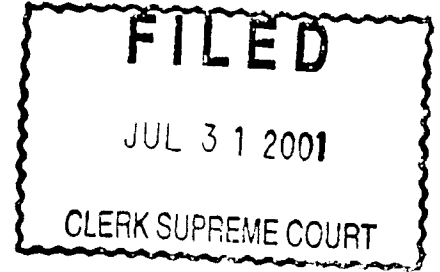


IN THE COURT OF APPEALS OF IOWA

No. 1-404 / 01-0206
Filed July 31, 2001



IN THE INTEREST OF J.J.L, Minor Child,

J.L., Mother,
Appellant.

Appeal from the Iowa District Court for Jasper County, Thomas W. Mott,
District Associate Judge.

The mother appeals from the order terminating her parental rights.

AFFIRMED.

William M. Ross of Selby, Updegraff, Smith & Holwerda, Newton, for
appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Scott Nicholson, Assistant County Attorney, for appellee
State.

Terry Rickers, Newton, guardian ad litem for minor child.

Considered by Sackett, C.J., and Huitink and Streit, JJ.

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STREIT, J.

Overview

Jamie, the mother of Jailyn, appeals the termination of her parental rights. She claims there was no clear and convincing evidence Jailyn could not be returned to her care. She also argues termination was not in her daughter's best interest in that she could continue to be placed with the maternal grandparents. James, the father, also had his parental rights terminated, but is not part of this appeal. We affirm.

Background

Jailyn was born prematurely on September 1, 1999, with methamphetamine in her system. She was removed by temporary order and adjudicated to be in need of assistance on September 24. Following a home study through the interstate compact, Jailyn was placed with her maternal grandparents in Omaha on December 3, 1999. She remained in their care through the pendency of the case. The grandparents desire to adopt her.

Both parents have long-standing problems with substance abuse. Their current drug of choice is methamphetamine. Both have been convicted of various crimes. Jamie was ordered to participate in substance abuse evaluation and treatment. During the sixteen months between Jailyn's birth and the termination of her parental rights, Jamie did not follow through with any substance abuse treatment until two months after the petition to terminate her parental rights was filed. By the time of the hearing she had completed an

inpatient program and was involved in an aftercare program. Her twenty-year drug abuse history reflects repeated relapses after periods of sobriety.

Termination proceeding

The court terminated Jamie's and James's parental rights under Iowa Code sections 232.116(1)(g) and (k). James did not appear at the hearing; he was subject to an arrest warrant at the time of the hearing. Jamie also was subject to an arrest warrant at the time of the hearing for a probation violation. She expected to serve sixty days in jail after the termination hearing. The court found Jamie was attempting "to find and right herself" but did too little, too late. The court also considered the best interest of Jailyn in whether to place her with her grandparents as guardians or to terminate her parents' rights. The court determined the prospect of the parents trying to regain custody from the grandparents could be detrimental to Jailyn. To provide her with "a permanent place that she knows is her place," the court concluded termination, not a guardianship, was in her best interest. Jamie appeals.

Discussion

We review proceedings to terminate parental rights de novo -- we review the facts as well as the law and adjudicate parents' rights anew. Iowa R. App. P. 4; *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). The State has the burden to prove the grounds for termination by clear and convincing evidence. *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997).

Jamie first claims she was actively participating in rehabilitative services and making improvements in her lifestyle, so there was no clear and convincing

proof Jailyn could not be returned to her custody. The legislature has determined the interval for which patience with parents may last. "This period must be reasonably limited because patience on behalf of the parent can quickly translate into intolerable hardship for the children." *In re R.J.*, 436 N.W.2d 630, 636 (Iowa 1989). Jamie waited "until the eve of termination, after the statutory periods for reunification [had] expired" to begin participating in substance abuse treatment. A parent cannot wait until the eve of termination of her parental rights, after the statutory time periods for reunification have expired, to begin to express an interest in parenting. *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000). "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987), *cert. denied sub nom A.C. v. Iowa*, 485 U.S. 1008, 108 S. Ct. 1474, 99 L. Ed. 2d 702 (1988). We consider what the future likely holds for the child if that child is returned to his or her parents. Insight for that determination may be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *In re Dameron*, 306 N.W.2d at 745. Jamie's past history strongly suggests she would relapse after treatment. She was scheduled to serve sixty days in jail on another charge after the termination hearing. Jailyn clearly could not be returned to her custody at the time of the termination hearing. Jamie's participation in substance abuse treatment in the time just before the termination hearing did not prevent the court from finding clear and convincing evidence her prognosis was that Jailyn could not be

returned to her custody within a reasonable time. Clear and convincing evidence supports termination on both grounds cited by the court.

Jamie also claims Jaily'n's placement with relatives and the closeness of the parent-child relationship mean the court need not terminate her parental rights, but rather, continue Jaily'n's placement with her grandparents. See Iowa Code § 232.116(3)(a) and (c). Section 232.116(3) has been interpreted to be permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). It is within the sound discretion of the juvenile court, based upon the unique circumstances before it and the best interests of the child, whether to apply this section. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997).

The court saw the prospect of continued legal battles between the parents and grandparents over Jaily'n's custody as unhelpful and possibly detrimental to Jaily'n. Under the circumstances of this case, we affirm the juvenile court's decision to terminate Jamie's parental rights to allow Jaily'n's grandparents to adopt her.

AFFIRMED.