IN THE COURT OF APPEALS OF IOWA

No. 8-448 / 98-0634

IN THE INTEREST OF B.S., A.S., C.S., and A.H., Minor Children,

P.H. Father of A.S., C.S. and A.H.,
Appellant,

C.H., Mother,
Appellant.

FILED
SEP 30 1998
CLERK SUPREME COURT

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

Mother and father appeal the juvenile court order terminating their parental rights. **AFFIRMED.**

Phillip J. Stone of Stillman, Goranson, Stone & Lovell, Clear Lake, for appellant-mother.

James J. Brandt of Pappajohn, Shriver, Eide & Nicholas, P.C., Mason City, for appellant-father.

Thomas J. Miller, Attorney General, and Chris Odell, Assistant Attorney General, for appellee-State.

Mark A. Young of Young Law Office, Mason City, guardian ad litem for minor children.

Considered by Cady, C.J., and Vogel and Mahan, JJ.

MAHAN, J.

Cheri is the mother of Brandon, born in November 1984; twins Andy and Cody, born in August 1987; and Allison, born in May 1989. The father of Brandon has not been involved in his life and is not a party to this appeal. Paul is the father of Andy, Cody, and Allison. Cheri and Paul appeal the termination of their parental rights. We affirm.

Cheri and Paul were married in 1990. The family came to the attention of the Department of Human Services (DHS) in September 1994 when Cheri requested services because the children were exhibiting behavioral problems such as stealing and setting fires. The family received family therapy and protective day care until September 1995.

In October 1995, DHS received a report the home was unsanitary. Social workers found the children playing nude in insulation. They had sores on their heads from untreated head lice. The children's mattresses were soaked with urine. DHS issued a founded report of denial of critical care due to lack of supervision. The children were removed from the home in November 1995.

The children were adjudicated to be children in need of assistance under Iowa Code sections 232.2(6)(b) and (c)(2). The juvenile court ordered Cheri and Paul to obtain substance abuse and psychological evaluations, and to receive family therapy. They were also ordered to improve the physical conditions in the home.

In January 1996, the parents began to participate in family therapy and life skills sessions. Paul obtained a psychological evaluation which showed he was a

rebellious individual who tended to disregard social norms. Cheri also obtained a psychological evaluation. She was diagnosed with chronic low-level depression. Cheri presented herself as an angry individual and was resentful toward persons in authority.

Both parents have problems with alcohol. Cheri and Paul had substance abuse evaluations in April 1996. Paul attended a day treatment program but was unsuccessfully discharged from the program. He did not attend a recommended inpatient program. In July 1996, Cheri was successfully discharged from an outpatient program. She did not follow through with recommended aftercare.

The parents were inconsistent in meeting with social workers. Visits were sporadic. When visits did occur, they were chaotic. The parents were unable to consistently discipline the children.

In June 1997, the juvenile court told the parents they had four months to show they could maintain the home in a safe and sanitary condition, provide documentation of attendance at AA, and demonstrate progress in parenting skills. Also, Paul was to obtain employment.

The parents failed to comply with any of the requirements of the juvenile court. Paul did not obtain employment and they lost their home due to foreclosure. The parents remained inconsistent in attending visitation and meeting with social workers. In September 1997, Paul was arrested for driving under suspension and driving while intoxicated.

In December 1997, the State filed a petition for termination of parental rights. The parents subsequently moved to Kansas without informing the children or social workers. They telephoned Brandon and told him they were not returning for the termination hearing.

The children have done well in foster care. They are presently in one foster home. The foster parents have expressed some interest in adopting the children. The children have behavioral problems and attend individual therapy.

The juvenile court found Cheri and Paul had actually regressed in terms of being able to care for the children. The parents had no home, minimal income, continuing untreated substance abuse, and a lack of appropriate parenting skills. The court determined Cheri and Paul's parental rights should be terminated under sections 232.116(1)(c), (d), and (e). Cheri and Paul have appealed.

