IN THE COURT OF APPEALS OF IOWA

No. 1999-612 (9-873) / 99-1299
Filed March 29, 2000

IN THE INTEREST OF

D.A., Jr.,
Minor Child,

B.G., Mother,
Appellant,

D.A., Sr.,
Appellant.

FILED
MAR 29 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Woodbury County, Mary Timko, Associate Juvenile Judge.

Mother and Father appeal the termination of their parental rights. They contend that the trial court erred in terminating their rights because not all of the elements of Iowa Code sections 232.116(1)(c), (d), (e), (g) or (k) (1997) were proven. They also assert that the termination of their rights was not in the child's best interests. **AFFIRMED.**

William L. Binkard, South Sioux City, Nebraska, for appellant- mother.

John C. Nelson of Thomas & Nelson, Sioux City, for appellant- father.

Thomas J. Miller, Attorney General, Tabitha Gardner, Assistant Attorney General, and Marlene Loftus, Assistant County Attorney, for appellee- State.

Lesley Rynell, Sioux City, guardian ad litem for minor child.

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

MILLER, J.

The parents of David, Jr. appeal the termination of their parental rights. Each contends the State did not prove by clear and convincing evidence all the required elements of each subsection of the Code under which the court terminated their respective parental rights. Each also contends that even if clear and convincing evidence supports the statutory elements for termination, termination is not in the child's best interest. We affirm.

I. Background Facts and Proceedings

A. Beth

Beth is the biological mother of two children, Crystal and David, Jr. Beth has an almost lifelong history of substance abuse: by age eight, she was using alcohol; by age ten she was using marijuana daily. By age thirteen, Beth used acid on a monthly basis until she was twenty-five, and also was mixing Quaaludes, marijuana and alcohol on almost a daily basis, and was using mushrooms monthly. When Beth was twenty years old, she completed a drug and alcohol treatment program. Unfortunately, she was unable to keep clean. By about age thirty-three Beth was using cocaine once every two or three weeks, eventually using up to two times per week. This continued for several years. Beth reported she used cocaine because it made hallucinations she experienced go away. She has also used crank on at least two occasions. She is also diabetic, and regularly fails to do blood sugar checks and fails to eat a proper diet.

In addition to Beth's drug abuse, she has been suicidal most of her life. Between the ages of sixteen and twenty she was hospitalized seven to eight times because of suicide attempts.

On November 11, 1997, a child abuse report was founded against Beth for denial of critical care and lack of proper supervision to Crystal, her 13-year-old biological daughter.[1] Two days later Crystal was placed by voluntary agreement in the custody of the Department of Human Services (DHS). Crystal was adjudicated to be a child in need of assistance (CINA) on March 2, 1998, pursuant to Iowa Code sections 232.2(6)(c)(2) and 232.2(6)(n). One month earlier, on February 2, 1998, the child who is the subject of this appeal, David, Jr., was born while Beth was in inpatient substance abuse treatment at the Women and Children's Program at Gordon Recovery Center.

The State filed a CINA petition on February 27, 1998, alleging David, Jr. to be a child in need of assistance. David, Jr. was adjudicated to be a CINA on April 7, 1998, pursuant to Iowa Code sections 232.2(6)(c)(2) and 232.2(6)(n). By this time, Beth had successfully completed the inpatient substance abuse treatment and was living in a court-ordered supervised living program, the Villa Program. The CINA dispositional order continued David, Jr. in the care, custody and control of the DHS, with placement with Beth at the Villa Program. Two weeks later Crystal joined her mother and half-brother at the Villa Program.

