IN THE COURT OF APPEALS OF IOWA

No. 5-505 / 95-0832

IN THE INTEREST OF
K.A.F., Minor Child,

L.G., Mother,
Appellant.

FILED
OCT 31 1995
CLERK, SUPREME COURT

Appeal from the Iowa District Court for Clarke County, James W. Brown, Judge.

Mother appeals the juvenile court's order terminating her parental rights over her minor child pursuant to Iowa Code sections 232.116(1)(g) and (k) (1995).

AFFIRMED.

Monty W. Franklin, Humeston, for appellant.

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

Richard Murphy, Osceola, guardian ad litem for minor child.

Considered by Donielson, C.J., and Hayden and Cady, JJ.

CADY, J.

This is an appeal by a mother from a district court order terminating her parental rights over her son. We find clear and convincing evidence to support the termination and affirm the district court order.

Leslie is the mother of Kyle, born May 27, 1993. In November 1993 the State filed a petition alleging Kyle was a child in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(b), 232.2(6)(c)(1), and 232.2(6)(n) (1993). Concern for Kyle's safety was due to Leslie's history of substance abuse and her involvement in an abusive relationship with Kyle's father, Jim. Following a December 1993 hearing, the court adjudicated Kyle CINA pursuant to Iowa Code sections 232.2(6)(b) (physical abuse or neglect by a parent, guardian or household member or imminently likely to neglect or abuse) and 232.2(6)(c)(1) (child suffered or imminently likely to suffer harmful effects as a result of mental injury). The court placed Kyle in Leslie's custody under the supervision of the Department of Human Services (DHS).

In June 1994 the court entered a temporary removal order and placed Kyle in the custody of DHS. Leslie's move from her Osceola residence to a Des Moines homeless shelter which caused a disruption in the service plan and DHS supervision prompted the court's order. Following a July 1994 modification hearing the court ordered Kyle to remain in DHS custody for placement in family foster care.

In February 1995, the State filed a petition for termination of Leslie's and Jim's parental rights over Kyle. The petition alleged grounds for termination under

Iowa Code sections 232.116(1)(g) and 232.116(1)(k). Jim consented to the termination of his parental rights.

Following a hearing in April 1995, the court concluded there was clear and convincing evidence for terminating Leslie's parental rights pursuant to sections 232.116(1)(g) and (k). Leslie appeals. She first argues the State did not present clear and convincing evidence Kyle could not be returned to her custody to support termination under section 232.116(1)(g). She also asserts there was no clear and convincing evidence her substance abuse problem presented a danger to herself or others, and Kyle could not be returned to her within a reasonable amount of time to justify termination under section 232.116(1)(k).

I. Standard of Review

We review actions to terminate a parent-child relationship de novo. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We review the facts and law, and adjudicate the rights of the parties anew. *Id.* Weight, however, is given to the findings of the juvenile court, especially as they relate to the credibility of witnesses. *Id.* Termination must be supported by clear and convincing evidence. Iowa Code section 232.117(3) (1993).

II. Termination Under Section 232.116 (1)(g)

Leslie claims clear and convincing evidence was not presented to show Kyle could not be returned to her custody because the State unreasonably denied services to facilitate reunification. *See* Iowa Code section 232.116(1)(g)(4). Leslie does not

contest the first three requirements of section 232.116(1)(g) (child is three years old or younger has been adjudicated CINA, and has been removed from the parent's physical custody for the requisite period of time).

The DHS must make reasonable efforts to reunite a parent and child following removal. *In re C.L.H.*, 500 N.W.2d 449, 453 (Iowa 1993). Terminations may be justified when the parent fails to respond to the help provided by the DHS. *In re R.A.*, 493 N.W.2d 897, 899 (Iowa App. 1952). This interplay requires a critical look at the parenting deficiencies well as the efforts made by the State to provide services. *Id.*

The State initially provided a host of family services to Leslie. Leslie, however, was quickly overwhelmed by the assistance, and the DHS determined she would obtain greater benefit from a service plan which targeted her long-standing substance abuse problem. The record was replete with evidence of the adverse impact of substance abuse on her life, as well as on Kyle's life. This impact was most poignantly illustrated by the medical records which revealed Kyle was born with fetal alcohol syndrome. Multiple medical evaluations confirmed Leslie's need for substance abuse treatment.

In lieu of continued family services, the DHS made arrangements for Leslie to enter an inpatient treatment program, which would also accommodate Kyle. She responded by moving to Des Moines without informing the department, and was later found living in a homeless shelter. Numerous other efforts were made to provide treatment to Leslie. In the end, she entered one program, but left against medical

advice before it was completed. The fundamental foundation for the restoration of custody has never been met. In the meantime, Kyle has been waiting, and growing up, in foster care.

Our legislature has made a categorical determination in cases which satisfy the criteria of section 232.116(1)(g) that the needs of the child are promoted by termination of parental rights. *See In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990). When the statutory time period has passed, the case is required to be viewed with a sense of urgency. *In re C.C.*, 459 N.W.2d 489, 495 (Iowa 1990).

Section 232.116(1)(g)(4) "is met when the child cannot be returned to the parental home because the definitional grounds of a child in need of assistance, Iowa Code section 232.2 (6), exist. " *In re A.M.S.*, 419 N.W.2d 723, 725 (Iowa 1988) (interpreting the predecessor section to section 232.116(1)(g).) Kyle remains a child in need of assistance, and Leslie has done little to improve as a parent, despite the reasonable efforts of the department to achieve reunification. The first step toward reunification was for Leslie to overcome her substance abuse problem. Leslie has been unable to accomplish this first step, and Kyle cannot afford to be left waiting any longer. We conclude clear and convincing evidence exists to support termination under section 232.116(1)(g).

III. Termination Under Section 232.116(1)(K)

We also conclude the termination is justified under Section 232.116(1)(K). Leslie has a severe and chronic substance abuse problem, and is a danger to herself

or others as revealed by her prior actions. Clear and convincing evidence exists that Leslie's prognosis indicates Kyle could not be returned to Leslie's custody within a reasonable period of time. *See* Iowa Code § 232.116(1)(k) (1993).

Leslie's problems with substance abuse and domestic abuse are longstanding, and social workers have been involved with the family prior to the initial adjudication involving Kyle. Other children had been removed from the home. The domestic abuse between Leslie and Kyle's father has adversely impacted Kyle, as has the alcohol and drug abuse. Leslie has refused to commit herself to treatment, and Kyle is no closer to returning home than the day he was removed.

AFFIRMED.