IN THE COURT OF APPEALS OF IOWA

No. 1-224 / 00-1841
Filed July 31, 2001

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CLERK SUPREME COURT

IN THE INTEREST OF K.M.Z., Minor Child,

S.R., Mother,

Appellant.

Appeal from the Iowa District Court for Woodbury County, Mary L. Timko, Associate Juvenile Judge.

A mother appeals from the juvenile court order terminating her parental rights to her daughter. **AFFIRMED.**

William L. Binkard, South Sioux City, Nebraska, for appellant.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and Dewey Sloan, Assistant County Attorney, for appellee-State.

Lesley D. Rynell, Juvenile Law Center, Sioux City, for minor child.

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

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HECHT, J.

Stacey, the mother of Khaiesha, appeals the juvenile court order terminating her parental rights. She claims (1) the trial court did not have personal jurisdiction over the child or subject matter jurisdiction over this case; (2) the trial court erred in terminating her rights pursuant to Iowa Code sections 232.116(1)(c), (f), and (g) (1999); and (3) termination is not in the child's best interests. We affirm.

I. Background facts and proceedings.

Stacey R. and Alfred E. are the parents of Khaiesha Z., born October 20, 1999. Stacey has had her parental rights terminated to three other children in Iowa. Her paramour Patric Z. has had his rights to four children terminated in Iowa. DHS has been involved with both parties over a period of years, most recently around Sioux City. Stacey and Patric moved from Iowa to South Sioux City, Nebraska, about a month before Khaiesha's birth.

Khaiesha was born prematurely in Omaha and removed from the hospital by the parents within twenty-four hours against the advice of the medical care providers. A public health nurse made five visits with the family in South Sioux City, Nebraska. On October 29, 1999, Khaiesha was admitted to St. Luke's Hospital in Sioux City, Iowa, with possible apnea symptoms. Stacey executed a voluntary foster care placement agreement with DHS at that time.[1]

On November 3, 1999, DHS filed a CINA petition. The court set a hearing on the petition for December 22, 1999. The court order of November 3, also

[1] Although the parties acknowledge the agreement was executed, it does not appear in the record.

appointed a guardian ad litem for Khaiesha and gave Stacey temporary care, custody, and control pending the hearing on the CINA petition. The record is less than clear, however, as to some of the procedural aspects of this case. Stacey's brief states an application for temporary removal order was filed and a temporary removal order was entered on November 3, 1999. However, neither appears in the court file and no citation to the record is made.

A CINA adjudication order entered on January 19, 2000, found Stacey and Patric spoke with DHS on November 6, 1999, about the fact a court order had placed custody with Stacey. The parents were advised the voluntary foster care placement agreement they signed on October 29, superseded the court order of November 3. The CINA adjudication order also acknowledged a second contact with DHS on November 6, about custody, which included Stacey's attorney, Mr. Hisey. It appears Khaiesha was not released to Stacey's care consistent with the November 3, order because the record shows Stacey and Patric exercised supervised visitation with the child during November and into December, 1999.

On December 2, 1999, at the end of a supervised visit with Khaiesha, Stacey and Patric took her from the supervising worker, claiming the November 3, court order gave custody to Stacey, and fled in a car driven by Stacey across the bridge into Nebraska. The pursuing Iowa police car noted several times when Stacey exceeded the posted speed limit and violated other traffic laws. The car was stopped near the couple's home in South Sioux City, Nebraska. Khaiesha was returned to Iowa. On December 3, DHS applied for, and the court issued, an ex parte temporary removal order, transferring temporary care, custody, and control of Khaiesha to DHS. Stacey later pled no

contest to child endangerment charges in Nebraska, served two weeks in jail, and paid a fine.

Khaiesha was adjudicated a child in need of assistance under Iowa Code section 232.2(6)(b) (1999) after a January 11, 2000, hearing. Stacey and Patric argued at the hearing the court was without personal jurisdiction over Khaiesha because she was illegally removed from Nebraska by Iowa authorities. In its adjudicatory order, the court concluded "jurisdiction attached when Khaiesha was brought to the hospital in Iowa and Stacey then signed the voluntary placement agreement after a removal order had been issued by the Iowa court." The court ordered Stacey and Patric to maintain stable employment and housing and to participate in services. Stacey and Patric continued to exercise visitation as permitted by DHS. A March 29, 2000, dispositional order continued Khaiesha's foster care placement and set a review hearing for late July. On May 22, 2000, the State petitioned to terminate Stacey's and all fathers' parental rights to Khaiesha. The combined review/termination hearing was continued by agreement until September 5, 2000. By that time, Stacey and Patric had moved to South Dakota.

II. Termination proceeding.

The juvenile court terminated Stacey's parental rights under Iowa Code sections 232.116(1)(c), (f), and (g). It found:

> The issues from the past years of Stacey and Patric's Juvenile Court involvement continue to this day. Every conceivable service has been provided to Patric and Stacey in an effort to avoid a termination of their parental rights to their other children as well as to Khaiesha. These services have been unsuccessful.

The juvenile court also terminated the parental rights of any putative or unknown fathers. During the pendency of this case, blood tests revealed Patric is not Khaiesha's father.

III. Claims on appeal.

Stacey appeals. She contends (1) the trial court erred in concluding it had personal jurisdiction over Khaiesha and subject matter jurisdiction over this case; (2) the trial court erred in terminating parental rights pursuant to Iowa Code sections 232.116(1)(c), (f), and (g); and (3) termination is not in Khaiesha's best interest. The State responds Stacey has failed to preserve error on her argument regarding jurisdiction.

