IN THE COURT OF APPEALS OF IOWA

No. 1999-222 (9-446) / 98-1104
Filed September 29, 1999

FILED
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CLERK SUPREME COURT

IN THE INTEREST OF A.M., Minor Child,

J.M., Mother,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Alan D. Allbee, Associate Juvenile Judge.

J.M. appeals the termination of her parental rights for A.M. **AFFIRMED.**

Kellyann M. LeKar of Roberts and Stevens, P.L.C., Waterloo, for appellant.

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

Heidi L. Noonan-Day of Gottschalk, Shinkle, & Noonan-Day, Cedar Falls, guardian ad litem for minor child.

Heard by Sackett, C.J., and Huitink and Mahan, JJ.

MAHAN, J.

Jody appeals the termination of her parental rights for Alanna. She contends the court erred in terminating her parental rights because (1) the State failed to prove she was unable to assume care of Alanna; (2) termination was not in the best interests of Alanna; (3) the Department of Human Services (DHS) failed to make reasonable efforts in preventing the termination of parental rights; and (4) Alanna's best interests would have been served by a permanency order, rather than termination of parental rights. We affirm.

Jody is the mother of Alanna, born on February 1, 1994. Alanna first came to the attention of DHS in April of 1994. A CINA petition was filed on April 22, 1994 alleging Alanna's parents had engaged in a domestic abuse incident in which Jody was slapped causing her to drop the child. Alanna suffered a head injury. The petition further alleged the father had admitted to other incidents in which the parents fought while Jody held Alanna; the father had been arrested for domestic abuse on three occasions; and Jody continued to see the father at her residence and other places in spite of a no contact order. The matter came before the court for a adjudication hearing on June 30, 1994, but was continued based on Jody's acceptance of voluntary services and her promise to abide by the no contact order.

By December of 1994, Alanna's parents had resumed their relationship in violation of the no contact order and were not cooperating with the case plan. On February 6, 1995, Alanna was removed from the home by an ex parte temporary removal order. The removal order was based on Jody leaving Alanna with care givers without letting them know her whereabouts, failing to seek appropriate medical attention for Alanna, being evicted from her apartment and having no known address,

and her unwillingness to cooperate with DHS. Other concerns included Jody's lack of stable employment and her apparent lack of commitment to consistently parent Alanna.

On April 26, 1995, Alanna was adjudicated a child in need of assistance as defined in Iowa Code section 232.2(6)(b) and (c)(2). Care, custody, and control of Alanna was placed with DHS for physical placement with her maternal great-grandparents with whom she had been living since her removal.

A petition to terminate parental rights was filed in September of 1995. This petition was apparently dismissed in February of 1996, because by December of 1995, Jody had been making progress. In the spring of 1996, DHS recommended Alanna be returned to Jody's care. However, in May of 1996, the juvenile court refused to return care, custody, and control of Alanna to Jody because she had violated the no contact order with Alanna's father.

A second petition to terminate parental rights was filed in September of 1996. Prior to the hearing on the petition, Jody contended an agreement had been made that the State would not pursue termination in this case if Jody stipulated to the entry of a permanency order with placement of Alanna with her great-aunt Robin. Jody filed a motion to enforce this alleged agreement. The juvenile court determined the evidence presented was insufficient to find such an agreement was made.

A supervisory order was entered on June 30, 1997, in which the juvenile court found it was not disputed that neither of Alanna's parents could appropriately assume care of Alanna at that time, DHS planned to place Alanna with Robin, and relatives had agreed it is appropriate for Robin to assume permanent custody of Alanna. The juvenile court ordered the care, custody, and control of Alanna to be transferred to

Robin subject to the protective supervision of DHS and expressly held open the question of whether termination or a permanency order was appropriate in this case. The juvenile court indicated the determining factors would be whether the parents could be supportive of a permanent placement and whether Robin would need the termination and adoption to confirm her parent-child relationship with Alanna. This order was not appealed. Following the entry of this order, Jody was no longer offered or provided with services from DHS.

The termination hearing was held in May of 1998. The juvenile court found the June 1997 supervisory order did not comply with Iowa Code section 232.104(2)(b). Therefore, the juvenile court determined it was not limited to entering a permanency order or termination order, but could also consider dismissing the petition and returning the custody of Alanna to either or both of her parents.

The evidence at trial showed Jody had an eighteen month relationship with Eric Thompson who has assaulted her twice. Eric has not attended AA meetings, nor has he attended barterer's education or anger management classes. Nonetheless, Jody permitted Eric to move into her apartment and they continued to live together at the time of trial. This living arrangement is in violation of Jody's lease and are grounds for potential eviction. Jody did not pay child support until her checks were garnished and had only held short-term employment.

Jody's visits with Alanna have largely been the result of Robin's efforts. Jody planned to attend a dance recital and see Alanna off at the airport when Robin took Alanna on a vacation trip but Jody failed to show up either time. Jody did attend Alanna's birthday party but arrived over an hour late. The juvenile court found this evidence demonstrated Jody's failure to make Alanna a priority in her life. The

juvenile court also found Jody was willing to be involved in Alanna's life when convenient for her and little or no effort is required on her part.

Alanna was described as having made a successful adjustment to Robin's home. The juvenile court determined the continued pressure to reunify Alanna with Jody creates continued instability for Alanna and mitigated against the use of a permanency order in this case. Thus, the juvenile court terminated Jody's parental rights under Iowa Code sections 232.116(1)(c)(g)(h).

Jody appeals.

