IN THE COURT OF APPEALS OF IOWA

No. 4-234 / 93-1976

FILED
JUN 28 1994
CLERK SUPREME COURT

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

G.A.B., a/k/a G.A.C., Mother,

Appellant.

Appeal from the Iowa District Court for Linn County, Michael J. Newmeister, District Associate Judge.

The natural mother appeals from the termination of her parental rights to her minor child L.B. **AFFIRMED.**

Richard L. Boresi of King, Smith & Boresi, Cedar Rapids, for appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, Charles K. Phillips, Assistant Attorney General, and Denver D. Dillard, County Attorney, for appellee State.

Fay Hoover Grinde, Office of Public Defender, Cedar Rapids, guardian ad litem for minor child.

Considered by Hayden, P.J., and Habhab and Cady, JJ.

HABHAB, J.

The mother, G.A.B. appeals from the termination of her parental rights to her minor child, L.B. We affirm.

On March 24, 1992, L.B., the four-year-old daughter of G.A.B. and T.C., was placed in foster care pursuant to Iowa Code section 232.79 (1991), after G.A.B. was found in an extremely intoxicated condition attempting to shoplift from a grocery store. L.B. was with her at the time of her arrest. A similar incident had occurred four months earlier. On March 25, 1992, the State filed a petition alleging that L.B. was a child in need of assistance. On June 29, 1992, L.B. was adjudicated as a child in need of assistance (CINA) pursuant to section 232.2(6)(n), pursuant to stipulation, and custody was placed with the Department of Human Services (DHS).

The State attempted to contact T.C. in order to seek his participation in a case permanency plan. However, T.C. failed to make any significant effort to contact L.B. The State offered services to G.A.B. in order to treat her severe substance abuse problem. Although G.A.B. did attempt to complete the programs, and for several months at a time would remain sober, G.A.B. ultimately would resume drinking, and often resorted to shoplifting liquor.

On May 12, 1993, the State filed a petition for termination of parental rights. The State pointed out that since the dispositional hearing in 1992, G.A.B. has continued to abuse alcohol. It noted that G.A.B. was

arrested on October 20, 1993, less than a month before the termination hearing, after she attempted to shoplift a twelve-pack of beer from a local grocery store. The officer who arrested her testified she was "obviously intoxicated." On October 26, 1993, G.A.B. registered a .26 blood alcohol content on a probation officer's intoxicator. Four days later, she was again arrested, this time with regard to a theft of two bottles of wine from a gas station convenience store. On November 8, 1993, G.A.B. tested positive for cocaine. The State also introduced evidence that during one of G.A.B.'s intoxicated periods, she threw an object that injured her thirteen-year-old son.

The district court determined that G.A.B.'s substance abuse problem presented a clear danger to L.B., and ordered a termination of her parental rights. The district court also determined that T.C. had effectively abandoned L.B. and terminated his parental rights. G.A.B. appeals.

Our review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984) cert. denied sub nom. J.G. v. Tauke, 469 U.S. 1222 (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. Id. at 491-92.

G.A.B. argues the district court erred in failing to grant her motion for directed verdict. G.A.B. contends the State failed to have her sign her first case permanency plan and therefore she was not given proper notice. She

asserts that the case permanency plan is tantamount to a contract between the service provider and the parent. G.A.B. maintains that because the DHS failed to review and formalize the agreement with her, the case permanency plan is a nullity.

We find this issue to be without merit. Iowa Code section 232.102(7) states in part:

> If the court orders the transfer of the custody of the child to the department of human services or other agency for placement, the department or agency shall submit a case permanency plan to the court and shall make every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interest of the child.

However, this is not a case where DHS failed to develop a case permanency plan. DHS filed its first case permanency plan on May 15, 1992. Although G.A.B. did not sign this document, she was mailed a copy. She was also present at the dispositional hearing on June 29, 1992, where the case permanency plan was adopted without objection. In addition, G.A.B.'s caseworker testified she discussed with G.A.B. her responsibilities under the case plan. There is no dispute that G.A.B. received services for her substance abuse problem. We find the fact that G.A.B. did not sign a case permanency plan does not invalidate the termination proceedings.

G.A.B. also contends the district court erred in terminating her parental rights pursuant to Iowa Code section 232.116(1)(e) and 232.116(1)(k) (1993). She argues

that it was not shown that L.B. cannot be returned to her care as required under subsection (e). She also argues that it was not shown she has a severe chronic substance abuse problem, and presents a danger to herself or others within the meaning of subsection (k). G.A.B. claims there was no clear and convincing evidence she was continuing to abuse alcohol because the social workers never smelled alcohol on her breath or saw her intoxicated.

There is ample evidence in the record that G.A.B. continues to abuse alcohol, including the testimony of the two police officers regarding G.A.B.'s recent arrests and the the probation officer's testimony regarding her intoxilyzer test results. We find the State has proven the elements of sections 232.116(1)(e) and (k) by clear and convincing evidence. We also find it is in L.B.'s best interest to terminate G.A.B.'s parental rights. We affirm the juvenile court.

AFFIRMED.