On May 26, 1998, Beth tested positive for cocaine following an extended off-site weekend visit. When confronted by treatment staff, Beth did not deny she had used cocaine while on the weekend visit. Beth was immediately terminated from the Villa program. David, Jr., was placed in foster care, and visitation with Crystal was suspended. Since this time, Beth has only been allowed supervised visitation with her two children. Beth tested "borderline" for marijuana on August 12, 1998

[1] The parent-child relationship of Beth and Crystal is not at issue in this appeal.

and positive for cocaine on September 12, 1998. Beth routinely has been unavailable for court-ordered random UA's. On February 3, 1999, following a Review/Permanency Hearing regarding her children, Beth refused to do a UA and ultimately signed a form admitting that if a UA was completed on that date, it would test positive for cocaine. The State filed its Termination petition on February 15, 1999.

Sadly, Beth's drug usage did not stop when the Petition for Termination of Parental Rights was filed. On March 22, 1999, Beth was found to be in possession of drug paraphernalia after being pulled over for a traffic violation. Upon questioning by the police officer, Beth admitted to using crack within the past week. On May 8, 1999, Beth admitted to using marijuana, and on May 28, 1999, she tested positive for cocaine.

B. David, Sr.

David, Sr. is the father of David, Jr. As aptly described by the juvenile court, David, Sr. leads a "very nomadic lifestyle." He has had several encounters with law enforcement, has a drug abuse problem, psychiatric problems, and a long history of unemployment.

When the CINA petition was filed, the DHS began to investigate David, Sr.'s ability to be a parent. It was found David, Sr. had an extensive drug history. He reported that as a teenager he tried every drug except heroin. He stated he had not used drugs as an adult. This self-reported denial of adult use was at odds, however, with Crystal's observations that David, Sr. was smoking crack with Beth while Beth was pregnant with David, Jr., with a UA that tested "borderline" for both cocaine and marijuana on September 16, 1998, and with a UA that tested positive

for cocaine on February 10, 1999. Attempts to locate David, Sr. for random UA's were unsuccessful as David, Sr. was always "unavailable." The juvenile court ordered David, Sr. to obtain and submit to the court a substance abuse evaluation. David, Sr. failed to comply.

David, Sr. also has psychiatric problems. At the direction of DHS, David, Sr. completed psychological testing twice. The first evaluation was of questionable value as David, Sr. denied his drug and alcohol problems. During this first evaluation David, Sr. further denied any past legal problems, even though at the time of the evaluation he was on probation for forgery and was at risk of having that probation revoked due to failure to contact the probation officer. During the second evaluation, David, Sr. admitted his current drug usage. Both evaluations concluded that David, Sr. was most likely schizophrenic, although a major affective disorder (manic) diagnosis could not be eliminated. The juvenile court noted in its order terminating parental rights that David, Sr. was unable to track the questions asked of him, and he continued to blame other people for his problems. Further, "it appeared that David, Sr. continued to display paranoid thought process and inability to rationally understand what is going on around him."

David, Sr. also has an extensive criminal history. In 1982 he was convicted of sexual abuse in the third degree. He continues to deny his guilt in that matter. In 1994 he was convicted of burglary in the second degree, criminal trespass, and criminal mischief in the fifth degree. He was again convicted of burglary in 1996, and as noted above was on probation for a forgery charge that arose in 1997. His disregard for the laws of the State of Iowa are further illustrated by several warrants

for failure to pay speeding and parking tickets, and arrests for driving while barred and driving an unregistered motor vehicle.

Since the time David, Jr. was adjudicated CINA on April 7, 1998, David, Sr. has only had two authorized contacts with his son. The last was in August 1998, before visits were suspended as a result of a September 1998 UA that was positive for cocaine. While several services have been offered to David, Sr., he failed to follow through on any of them and consequentially has not been allowed to see his son.

The juvenile court held evidentiary hearings on the State's petition to terminate David, Sr.'s and Beth's parental rights on May 18 and June 1, 1999. In an order dated August 2, 1999, the juvenile court terminated Beth's parental rights pursuant to sections 232.116(1)(c), (d), (e), (g), and (k) of the 1997 Code of Iowa, and terminated David's parental rights pursuant to sections 232.116(1)(c), (d), and (g) of the 1997 Code of Iowa. Both parents appeal.

