Wyatt claims "little or no evidence was introduced to show [his] substance abuse problems placed the children in danger or at risk."

Discussion.

The scope of review in termination cases is de novo. *See In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa Ct. App. 1998). The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa Ct. App. 1997). Our primary concern is the best interests of the child; we look to both the child's long-range and immediate interests. *M.N.W.*, 577 N.W.2d at 875.

Tanya. The juvenile court need not terminate a parent's rights, even if grounds exist, if "[t]here is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." Iowa Code § 232.116(3)(c). As evidence of the close parent-child relationship, Tanya cites to her own assertion, as reported in the case permanency plan, that "she reports having a close relationship with her children." Tanya may have a close emotional bond with Nichole, but the relationship is not healthy. Nichole has assumed a parental role in relationship to her mother and feels responsible to take care of her. Nichole is torn about termination, but she testified she did not want to go back with her mother unless the twins came back too. The provisions of section 232.116(3) are discretionary and are factors to consider, not overriding considerations. *In re N.F.*, 579 N.W.2d 338, 341-42 (Iowa Ct. App. 1998). With the changes in federal law, the trend in Iowa is to terminate once statutory grounds exist, unless there are compelling reasons not to terminate. *See* Iowa Code § 232.111(2)(b)(2). We find the juvenile court properly considered the relationship between Tanya and Nichole and correctly

determined termination was proper. We affirm the termination of Tanya's parental rights to Nichole.

Wyatt. The juvenile court found Jakob and Jordan could not be returned to Wyatt's care at the time of the termination. *See* Iowa Code § 232.116(1)(g)(4). Wyatt claims Jakob and Jordan could be returned to his care despite his untreated substance abuse because there is no evidence he would harm them or put them at risk. Wyatt also argues there is no evidence he used drugs in the children's presence. He stated he waits twenty-four hours after using before being around the children. Iowa's statutory termination provisions are preventative as well as remedial. *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998). Wyatt's drug abuse has affected his ability to obtain and maintain employment and housing. It has revealed his problems with verbal and physical aggression. Even if we were to credit Wyatt's claim he has abstained from drug use during the twenty-four hours before contact with the children, such a history does not support a finding the children would not be at risk in his care. Wyatt has not demonstrated the ability to consistently abstain from drug use. Accordingly, we find Jakob and Jordan would be at risk of adjudicatory harm if returned to Wyatt's care. *See, e.g.,* Iowa Code §§ 232.2(6)(b), (c)(2), (g), or (n). We affirm the termination of Wyatt's parental rights to Jakob and Jordan.

AFFIRMED ON BOTH APPEALS.

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