

IN THE COURT OF APPEALS OF IOWA

No. 1-474 / 91-1114

FILED

DEC 31 1991

CLERK SUPREME COURT

IN THE INTEREST OF A.L., Minor Child,
J.M., Mother,
Appellant.

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Appeal from the Iowa District Court for Humboldt
County, Stephen E. Barbour, Juvenile Referee.

Mother appeals the termination of her parental rights.
AFFIRMED.

Joseph B. McCarville, Fort Dodge, for appellant mother.

Bonnie J. Campbell, Attorney General, John M. Parmeter,
Special Assistant Attorney General, and Judy Sheirbon,
Assistant Attorney General, for appellee.

Considered by Oxberger, C.J., and Schlegel and Habhab,
JJ.

SCHLEGEL, J.

A.L. is a boy born in January 1988. His natural parents have never been married to each other, and the natural father has had no contact with the child. The mother, J.M., later married another man, R.M.

In July of 1988 A.L. was placed in emergency foster care at the request of his maternal grandmother. J.M. had left A.L. with his grandmother. A.L. was then adjudicated a child in need of assistance because J.M. was evicted from her home and had no place to live. Since that time A.L. has mainly remained in foster care.

In October 1988 A.L. sustained a serious skull fracture while in the care of his mother and her husband. No explanation was given for the injury, and it led to a founded child abuse report. There have been three less serious episodes of known physical abuse. The mother accepts responsibility for two of these incidents.

During the child's foster care the mother has not exercised all the visitation to which she was entitled, and she has not always interacted well with the child during visits. According to social workers, the mother and stepfather deny they have any problems in parenting the child and continue to believe that corporal punishment is appropriate. In addition, the mother and stepfather have resisted services, have expressed resentment of social workers, and have expressed frustration that they are not free to use corporal punishment during visitation.

In 1990 the State filed a petition to terminate the mother's parental rights. After a hearing, the juvenile court did terminate the mother's parental rights. The juvenile court relied on Iowa Code sections 232.116(1)(g) and 232.116(1)(h). Subsection (g) permits termination if a child is three years of age or younger, has been adjudicated CINA, has been in foster care for six of the last twelve months, and cannot safely be returned to the parents' care. Subsection (h) permits termination upon proof of physical or sexual abuse or neglect which continues to constitute an imminent danger to the child despite the receipt of services.

The mother appeals the juvenile court's termination order.

I.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984), cert. denied, 469 U.S. 1222, 105 S. Ct. 1212, 84 L. Ed. 2d 353 (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. In re R.M., 431 N.W.2d 196, 199 (Iowa App. 1988). The primary concern is the child's long-term, as well as immediate, best interests. In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

II.

J.M. challenges the sufficiency of the evidence to support termination under either of the statutory subsections relied on by the juvenile court. See Iowa Code §§ 232.116(1)(g), 232.116(1)(h) (1991). The mother argues the evidence failed to establish that she or her husband had caused the skull fracture, had committed any of the other physical abuse in the past, or posed any risk of physical abuse in the future. For these reasons, she argues, the evidence failed to establish either that the child cannot safely be returned to her care (subsection g) or that the risk of physical abuse continues to constitute an imminent danger to the child (subsection h).

In addition, the mother challenges the sufficiency of the evidence to establish the age condition for subsection (g). Because the child was between three and four years of age at the time of the termination, the mother argues that he was not "three years of age or younger" and that the termination must therefore be reversed insofar as it relies on subsection (g).

We determine the juvenile court properly found by clear and convincing evidence that termination of J.M.'s parental rights was appropriate. Because we review de novo and conclude termination is proper under Iowa Code section 232.116(1)(h), we do not address the mother's argument concerning the age condition of Iowa Code section 232.116(1)(g).

Termination is proper under Iowa Code section 232.116(1)(h) if both of the following have occurred:

- (1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.
- (2) There is clear and convincing evidence that the circumstances surrounding the abuse or neglect of the child, despite the receipt of services, constitutes imminent danger to the child.

A.L. has been adjudicated a child in need of assistance. We find there is clear and convincing evidence in this case to suggest A.L. would be in imminent danger of physical abuse if returned to his mother's home. The facts clearly show that J.M. and R.M. are unable to discipline A.L. without resorting to corporal punishment that causes injuries. The evidence gives every indication that J.M. and R.M. intend to continue to physically discipline A.L. in order to try to control and change his behavior. The mother refuses to attend parenting classes, and her discipline continues to result in bruises and serious injuries to the child.

J.M. states that a founded abuse report has not occurred for a year despite frequent visits. However, the visits between A.L. and his mother have had to be supervised since June 1990 because A.L. was returned from visits with bruises from spankings, had his mouth washed out with soap, was dropped in the corner by R.M., R.M. and J.M. asked permission to "pop" A.L. in the mouth, and J.M. mentioned putting A.L. in a box. The parents have been unable to learn alternative discipline techniques.

The evidence shows that A.L., only three years old at the time of the termination hearing, would be in imminent danger of physical abuse if returned to J.M. and R.M. J.M. has repeatedly refused to attend group parenting classes, and both parents deny a need for additional services or supervision. Little bonding exists between the mother and son. J.M. has stated that she plans to use physical punishment in the future and "I don't care what people tell me, I'm going to discipline him the way I see fit." It seems J.M. has been inconsistent with exercising the offered visitation and has often ignored A.L.'s birthday and his presence during visits. A.L. requires individualized attention and patience that neither J.M. nor R.M. possess.

III.

We agree with the juvenile court that the parents' "own manifestations concerning the continued need for physical discipline in this matter leads the Court to find that there is clear and convincing evidence that all of the requirements of subsection [(h)] have been met." We determine the termination of J.M.'s parental rights to A.L. is in A.L.'s best interest. We have considered all issues raised by J.M., and we affirm the juvenile court.

AFFIRMED.