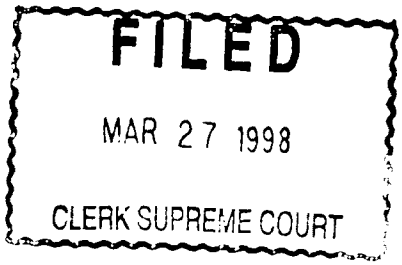
IN THE COURT OF APPEALS OF IOWA

000393

No. 8-121 / 97-1671



IN THE INTEREST OF J.R.W.,

A Child,

J.O., Mother,

Appellant.

Appeal from the Iowa District Court for Johnson County, Sylvia A. Lewis District Associate, Judge.

Mother appeals from the associate district court order terminating her parental rights. **AFFIRMED.**

Paul D. Miller of Zimmermann and Miller, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General, and Deborah Farmer Minot, Assistant County Attorney, for appellee State.

Janice B. Binder of Mears Law Office, Iowa City, attorney and guardian ad litem for minor child.

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

CADY, C.J.

Jessica and Willie are the parents of James, who was born in July 1994. They are not married.

The family came to the attention of the Department of Human Resources (DHS) in August 1996, due to a report the parents left the child without adequate supervision or food. On August 19, 1996, Jessica admitted herself to a psychiatric hospital after a suicide attempt. DHS issued a founded report of denial of critical care.

James was temporarily placed in the custody of DHS. At the emergency removal hearing, the court agreed to allow James to stay in the home because Willie agreed to care for him. Within a few days, however, Jessica and Willie moved to Omaha without informing DHS. There they had a fight and Willie moved to Minnesota. He has not been involved with James since that time. The juvenile court issued an order for the removal of James from Jessica's care. A DHS worker went to Omaha and retrieved James. James was adjudicated a child in need of assistance. He has been in foster care since October 1996.

While in Omaha, Jessica met Bobby and married him. They moved to Alabama. Jessica did not have any contact with James or DHS for several months.

In January 1997, Jessica contacted her mother, who informed DHS of her location in Alabama. A DHS social worker had telephone contact with Jessica, and

was able to prepare a social history. Jessica admitted she had a history of substance abuse.

In May 1997, the State filed a petition to terminate the parental rights of Jessica and Willie. Jessica moved back to Iowa the same month. DHS informed her she needed to obtain a substance abuse evaluation and complete recommended treatment, obtain a psychological evaluation, and participate in parent skill development classes before she could have visitation with James.

Jessica began to participate in services in June 1997. She began to receive in-home parent skill development services. She also obtained a substance abuse evaluation and entered substance abuse treatment. Jessica obtained a psychological evaluation in July 1997, which showed she had a major depressive disorder and chemical dependence. Jessica had two visits with James.

James is described as a very friendly little boy. He has no special needs. DHS considered him to be very adoptable.

The termination hearing was held in August 1997. At that time, Jessica was working part-time and attending out-patient substance abuse treatment. The juvenile court terminated the parental rights of Jessica and Willie pursuant to Iowa Code section 232.116(1)(b). Only Jessica has 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 child. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

II. Jessica contends the State presented insufficient evidence to show she abandoned James. She admits she did not see James from October 1996 until July 1997. She states she did not intend to abandon James. Jessica testified she wanted to return to Iowa, but did not have sufficient money to do so. She points out she recently became involved in services.

Abandonment is characterized as a giving up of parental rights and responsibilities accompanied by an intent to forego them. *A.B.*, 554 N.W.2d at 293. Two elements are involved: (1) the giving up of parental rights and responsibilities refers to conduct; and (2) the intent element refers to the accompanying state of mind. *In re D.M.*, 516 N.W.2d 888, 891 (Iowa 1994). Parental responsibilities include more than subjectively maintaining an interest in a child. *A.B.*, 554 N.W.2d at 293. The concept requires affirmative parenting to the extent it is practical and feasible in the circumstances. *Id.*

We conclude there is clear and convincing evidence in the record to show Jessica abandoned James. Jessica claimed she did not have enough money to move to Iowa, but somehow she had enough money to move to Alabama with her new husband. Jessica did not make any effort to contact James by telephone or through letters while she was in Alabama. We determine Jessica's parental rights were properly terminated under section 232.116(1)(b).

III. Jessica claims termination is not in James' best interests. She asserts there is hope for improvement in her parenting abilities. Jessica believes termination at the present time is premature. She points out she has two other children, and her parental rights to these children have not been terminated.

Jessica's two oldest children have been adjudicated children in need of assistance and they reside with Jessica's mother. The children are in a stable placement, and no termination proceedings have been initiated as to these children. James, on the other hand, has been in foster care since October 1996. He does not know Jessica as his mother. He needs a permanent home. We conclude termination is in his best interests.

We affirm the decision of the juvenile court terminating Jessica's parental rights to James.

AFFIRMED.

Mahan, J., concurs; Sackett, J., concurs specially.

SACKETT, J. (concurring specially)

I concur specially. I do not concur with the majority that termination is in James's best interest. His best interests disappeared long ago. The most we can do is pick the best of available alternatives, none of which serve his best interest.

Termination cuts James's ties to siblings and biological parents. Severing biological ties has serious ramifications. While the majority points a rosy picture about James's chances for adoption, I am not so optimistic. He is now three and one-half years old and has bonded with a foster mother who is not able to adopt him. He is a child with special needs.

Jessica could have done substantially more to reclaim her son. Yet the programs provided her are alleged not to have worked despite the expenditure of considerable resources by the State and the fact Jessica has employment and is involved in outpatient substance abuse.

I concur with the majority because the evidence supports the juvenile court's decision. I can only trust that the child's guardian ad litem assures he will soon be placed in a good, adequate home.