IN THE COURT OF APPEALS OF IOWA

No. 1999-304 (9-534) / 99-289
Filed October 27, 1999

FILED
OCT 27 1999
CLERK SUPREME COURT

**IN THE INTEREST OF D.S. and D.K.,
Minor Children,**

R.B., Father of D.K.,
Appellant,
J.K., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Karen Romano, District Associate Judge.

The mother of two minor children, and the father of minor child D.K., appeal a district court order terminating their parental rights. **AFFIRMED.**

Michael B. Oliver, Des Moines, for appellant father.

Christopher A. Kragnes, Sr. of law offices of Christopher A. Kragnes, Sr. P.C., Des Moines, for appellant mother.

Thomas J. Miller, Attorney General, **Mary Vavroch,** Assistant Attorney General, **and Jon E. Anderson,** Assistant County Attorney, for appellee State.

Michael J. Bandstra, Des Moines, guardian ad litem for minor children.

Considered by Zimmer, P.J., Miller, J., and Schlegel, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

SCHLEGEL, S.J.

A mother and father appeal the termination of their parental rights. She claims the court erred in evaluating her prognosis for drug treatment recovery and that termination was improper because of the closeness of the parent-child relationship. He claims the court erred in finding he had abandoned his son, he had not maintained significant and meaningful contact with his son, and that the child could not be returned to his care. We affirm as to both parents.

Background. Jennifer is the mother of Dylyn, born in July 1992, and Daron, born in October 1996. Rodney is Daron's father. Dylyn's father, Lonnie, is not involved in this appeal. Dylyn was the subject of a CINA case from September 1994 through February 1997 based on Jennifer's substance abuse. Both fathers have been incarcerated for much of their sons' lives.

This current CINA case began in February 1998 when the State petitioned to have Dylyn and Daron adjudicated in need of assistance. In April 1998 the court found the boys in need of assistance and placed them with their maternal grandmother.

At the time of the termination Jennifer was twenty-three years old. She had been abusing illegal drugs since before age sixteen. She had participated in at least seven treatment programs without any lasting success. Her longest period free from drugs was eighteen months starting in 1994. Just prior to the December 1998

termination hearing Jennifer was hospitalized for an overdose which almost killed her. She had been clean for twelve days at the time of the hearing.

Rodney lived with Jennifer and the boys for the first four months of Daron's life and then began his incarceration. He remained incarcerated at the time of the termination hearing and only attended the first day of the hearings even though he knew he would not be able to present evidence if he did not attend the hearings. The court found he had no relationship with Daron.

Dylyn has been in and out of his mother's care throughout his life. Her substance abuse and inconsistent parenting have left him extremely anxious and contributed to his behavior problems such as sexual acting out and lying. He has been in therapy since age three. Dylyn and Daron have a close relationship. Daron is described as a developmentally compromised infant and a drug affected toddler.

The juvenile court terminated Jennifer's parental rights to Dylyn and Daron under Iowa Code section 232.116(1)(k).[1] The court also terminated Jennifer's

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[1] k. The court finds that 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.

parental rights to Daron under section 232.116(1)(g).[2] The court terminated Rodney's parental rights to Daron under sections 232.116(1)(b), (d), and (g).[3] Jennifer and

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[2] g. The court finds that all of the following have occurred:

(1) The child is three years of age or younger.

(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 six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

[3] b. The court finds that there is clear and convincing evidence that the child has been abandoned or deserted.

d. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The child has been removed from the physical custody of the child's parents for a period of at least six consecutive months.

(3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so. For the purposes of this subparagraph, "significant and meaningful contact" includes but is not limited to the affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child's life.

Rodney appeal. The court terminated Lonnie's parental rights to Dylyn under sections 232.116(1)(d) and (e), but his parental rights are not at issue in this appeal.

Appellate claims. *Jennifer.* She claims she now has a plan of attack for handling her substance abuse problem and the record contains no evidence her prognosis would not result in her being able to care for her children [at some future time]. *See* Iowa Code § 232.116.(1)(k). She admits she could not resume care of her children at the time of the termination hearings, Iowa Code section 232.116(1)(g), but argues the court should have exercised its discretion not to terminate because it would be detrimental to the children because of the closeness of the parent-child relationship. *See* Iowa Code § 232.116(3)(c).[4] Finally, Jennifer claims there was no

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g. The court finds that all of the following have occurred:

(1) The child is three years of age or younger.

(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 six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

[4] 3. The court need not terminate the relationship between the parent and child if the court finds any of the following:

c. There 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.

need to terminate her parental rights because the children are placed with a relative. *See* Iowa Code § 232.116(3)(a).[5] The State responds Jennifer did not preserve the section 232.116(3) discretionary claims for review because they were not ruled on by the juvenile court.

Rodney. He claims the court erred in concluding he *intended* to desert Daron, a necessary element of desertion. *See In re D.M.*, 516 N.W.2d 888, 891 (Iowa 1994). He also claims, because of his incarceration and the no-contact order regarding Jennifer, it was not feasible for him to make contact with Daron or to support him. He argues the State did not provide him an opportunity to resume care of Daron or make reasonable efforts to reunite him with Daron. *See* Iowa Code § 232.116(1)(d). Finally, Rodney claims termination was improper under section 232.116(1)(g) because the State did not present any evidence how long he would be incarcerated. He argues he should be given another chance because of extenuating circumstances. Iowa Code § 232.116(3); *see In re A.L.*, 492 N.W.2d 198, 202 (Iowa App. 1992).

Analysis. *Jennifer.* Her record of dealing with her substance abuse does not provide much reason to believe she will be successful this time. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). The removal of her children was not enough to make her stop using drugs. Even with the termination hearings approaching, she did not stop. The time for her to have

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[5] 3. The court need not terminate the relationship between the parent and child if the court finds any of the following:

a. A relative has legal custody of the child.

attained and maintained a drug-free life so she could care for her children has passed. They should not have to wait any longer for permanency and security. *In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990); *Long v. Long*, 255 N.W.2d 140, 146 (Iowa 1977). By her own admission, Jennifer cannot care for them now. We find termination proper under sections 232.116(1)(g) and (k) and affirm the juvenile court.

Jennifer did not preserve any of her claims based on Iowa Code section 232.116(3) concerning the court's discretion not to terminate. They were not decided by the juvenile court and not raised in any posttrial motions. We do not address claims raised for the first time on appeal. *In re C.D.*, 508 N.W.2d 97, 100 (Iowa App. 1993).

Rodney. Other than living in the same house during the first four months of Daron's life, Rodney has not been a father to him. He argues a variety of reasons why it was "not feasible" or "impractical" for him to support his son or to try to develop and maintain any relationship with Daron. He didn't even try. His own illegal acts caused his incarceration and separation from Daron. Clear and convincing evidence supports termination under Iowa Code section 232.116(1)(d).

Rodney's claim that the State did not prove he wasn't going to be released soon is without merit. Regardless of his release date, at the time of the hearing Daron could not be returned to Rodney's care. The requirements of section 232.116(1)(g) are satisfied and we affirm the juvenile court.

Rodney also raises claims under section 232.116(3) seeking a discretionary second chance. Like Jennifer, Rodney did not preserve these claims for review on appeal. We do not address them. *Id.*

We find clear and convincing evidence supports terminating Jennifer's parental rights under Iowa Code sections 232.116(1)(g) and (k). We find clear and convincing evidence supports terminating Rodney's parental rights under Iowa Code section 232.116(1)(d) and (g).

AFFIRMED.