IN THE COURT OF APPEALS OF IOWA

No. 0-682 / 00-953
Filed December 13, 2000

IN THE INTEREST OF
D.R.L. and A.S.L,
Minor Children,

C.L., Mother,
Appellant.

FILED
DEC 13 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Associate Juvenile Judge.

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

Martha M. McMinn, Sioux City, until withdrawal, then Robert B. Deck, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, and Rhoda M. Tenuta for appellee State.

James M. Daane II of Buckmeier & Daane, Sioux City, guardian ad litem for minor children.

Considered by Zimmer, P.J., and Hecht and Vaitheswaran, JJ.

ZIMMER, P.J.

A mother appeals the termination of her parental rights to her two children. She claims the juvenile court abused its discretion in denying her motion to continue. She also claims the court improperly admitted hearsay evidence and the State did not present sufficient evidence to justify termination of her parental rights. We affirm on appeal.

Christina is the mother of five children. This appeal involves only the two youngest children, Autumn, born in December 1995, and Dakota, born in May 1997. Ray is the father of Autumn and Dakota. Christina has an extensive history of substance abuse and criminal behavior. She was convicted of delivery of a controlled substance in 1990, possession of methamphetamine in 1994 and 1995, and possession of methamphetamine with intent to deliver in 1996.

Christina became involved with the Iowa Department of Human Services (DHS) when Dakota tested positive for amphetamine and methamphetamine at the time of his birth in May 1997. DHS issued a founded report of denial of critical care. Dakota was removed from Christina's care and placed in foster care.

All of the children were adjudicated to be children in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(a), (b), (c), (n), and (o). The other children remained in Christina's care until August 1997, when Christina was sent to prison for probation violations. Autumn resided with the maternal grandmother while Christina was in prison.

Christina was released from prison in February 1999. She entered a residential treatment program for women and their children. Autumn and Dakota

came to live with their mother at this facility. Christina successfully completed the program and in April 1999, she, Autumn, and Dakota moved in with her mother. Christina's mother died in June 1999. Christina then cared for the children on her own.

In August 1999, Christina had three drug tests which showed positive for methamphetamine. She told a social worker, the "kids were driving me nuts." The children were removed from her care and placed in foster care. Christina became involved in another substance abuse treatment program, but was discharged in January 2000 due to noncompliance. She fell into her old habits of drug usage, testing positive for cocaine on several occasions. An arrest warrant was issued for her in February 2000 for parole violations. She became a fugitive from justice.

The State filed a petition to terminate the parental rights of Christina and Ray in December 1999. About two days before the termination hearing, which was scheduled for April 19, 2000, Christina told her court-appointed attorney, Lesley Rynall, she wanted a new attorney. Rynall filed a motion to withdraw. The juvenile court considered the motion just prior to the termination hearing. Neither Christina nor her new attorney appeared at the termination hearing, but Rynall was present. The juvenile court denied the motion to withdraw.

Rynall then made an oral motion for a continuance because Christina was not present for the hearing. The juvenile court denied this motion as well. The court terminated Christina's parental rights to Autumn and Dakota under sections 232.116(1)(c), (g), and (k). The court found the children could not be returned to

Christina's care because she was a fugitive from justice and was actively using illegal drugs. Ray's parental rights were also terminated. Christina appeals.

I. Scope of Review

The scope of review in termination cases is de novo. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa App. 1997). The grounds for termination must be proven by clear and convincing evidence. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa App. 1999). Our primary concern is the best interests of the children. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

II. Continuance

Christina contends the juvenile court should have granted her motion to allow her attorney to withdraw and her motion for a continuance. An appellate court reviews a motion for continuance under an abuse of discretion standard. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa App. 1996). The court will reverse only if injustice will result to the party desiring the continuance. *Id.* In order to show an abuse of discretion, the party must show the juvenile court's action was unreasonable under the attendant circumstances. *In re J.L.L.*, 414 N.W.2d 133, 135 (Iowa 1987).

Because Christina's new counsel was not present at the termination hearing, to grant her motion to allow her court-appointed attorney to withdraw would have meant delaying the case. The juvenile court determined Christina had waited "until the eve of the termination trial that she's known about for the last several months to, in the Court's opinion, delay this matter by attempting to fire her counsel." The court found it was not in the best interests of the children to delay the proceedings. We find the juvenile court did not abuse its discretion

by denying Christina's motions for withdrawal of her attorney and for a continuance.

III. Admission of Evidence

A. Exhibits

Christina's attorney objected to several of the State's exhibits on the grounds Christina may not have seen the exhibits. The juvenile court overruled the objections and considered the exhibits. On appeal, Christina asserts some of the exhibits contained hearsay and should not have been considered. She claims she was prejudiced by the court's consideration of the evidence.

An issue not presented in the juvenile court may not be raised for the first time on appeal. *See In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa App. 1994). In the present case, Christina raises for the first time on appeal her hearsay objections to the State's exhibits. This issue has not been preserved for our review.

Even if the issue had been preserved, the evidence would be admissible. In a termination proceeding, a court may judicially notice exhibits which were part of the prior CINA proceeding. *In re E.J.R.*, 400 N.W.2d 531, 532-33 (Iowa 1987). Judicial notice of CINA proceedings is not limited to evidence, but includes any part of the record. *In re H.R.K.*, 433 N.W.2d 46, 48 (Iowa 1988). Here, the exhibits were part of the CINA proceedings, and were properly considered by the juvenile court in the termination proceeding.

B. Testimony

During the termination hearing, a DHS caseworker, Jennifer Stinton, was asked whether Christina's parole officer had indicated whether Christina had tested positive for illegal drugs from December 1999 to the date of the

termination hearing. Christina objected to the question on hearsay grounds. The juvenile court overruled her objection.

Hearsay statements are permitted in adjudicatory hearings in CINA cases by section 232.96(6). *In re T.C.*, 492 N.W.2d 425, 429 (Iowa 1992). Because of the interdependent nature of CINA and termination actions, evidence properly admissible in an adjudicatory proceeding should be accorded the same standard of admissibility in a subsequent termination hearing pertaining to the same child. *In re A.M.H.*, 516 N.W.2d 867, 873 (Iowa 1994). We determine the evidence was properly admitted.

IV. Sufficiency of the Evidence

Christina claims the State did not present sufficient evidence to warrant termination of her parental rights. She does not allege specifically what elements of the termination statutes the State failed to prove by clear and convincing evidence.

In any event, we find there is clear and convincing evidence in the record to show the children could not be safely returned to Christina's care at the present time. As the juvenile court noted, at the time of the termination hearing Christina was a fugitive from justice. Also, she was still engaged in a lifestyle that involved the use of illegal drugs. Christina has consistently placed her use of illegal substances over her children. Obviously, she is not in a position to parent the children in a responsible manner. Christina's parental rights were properly terminated under sections 232.116(1)(c), (g), and (k).

We affirm the decision of the juvenile court.

AFFIRMED.