II. Scope and Standard of Review

Appellate review of proceeding 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 Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We accord weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses, whom that court heard and observed firsthand, but we are not bound by those findings. *Id.*

III. Merits of the Statutory Grounds for Termination

A. Beth

Beth contends on appeal the State failed to prove, by clear and convincing evidence all of the elements of each subsection under which the court terminated her parental rights. Specifically, she contends that because she will stop using drugs if David, Jr. is returned to her, the State failed to prove (1) the circumstance which led to the CINA adjudication continues to exist despite the offer or receipt of services; (2) she has not maintained significant and meaningful contact with David, Jr. during the previous six consecutive months and has not made reasonable efforts to resume his care despite being given the opportunity to do so; (3) that David, Jr. cannot be returned to her as provided in section 232.102 at the present time; and (4) that she presents a danger to herself or others as evidenced by prior acts. *See* Iowa Code §§ 232.116(1)(c), (d), (g), and (k). She further contends termination was not proper under section 232.116(1)(e) because David, Jr. is not four years of age or older. Even if the elements of each code section were proven, Beth argues termination is not in the best interest of David, Jr.

At some point the rights and needs of the child rise above the rights and needs of the parents. The time for Beth to begin being a parent and stop her abusive lifestyle has long since come and gone. She began her drug abuse at age eight, and was unable to stop her cocaine addiction even in light of the termination proceedings. Beth has repeatedly been unable to overcome her drug and alcohol addictions. She has been separated from David, Jr. as a result of her addiction and, in the meantime, has failed to place herself in a position to enable David, Jr. to be returned to her. Drug addictions as severe as Beth's warrant termination. *See, e.g., In re J.K.*, 495 N.W.2d 108, 110-12 (Iowa 1993); *In re N.F.*, 579 N.W.2d 338, 341 (Iowa App. 1998); *In re A.J.*, 553 N.W.2d 909, 914-15 (Iowa App. 1996). This

is especially true when, as here, even at the time of the termination hearing the serious addiction continues, the prognosis is poor and there is no reasonable assurance that reunification can occur. There is nothing apparent in the record to reasonably suggest Beth will overcome her addiction if the termination is delayed.

Beth's constant thoughts of suicide are a substantial concern. In addition, she is unable or unwilling to take care of her own diabetic needs. The State has offered her more than reasonable services in an effort to reunite her with David, Jr., but she is either unable or unwilling to make the lifestyle changes that would entitle her to take on the great responsibility of parenthood. Her past performance as a parent to David, Jr. has been dismal. The parent's past performance may indicate the quality of care the parent is capable of providing in the future. *See In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). A good prediction of the future conduct of a parent is to look at the past conduct. *In re N.F.*, 579 N.W.2d at 341.

We cannot accept Beth's request to have David, Jr. returned to her and wait and see if she stops her drug abuse. It is clear that the circumstance that led to the original CINA adjudication continues to exist despite efforts to provide Beth with proper services, that Beth has not made any reasonable efforts to resume the care of her child despite the efforts of the DHS, and that Beth presents a danger to herself and others as evidenced by her prior acts. We conclude, upon our de novo review, that termination was proper under Iowa Code sections 232.116(1)(c), (d), and (k). (As conceded by the State, the grounds for termination under Iowa Code § 232.116(1)(e) were not proved because it is clear that David, Jr. was under four years of age.) We need not reach her arguments as to Iowa Code section 232.116(1)(e) and (1)(g). *In re A.J.*, 553 N.W.2d at 911 (holding when the juvenile

court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm).

