IN THE COURT OF APPEALS OF IOWA

No. 1999-220 (9-444) / 99-0212
Filed August 27, 1999

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CLERK SUPREME COURT

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

G.A.S., Jr., Father,
Appellant.

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

A father appeals the termination of his parental rights. **AFFIRMED.**

Charles P. Pritchard of Nading Law Firm, Ankeny, for appellant.

Thomas J. Miller, Attorney General, and Charles K Phillips, Assistant Attorney General, for appellee-State.

Amy L. Peters, Des Moines, guardian ad litem for minor child.

Considered by Sackett, C.J., and Vogel and Zimmer, JJ.

ZIMMER, J.

The father, Greg, Jr., appeals the termination of his parental rights to his daughter, Aubrey. He claims the juvenile court erred in terminating his rights because (1) there was not clear and convincing evidence he intended to abandon his child; (2) the circumstances which led to the underlying child-in-need-of-assistance adjudication had been eliminated; and (3) the parent-child relationship could be preserved because Aubrey was in the legal custody of a relative. We affirm the termination of his parental rights.

Aubrey, born in August 1993, is the daughter of Greg, Jr. (Greg) and Debbie. On December 29, 1997, the court adjudicated Aubrey in need of assistance (CINA) under Iowa Code section 232.2(6)(c)(2) (1997) because her mother had left her in the maternal grandmother's care and disappeared.[1] On February 26, 1998, the court added a second CINA adjudication on the basis of sexual abuse pursuant to section 232.2(6)(d).[2] Greg, Jr. was not accused of nor found to be the perpetrator of the

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[1] Iowa Code section 232.2(6)(c)(2) defines a child in need of assistance as an unmarried child

> c Who has suffered or is imminently likely to suffer harmful effects as a result of either of the following
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> (2) The failure of the child's parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child

[2] Iowa Code section 232.2(6)(d) defines a child in need of assistance as an unmarried child

> d Who has been, or is imminently likely to be, sexually abused by the child's parent, guardian, custodian or other member of the household in which the child resides

sexual abuse. The court found the identity of the perpetrator was unknown. The court initially placed Aubrey with her maternal grandmother, but changed her placement to her maternal aunt in March 1998, where she remained throughout this case. The court ordered substance abuse evaluations, drug screens, visitation, family centered services, and batterer's education for Greg, as well as therapy for Aubrey with a goal of reunifying the family.

A dispositional hearing was held March 11, 1998. Greg did not attend the hearing. The court ordered Greg to make his intentions known and stay in contact with his attorney. Greg was awarded supervised visitation at the discretion of DHS. A review hearing was scheduled for September 8, 1998.

Greg did not attend the review hearing in September 1998. His attorney was relieved from representing him because Greg had not remained in contact with him or with DHS, and was not attending hearings.

At the end of October 1998 the State petitioned to terminate Greg's and Debbie's parental rights. The district court found neither parent ever provided any financial support for Aubrey. Greg did not complete the substance abuse or psychosocial evaluations ordered by the court. He did not make his intentions known, advise his attorney or DHS of his whereabouts, or cooperate with services. He was arrested for a parole violation in October 1998. He remained in custody through the date of the termination hearing in December. During his incarceration, Greg did attempt to call Aubrey three times and sent her a card. At the hearing, Greg admitted he had recently lost his job, been divorced, been arrested, and had an alcohol

problem, but proclaimed a desire to reform. The court terminated Greg's parental rights under Iowa Code Sections 232.116(1)(b), (c), (d), (e), and (k).[3] Greg appeals.

We review proceedings to terminate parental rights de novo -- we review the facts as well as the law and adjudicate parents' rights anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). The grounds for termination must be proved 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 child; we look to both the long-range and immediate interests. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996). We give weight to the findings of the juvenile court, particularly with respect to the credibility of witnesses, but are not bound by them. *In re L.L.*, 459 N W.2d 489, 493 (Iowa 1990); *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995), Iowa R. App. P. 14(f)(7).

On appeal, Greg only disputes the finding clear and convincing evidence supports termination under sections 232.116(1)(b) and (c).[4] He admits grounds for

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[3] Debbie consented to the termination in writing

[4] These sections state the grounds for termination as

> b The court finds that there is clear and convincing evidence that the child has been abandoned or deserted
>
> c The court finds that both of the following have occurred
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> (1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding

termination exist under sections 232.116(1)(d), (e), and (k).[5] When the juvenile court

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(2) Subsequent to the child in need of assistance adjudication, 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.

[5] These sections state the grounds for termination as

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

e. The court finds that 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

terminates parental rights on more than one statutory ground, we only need to find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996); *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa App. 1995). Greg's admission in his brief resolves the issue whether or not termination is appropriate under Iowa Code section 232.116(1). However, section 232.116(3) gives the juvenile court discretion not to terminate a parent's rights in certain circumstances. A termination otherwise warranted may be avoided under Iowa Code section 232.116(3)(a) if the child is in the care of a relative. *In re D.E.D.*, 476 N.W.2d 737, 738 (Iowa App. 1991).

Greg asks for another chance to be a good parent. He claims that because Aubrey is living with a relative, the court should have exercised its discretion not to terminate his parental rights. Iowa Code § 232.116(3)(a). Little case law exists interpreting or applying Iowa Code section 232.116(3)(a). In *In re J.V.*, 464 N.W.2d 887, 890 (Iowa App. 1990), we interpreted the language of section 232.116(3) as

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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

permissive and held "it is within the sound discretion of the court, based upon the unique circumstances before it and the best interests of the child, whether to apply section 232.116(3)(e) to save the parent-child relationship." *Id.* The same logic applies to the other subsections of 232.116(3). *See In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa App. 1993) (applying the reasoning to sections (a) and (c)). In both cases in which a parent has sought to avoid termination because the child was in relative placement, this court affirmed the termination. *In re C.L.H.*, 500 N.W.2d at 454; *In re D.E.D.*, 476 N.W.2d at 738.

Greg has no relationship with Aubrey. He failed to cooperate with services. His continuing legal problems prevent him from caring for Aubrey He admits he is not ready to parent her now. Aubrey's aunt has provided and cared for her and Aubrey has thrived. Aubrey has formed attachments with her aunt and cousins. *See* Iowa Code § 232.116(2)(b). Aubrey's aunt is willing and able to adopt her and provide the permanency Aubrey needs and deserves. At some point, the rights and needs of the child rise above the rights and needs of the parents. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997). The juvenile court did not abuse its discretion by refusing to avoid the termination simply because Aubrey was living with a relative. We affirm the juvenile court's termination of Greg's parental rights.

AFFIRMED.