

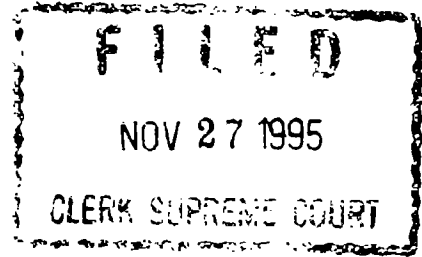
IN THE COURT OF APPEALS OF IOWA

No. 5-639 / 95-855

IN THE INTEREST OF J.J.K.G., Minor Child.

B.G., Mother,

Appellant.



Appeal from the Iowa District Court for Polk County. Karla J. Fultz. District Court Juvenile Judge.

Mother appeals a juvenile court ruling terminating her parental rights to her minor child J.J.K.G. **AFFIRMED.**

Robert E. Tucker of Watson & Gajdel. Des Moines. for appellant.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Michael Hunter, Assistant County Attorney. for appellee.

Victoria Meade, Des Moines. for minor child.

Considered by Donielson, C.J., and Sackett 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.

Brandy G. and John C. are the parents of Jovante G., born July 24, 1993. In March 1994, Brandy was arrested on traffic and theft charges. She allowed Jovante to live with his father, where he was exposed to persons using crack cocaine. After Jovante was taken to his maternal grandmother's home, DHS recommended she and Jovante undergo a drug screen. Jovante tested positive for cocaine and his grandmother tested positive for marijuana. Upon learning Jovante's step-grandfather sexually abused Brandy and her brother when they were young, DHS requested Jovante be removed from the home and placed in foster care. In March, the juvenile court ordered Jovante be placed in foster care.

At a meeting with a juvenile court officer and child protective services investigator, Brandy reported she did not use cocaine, but smoked marijuana and had knowledge John used cocaine. She also expressed her belief it would be impossible to have Jovante returned to her from foster care. DHS established supervised visitation for Brandy and set forth recommendations, including Brandy test negative on at least two urinalysis tests and complete a substance abuse evaluation. At a subsequent removal hearing, the parties agreed Jovante should be moved to foster care.

In May 1994, the juvenile court found Jovante to be a child in need of assistance (CINA) under Iowa Code sections 232.2, 232.6(c)(2), 232.6(n) and 232.6(o) (1993) because of Brandy's unstable emotional and drug abuse problems as well as evidence Jovante was exposed to drugs. The court ordered continued placement in foster care and allowed Brandy to have supervised visitation of Jovante, at the discretion of DHS, if she passed random drug tests. Brandy tested positive on several drug screens and could not maintain contacts with Jovante through the supervised visitations. She also failed to complete substance abuse counseling as DHS required. Furthermore, Brandy moved from apartment to apartment and failed to return messages left for her by DHS workers.

In September 1994, Brandy informed DHS workers she was in jail for second degree robbery. Upon her release from prison, she continued to move around and failed to return messages regarding Jovante left by DHS.

Jovante progressed very well in his developmental skills while in foster care. He had been stimulated every day and interacted with other children at daycare. The foster family who was taking care of Jovante also committed to adopting Jovante if he could legally be available for adoption.

After submitting two clean drug tests in November 1994, Brandy filed a motion for a hearing requesting visitation, which was denied by the district court. The State then filed a petition to terminate Brandy and John's parental rights. In December 1994, Brandy inquired if she could have an open adoption of Jovante if she

consented to terminating her parental rights. DHS informed Brandy they would not agree to the open adoption. One week prior to the termination hearing, Brandy requested a good-bye visit with Jovante to let him know she had a plan for him and it was in his best interests. She also expressed her desire to voluntarily consent to terminate her parental rights to Jovante. Brandy was told by the DHS worker she would be allowed a good-bye visit before the hearing and an opportunity to meet Jovante's foster and potential adoptive parents if she voluntarily signed the consent papers.

In January 1995, the district court entered an order terminating the parental rights of Brandy and John pursuant to Iowa Code section 232.116(1)(a) and 232.116(g)(1993).