B. David, Sr.

David, Sr. contends on appeal the State failed to prove by clear and convincing evidence all of the elements of each subsection that the court cited in terminating his parental rights. Specifically, he argues that the State did not prove (1) he was offered or received services to correct the circumstance which led to the CINA adjudication, and the circumstance continues to exist despite the offer or receipt of services; (2) he did not make reasonable efforts to resume care of David, Jr. despite being given the opportunity to do so; and (3) that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

David, Jr. was originally adjudicated CINA in part due to David, Sr.'s drug abuse and mental health problems. Like Beth, David, Sr. has not addressed his drug abuse problem. During the receipt of mental health services, David, Sr. continued to deny he had a drug problem. Nor has he taken any steps, despite the offer of appropriate services, to address his mental health problems. He has been unable or unwilling to follow the Case Permanency Plan. It required him to submit negative UA's for two months in order to regain visitation with his son. He failed to do so. As noted by the juvenile court, "There have been no significant changes in David, Sr.'s lifestyle or his ability to care for his child since the child was placed in foster care. . . ." The juvenile court further aptly noted that

> Both Beth and David, Sr. have indicated by their past performance that they would be unable to provide any type of safe, healthy,

> nurturing environment should David, Jr. be returned to their care either as a couple or individually. Their past performance indicates that the quality of the care that David, Jr. would receive in their home would be harmful. David, Jr. would clearly be a child in need of assistance as initially pled and adjudicated if he were returned to their home at this time.

It is clear that David, Sr. was offered and received services to correct the circumstance which led to David, Jr.'s CINA adjudication, and the circumstance continues to exist despite the offer and receipt of services; and David, Sr. did not make reasonable efforts to resume care of David, Jr. despite being given the opportunity to do so. The juvenile court correctly held the State proved by clear and convincing evidence that termination was proper under Iowa Code sections 232.116(1)(c) and (d). We need not reach David, Sr.'s argument as to Iowa Code section 232.116(1)(g). *See In re A.J.*, 553 N.W.2d at 911 (holding when the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm).

IV. Best Interests of David Jr.

Since we have found the grounds for termination exist, we must now consider the factors enumerated in Iowa Code section 232.116(2). These factors, standing alone, are not grounds for termination. *See, e.g., In re A.J.*, 553 N.W.2d at 915. Both Beth and David, Sr. argue that even if the statutory grounds were met in each of their respective cases, termination is not in David, Jr.'s best interest.

Upon our de novo review, we find the criteria set forth in section 232.116(2) overwhelmingly weigh in favor of termination. Neither parent has acted like one. Neither has shown a willingness to rid themselves of the drug addictions that have afflicted them throughout their lives. Beth cannot take care of her own basic

diabetic needs. David, Sr. has only seen his son twice since his birth due to his drug addictions. David, Sr. cannot not maintain employment. Each suffers from mental illness, yet neither has submitted to proper care. Only by order of the court did David, Sr. get a mental health evaluation. The State, as *parens patriae*, has the duty to assure that every child within its borders receives proper care and treatment and it must intercede when parents abdicate that responsibility. *In re A.L.*, 492 N.W.2d 198, 200 (Iowa App. 1992) (citing *In re Dameron*, 306 N.W.2d at 745). Beth and David, Sr. have not even been able to care for themselves. It therefore cannot be in David, Jr.'s best interests to preserve in law a relationship which does not exist in fact. The juvenile court found that David, Jr. is clearly adoptable. He deserves to begin bonding with a family instead of waiting on his biological parents to address and deal with the addictions and mental health problems they have been unable or unwilling to address and deal with for many years.

V. Conclusion

It is time for David, Jr. to get on with his life. Our statutory termination provisions are preventive as well as remedial. *In re E.B.L*, 501 N.W.2d 547, 549 (Iowa 1993). They are designed to prevent probable harm to a child. *Id.* (citing *In re J.S.*, 427 N.W.2d 162, 163 (Iowa 1988)). The juvenile court's determination that the statutory grounds for termination exist is clearly supported by clear and convincing evidence. It is just as clear that termination is in David, Jr.'s best interests. We affirm.

AFFIRMED.