IV. Analysis.

A. Jurisdiction: Stacey first alleges the juvenile court was without personal jurisdiction over Khaiesha or subject matter jurisdiction over the case. The State claims she did not preserve these issues for review. The record reveals Stacey raised the personal jurisdiction issue in the adjudicatory proceeding in January 2000. The juvenile court concluded jurisdiction attached when Stacey brought Khaiesha to the hospital in Iowa and signed the voluntary placement agreement. The court cited Iowa Code section 232.62(1),[2] concerning venue, in support of its conclusion on jurisdiction. Stacey cites only to the section on venue in her brief, even though her claim involves both personal and subject matter jurisdiction.

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[2] Iowa Code section 232.62(1) provides:

> 1. Venue for child in need of assistance proceedings shall be in the judicial district where the child is found or in the judicial district of the child's residence.

Id.

Stacey executed a placement agreement with DHS. At the time, Khaiesha was in an Iowa hospital. Although unknown to the court at the time, Khaiesha's biological father was an Iowa resident. Certainly the relevant information concerning her mother's fitness as a parent was in Iowa because of the prior CINA proceedings. Stacey submitted to the court's jurisdiction. *See In re Marriage of Zahnd*, 567 N.W.2d 684, 686-87 (Iowa Ct. App. 1997). We affirm the juvenile court's determination it had personal jurisdiction.

Stacey also argues the juvenile court lacked subject matter jurisdiction to hear the case. Although objections to subject matter jurisdiction may be raised at any time, Stacey does not cite the applicable statutory sections on jurisdiction[3] or any other authority in support of her claim. We deem this claim to be waived. Iowa R. App. P. 14(a)(3).

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[3] Iowa Code section 232.61(1) provides:

> 1. The juvenile court shall have exclusive jurisdiction over proceedings under this chapter alleging that a child is a child in need of assistance.

Id. Iowa Code chapter 232 has parallel sections on jurisdiction and venue for termination of parental rights:

> The juvenile court shall have exclusive jurisdiction over proceedings under this chapter to terminate a parent-child relationship and all parental rights with respect to a child. No such termination shall be ordered except under the provisions of this chapter if the court has made an order concerning the child pursuant to the provisions of division III of this chapter and the order is in force at the time a petition for termination is filed.

Iowa Code § 232.109.

> 1. Venue for termination proceedings under this chapter shall be in the judicial district where the child is found or the judicial district where the child resides except as otherwise provided in subsection 2.
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> 2. If a court has made an order concerning the child pursuant to the provisions of this chapter and the order is still in force at the time the termination petition is filed, such court shall hear and adjudicate the case unless the court transfers the case.
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> 3. The judge may transfer the case to the juvenile court of any county having venue in accordance with the provisions of section 232.62.

Iowa Code § 232.110.

B. Evidence supporting termination. Stacey argues the State did not produce clear and convincing evidence to support each element of the grounds for termination. Concerning Iowa Code section 232.116(1)(c), she claims she "has successfully accepted and received the subject services offered, and the circumstance which led to the child's being adjudicated C.I.N.A. no longer exists." She makes only this summary statement, however; she points to no evidence for support. Concerning Iowa Code section 232.116(1)(f), Stacey contends "she has clearly shown ability and willingness to respond to such services, and she has in fact done so to a very productive extent." Again, she makes only a summary claim, without any evidentiary details cited for support. Finally, concerning Iowa Code section 232.116(1)(g), Stacey argues "she has been productively involved in the receipt of remedial services, and that within a reasonable period of time the child can be safely returned to her." As before, she merely states her position, but offers no details from or citation to the record to support her claim.

The juvenile court adjudicated Khaiesha to be in need of assistance in January, 2000, on the grounds in section 232.2(6)(b), concluding:

> there is an imminent danger of neglect to this child based upon the parents' past history which includes neglect of children, drug abuse, domestic violence, extensive criminal history and chaotic lifestyles. . . . [T]he court cannot ignore the choices made and behaviors of Stacey and Patric which placed Khaiesha in a life threatening situation during the high speed chase.

Iowa Code section 232.116(1)(c) requires proof services were offered and the adjudicatory circumstances continue to exist. At the psychosocial evaluation, Stacey indicated she was not interested in services. At the termination hearing, she testified she would participate in reunification services. The court noted her

continued unstable lifestyle with nine moves in a year, several job changes, and continued legal difficulties. There does not appear to be an offer of additional services beyond visitation after Stacey indicated she was not interested in services. The services offered and received in the prior CINA cases, which ended in termination of Stacey's parental rights to her three children, did not correct Stacey's problems. We affirm the termination under Iowa Code section 232.116(1)(c).

To support termination under Iowa Code section 232.116(1)(f), the State must show a previous termination and an inability or unwillingness of the parent to respond to services to correct the problems. Stacey's lack of participation in services other than supervised visitation and the evidence of no change in her life provide clear and convincing evidence to support termination under this section. We affirm the termination under Iowa Code section 232.116(1)(f).

Termination under Iowa Code section 232.116(1)(g) requires proof the child cannot safely be returned to its parent. Nothing has changed in Stacey's life. She continues to have a chaotic life, criminal problems, and involvement with men who are not suitable parents for Khaiesha. Clear and convincing evidence supports termination on this statutory ground. We affirm the termination under Iowa Code section 232.116(1)(g).

C. Best interests. Finally, Stacey claims Khaiesha's best interests dictate her parental rights not be terminated. Notwithstanding her protestations, nothing has changed in Stacey's life. Her claim now that she is "capable, ready, willing and able" to be a mother to Khaiesha is without merit or support in the record.

Khaiesha's best interests are supported by termination of Stacey's parental rights.

AFFIRMED.