Brandy appeals the district court's order contending her consent to termination was not knowingly and voluntarily made. She maintains she did not understand the ramifications of voluntarily terminating her rights, but was only concerned that Jovante not be returned to her the day of the termination hearing. Brandy contends she is no longer on drugs, maintains her own apartment and steady employment, and is now ready to care for her child.

I. Scope of Review

Appellate review of termination proceedings is de novo. *In re W.G.*, 349 N.W.2d 487, 491 (Iowa 1984) *cert. denied sub nom. J.G. v. Tauke*, 469 U.S. 1222

(1985). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. *Id.* at 491-92.

Termination of parental rights may not occur except upon the showing of one or more statutory grounds established by the legislature. *In re L.H.*, 480 N.W.2d 43, 47 (Iowa 1992). The State must prove by clear and convincing evidence the rights of the parent should be terminated. *In re A.R.S.*, 480 N.W.2d 888, 890 (Iowa 1992).

The primary concern in termination proceedings is the best interest of the child. Iowa R. App. P. 14(f)(15); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

We look to the child's long-range, as well as immediate, interests. We consider what the future holds for the child if returned to his or her parents. Insight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care the parent is capable of providing. Our statutory termination provisions are preventative as well as remedial. They are designed to prevent probable harm to a child.

In re R.M., 431 N.W.2d 196, 199 (Iowa App. 1988) (citing *Dameron*, 306 N.W.2d at 745).

II. Termination under 232.116(1)(a)

A court may order the termination of parental rights when the parent “voluntarily and intelligently consent[s] to the termination of parental rights and the

parent-child relationship and for good cause desire[s] the termination.” Iowa Code § 232.116(1)(a) (1993).

We find the State has proven by clear and convincing evidence Brandy voluntarily and intelligently consented to terminate her rights to parent Jovante. She inquired into voluntarily terminating her rights if an open adoption would be possible. Brandy’s good-bye visit with Jovante one week before the hearing was to let him know of her plan for him and the plan was in his best interests. Brandy’s actions before the termination hearing illuminate her awareness of the need to allow Jovante to grow up in a more stable environment than she could provide.

Moreover, Brandy’s testimony at the termination hearing shows her awareness of the process involved in terminating her rights. Brandy expressed her desire to consent to a termination of her parental rights regarding Jovante and that she knew terminating her rights meant she would no longer be Jovante’s legal mother, she could not visit him, and he could be placed for adoption. She testified she was not threatened or coerced in any way, nor was she under the influence of any drugs or alcohol. Brandy stated she wished to terminate her parental rights because “[i]t’s in the best interests of my son, that he have a good home.”

Brandy’s actions and testimony indicate her wishes Jovante be allowed to grow up in a stable, safe environment, not that she was merely concerned with Jovante coming home with her at the time of the termination hearing. We conclude Brandy

voluntarily and intelligently consented to terminate her parental rights to her son under section 232.116(1)(a) in an effort to allow Jovante to grow up in a good home.

III. Termination under 232.116(1)(g)

The trial court also terminated Brandy's parental rights under section 232.116(1)(g) which allows for a termination where the child is three years old or younger, has been adjudicated a child in need of assistance, has been removed from the home for at least six of the last twelve months, and clear and convincing evidence exists the child cannot be returned to the parent's custody. Iowa Code § 232.116(1)(g) (1993).

We find clear and convincing evidence Brandy's parental rights should be terminated under 232.116(1)(g). Brandy's life has been filled with emotional and physical turmoil. She has been arrested and jailed more than once and has abused drugs regularly. She has not made efforts to deal with her substance abuse problem or seek help with her parenting skills. She has moved from home to home frequently and failed to communicate with DHS workers about her whereabouts. Brandy was unable to visit Jovante and maintain any type of relationship with him while he was in foster care because of her actions. Clear and convincing evidence exists to show Jovante cannot be returned to Brandy's home.

In the meantime, Jovante has been doing very well in foster care with a family committed to his needs. He has spent more than half of his short life in foster care

with little to no contact with Brandy. His foster family eagerly wishes to adopt Jovante. We find it would be in Jovante's best interests to terminate Brandy's parental rights.

AFFIRMED.