I. STANDARD OF REVIEW. Termination proceedings are reviewed de novo. Iowa R. App. P. 4; *In re M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993). Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. Iowa R. App. P. 14(f)(7); *M.M.S.*, 502 N.W.2d at 5. The primary interest in termination proceedings is the best interests of the child. Iowa R. App. P. 14(f)(15); *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). The State has the burden to prove the allegations of the petition by clear and convincing evidence. Iowa Code § 232.96 (1997).

II. TERMINATION. Jody contends the trial court erred in finding the legal grounds for termination had been met under Iowa Code sections 232.116(1)(c), 232.116(1)(g), and 232.116(1)(h), and in finding termination was in Alanna's best interest. Jody also maintains the trial court erred in finding reasonable efforts were made to prevent the termination of her parental rights. We disagree.

A. Grounds For Termination. We can affirm the trial court if we find the grounds for termination have been established under any of the subsections by clear

and convincing evidence. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996) (we only need to find grounds to terminate parental rights under one of the sections cited by the juvenile court in order to affirm the juvenile court's ruling). Section 232.116(1)(c) requires a finding that "[s]ubsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of such services." Iowa Code § 232.116(1)(c)(2).[1]

Alanna was adjudicated a child in need of assistance because she had been injured in a domestic abuse incident between her parents. Alanna was adjudicated CINA on April 26, 1995, and it is clear Jody was offered services until the time of the supervisory order on June 30, 1997. At the time of termination, domestic violence continued to be a concern. Jody was living with a man who had assaulted her twice and she was not dealing with domestic violence issues in therapy.

Other concerns which were present at the time of the CINA adjudication continued to exist at the time of the termination hearing. Jody could potentially be evicted because she violated her lease by allowing Eric to move in with her. Jody's employment continued to be short-term. Her visits with Alanna have largely been the result of Robin's efforts and Jody still had not made Alanna a priority in her life. We conclude there is clear and convincing evidence the grounds for termination were established under Iowa Code section 232.116(1)(c).

B. Alanna's Best Interest. "Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). To continue

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[1] Jody does not challenge the juvenile court finding under Iowa Code section 232.116(1)(c)(1).

to keep children in temporary or even long-term foster homes is not in their best interest, especially when the children are adoptable. *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997); *In re J.L.P.*, 449 N.W.2d 349, 353 (Iowa 1989); *In re T.T.*, 541 N.W.2d 552, 557-58 (Iowa App. 1995).

At the time of trial, Alanna was four years old and had been out of Jody's care for three of those years. The testimony shows Alanna "has finally found a home where she is safe and secure and stable and is starting to make some gains." She has made a very good adjustment and is enjoying a number of activities. Interruption of placement with Robin would be harmful to Alanna. We conclude there is clear and convincing evidence termination of Jody's parental rights is in Alanna's best interest.

C. Reasonable Efforts. The State must make reasonable efforts to reunite parents and children prior to termination of parental rights. *In re T.C.*, 522 N.W.2d 106, 108 (Iowa App. 1994). The State concedes services had not been offered to Jody and efforts for reunification had not been made since July of 1997. Therefore, Jody argues DHS did not make reasonable efforts to prevent the termination of her parental rights. We disagree.

The State claims the supervisory order of June 30, 1997, was a permanency order. However, the case permanency plan filed shortly after the order was entered continues to show the goal is reunification. The supervisory order failed to comply with Iowa Code section 232.104(2)(b). The parties indicated the April 1997 hearing dealt with enforcement of a permanency agreement and evidence was not presented concerning termination of parental rights. We conclude the supervisory order was not a permanency order and the State cannot justify the cessation of services on this basis.

Although it is not clear, we find the supervisory order was a transfer of custody to Robin under Iowa Code section 232.102(1)(a). Because custody was transferred to a relative, the juvenile court had discretion to direct DHS to offer services to Jody but chose not to do so. Iowa Code § 232.102(7). Thus, DHS was relieved of its obligation to offer services to Jody. Whatever the faults are with the supervisory order, we find they are not sufficient to justify reversing the termination in this case. Jody did not appeal the supervisory order and apparently was content with Alanna being permanently placed with Robin. *See In re L.P.*, 370 N.W.2d 839, 841 (Iowa App. 1985). We have carefully reviewed the facts of this case and we conclude reasonable efforts were made to prevent termination of Jody's parental rights.

III. PERMANENCY. Jody argues termination of her parental rights is unnecessary to achieve permanency for Alanna. It is true the court need not terminate parental rights when the child is placed in the legal custody of a relative or the termination would be detrimental to the child due to the closeness of the parent-child relationship. Iowa Code §§ 232.116(3)(a), 232.116(3)(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 App. 1993). It is within the sound discretion of the court, based upon the unique circumstances before it and the best interests of the child, whether to apply this section. *In re A.J.*, 553 N.W.2d 909, 916 (Iowa App. 1996). Generally, once the grounds for termination of parental rights have been shown, termination is in the best interests of the child. *In re L.M.F.*, 490 N.W.2d 66, 68 (Iowa App. 1992).

Jody contends it is in Alanna's best interest not to be deprived of the opportunity to develop a mother-daughter bond with her. However, Alanna was four years old at the time of trial and has been removed from Jody's custody for most of

her life, a total of more than three years at the time of trial. Alanna has lived with Robin for approximately eleven consecutive months at the time of trial and this placement has been successful for Alanna. Furthermore, the testimony shows Alanna needs stability, which cannot be achieved as long as there is continued pressure to reunify Jody and Alanna. Finally, the guardian ad litem very strongly argues in favor of termination of parental rights. Based upon a careful review of this case, we find it is in Alanna's best interest to terminate the parental rights of Jody.

For these reasons, we affirm.

AFFIRMED.