IN THE COURT OF APPEALS OF IOWA

No. 1-147 / 00-1417
Filed April 27, 2001

FILED
APR 27 2001
CLERK SUPREME COURT

IN THE INTEREST OF J.G. and J.G., Minor Children,

T.R., Mother,
Appellant.

Appeal from the Iowa District Court for Wapello County, William S. Owens, Associate Juvenile Judge.

The mother of two minor children appeals a juvenile court order terminating her parental rights. **AFFIRMED.**

John R. Silko, Bloomfield, for appellant

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, and Victoria Siegel, County Attorney, for appellee State.

H. Edwin Detlie, Ottumwa, guardian ad litem for minor children.

Kenneth J. Ketterhagen, Fairfield, for father, J.G.

Considered by Huitink, P.J., and Streit and Vogel, JJ.

VOGEL, J.

Tracy, the mother of two minor children, appeals the juvenile court order terminating her parental rights. She claims the court erred in concluding there was clear and convincing evidence to terminate her parental rights under Iowa Code sections 232.116(1)(e) and (k) (1999). We affirm.

Background facts and CINA proceedings. Tracy and Jeff are the parents of Jeffery, born in October 1992, and Justice, born in June 1994. The children were first adjudicated in need of assistance in April 1995. The children remained in Tracy's care through that CINA case, which was dismissed in May 1996. In 1997, after Jeff was incarcerated and Tracy was jailed on a number of criminal charges, the State filed a second CINA proceeding and the children were placed in foster care. After a review hearing in April 1998, Tracy was ordered to participate in a substance abuse treatment program, individual counseling, and parenting instruction. Following her conviction for second-degree theft Tracy was placed in residential treatment at the Ottumwa correctional facility. Upon her release, Tracy's skills had improved markedly and the children were returned to her care from January to April 1999. However, in April 1999, Tracy was arrested for burglary after another drug relapse. Tracy's probation was revoked and she was incarcerated. In May 2000, the State filed a petition to terminate both Tracy and Jeff's parental rights. Tracy remained incarcerated at the time of the hearing on the petition. The juvenile court terminated Tracy's parental rights under Iowa Code sections 232.116(1)(e) and

(k). The court terminated Jeff's parental rights under Iowa Code sections 232.116(1)(e) and (i). Only Tracy has appealed.

Appellate claim. On appeal, Tracy claims the juvenile court's conclusions (1) the children could not be returned to her custody at the present time or (2) within a reasonable period of time are not supported by clear and convincing evidence. Tracy claims she expected to be released soon after the hearing and she thought the children could be returned to her within six months after her release. Department of Corrections information suggested Tracy might not be released until 2002. Nothing in the record before this court indicates whether or not Tracy has, in fact, been released, and we do not consider information not contained in the record.

Discussion. Clear and convincing evidence supports termination under Iowa Code section 232.116(1)(e) because the children could not be returned to Tracy's custody at that time. She was unavailable to parent her children because of her incarceration. Conflicting evidence was before the district court concerning when Tracy might be released.

Even if she had already been released, DHS would have required a year of consistent abstinence from drug use before considering returning the children to her care. Tracy's past history reveals a lack of success in remaining clean and sober while outside the structured environment of incarceration. Given the time the children have been in limbo, termination was appropriate also under section 232.116(1)(k).

AFFIRMED.