I. 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. CHERI

A. Cheri contends the State did not properly serve her with notice of the petition for termination of parental rights. She admits she saw Paul's copy of the petition, but argues the State should have served her with a separate copy. Cheri claims the juvenile court lacked jurisdiction over her.

The State claims Cheri failed to preserve this issue for appeal. Cheri raised the issue before the juvenile court. The court did not specifically rule on the issue. We determine that by proceeding with the hearing and by issuing the order terminating Cheri's parental rights, the court made an implied finding it had jurisdiction over Cheri.

The fact Cheri was not served with an original notice of the petition would normally be fatal to jurisdiction. *Fisher v. Keller Indus., Inc.*, 485 N.W.2d 626, 628 (Iowa 1992). However, a court may obtain jurisdiction through a party's voluntary appearance in the proceedings. *Id.* Cheri saw Paul's copy of the petition for termination of parental rights. She told a social worker she would go down to the courthouse to obtain her own copy, but never did. She filed an application for appointment of counsel to represent her in the termination proceedings. Counsel did represent Cheri at the termination hearing, although Cheri herself did not attend. We conclude Cheri voluntarily submitted to the juvenile court's jurisdiction.

B. Cheri claims the State did not present sufficient evidence to show the children cannot be returned to her care, which is an element of section 232.116(1)(e). Her failure to address sections 232.116(1)(c) and (d) means she has waived any arguments on appeal based on these sections. *See Smith v. CRST Int'l, Inc.*, 553 N.W.2d 890, 895 (Iowa 1996). Failure in an appellate brief to state, to argue, or to cite authority in support of an issue may be deemed waiver of that issue. Iowa R. App. P. 14(a)(3). The termination of Cheri's parental rights may be upheld based on the sections which she did not appeal.

Furthermore, we find there is sufficient evidence to support termination of Cheri's parental rights based on section 232.116(1)(e). Cheri has been inconsistent in attending supervised visitation and meeting with social workers. She has not attended AA meetings as required by the juvenile court. Most important, Cheri has not done anything to prepare herself or her home for the return of the children. The evidence showed the parents' situation has actually regressed while this case was pending. We determine Cheri's parental rights were properly terminated under section 232.116(1)(e).

C. Cheri contends it is not in the best interests of the children to terminate her parental rights. She points out the children stated they wanted to maintain a relationship with their parents. Cheri asserts it would be more beneficial to the children to place them in long-term foster care or in the guardianship of the foster parents.

In determining the best interests of the children, a court looks to the children'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 children in deciding whether to terminate parental rights. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa App. 1996).

We determine it would be in the best interests of the children to terminate Cheri's parental rights. Although the children had previously stated they wanted to maintain a relationship with their parents, they felt abandoned when Cheri and Paul moved to Kansas without informing them. Additionally, the children experienced

increased behavioral difficulties after visits with the parents. The children need the stability of adoption to help them address their behavioral problems.

III. PAUL

A. Paul claims the State did not engage in reasonable efforts to reunite him with the children. He believes the real objective of DHS was to keep the children separated from their parents.

The evidence shows DHS utilized several services in an effort to reunite this family. Paul, however, did not cooperate with services. He did not take steps to end his dependence on alcohol. Eventually, he moved away to a different State. The fact reunification failed to occur was not due to a lack of effort by DHS, but rather Paul's lack of motivation to change.

B. Paul points out under section 232.116(3)(b) the juvenile court need not terminate parental rights if a child is over ten years old and objects to the termination. In this case, Andy and Cody are over ten years old. They expressed an interest in maintaining a relationship with their parents.

The factors in section 232.116(3) are permissive, not mandatory. *In re A.J.*, 553 N.W.2d 909, 916 (Iowa App. 1996). It is in the juvenile court's discretion to apply the factors in this statute based on the unique circumstances of each case and the best interests of the children. *Id.* For the same reasons discussed above regarding Cheri's argument, we determine termination is in the best interests of the children. Due to the children's behavioral problems, they need the stability of adoption.

We find the juvenile court properly terminated the parental rights of Cheri and Paul. We affirm the decision of the juvenile court.

AFFIRMED.