IN THE COURT OF APPEALS OF IOWA

No. 1-723 / 01-0668
Filed December 12, 2001

FILED
DEC 12 2001
CLERK SUPREME COURT

IN THE INTEREST OF R.K., Minor Child,

L.W., Mother,
Appellant.

Appeal from the Iowa District Court for Scott County, John G. Mullen, District Associate Judge.

Mother appeals from a juvenile court order terminating her parental rights. **AFFIRMED.**

Robert J. Phelps, Davenport, for appellant.

Thomas J. Miller, Attorney General, and M. Elise Pippin, Assistant Attorney General, for appellee-State.

Kate Varlas Teel, Davenport, guardian ad litem for minor child.

Considered by Sackett, C.J., and Mahan and Hecht, JJ.

HECHT, J.

Mother appeals the juvenile court's order terminating her parental rights. We affirm.

I. **Factual Background and Proceedings.** Linda is the biological mother of Rashaun, born June 8, 2000.[1] Linda has given birth to eight other children, none of whom reside in her care. Her parental rights to four of her children were terminated on February 22, 2000, due to physical abuse, sexual abuse, and neglect. On June 29, 2000, the Iowa Department of Human Services (DHS) requested removal of Rashaun from Linda's custody. The basis of the request was Linda's extensive drug and alcohol use as well as her history of involvement with men who were abusive to her and her children. Attempts were made to serve Linda, but sheriff's deputies were unable to locate her.

On July 24, 2000, Linda was arrested for shoplifting and charged with third-degree theft. Rashaun was with Linda at the time of her arrest. A removal order was entered placing Rashaun in the temporary custody of DHS, and a temporary removal hearing was held on July 31, 2000, placing him in the custody of DHS for foster care or an appropriate alternative family. On September 25, 2000, the juvenile court adjudicated Rashaun a child in need of assistance pursuant to Iowa Code section 232.2(6)(b), 232.2(6)(c)(2), and 232.2(6)(n) (1999). The order noted Linda's substance abuse, unstable lifestyle, criminal behavior, history of violent relationships with men, and failure to cooperate with remedial services. On November 9, 2000, an uncontested dispositional hearing

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[1] The only demographic information available regarding Rashaun's father is his name, Shaun. His parental rights are not at issue in this appeal.

was held and the court ordered Rashaun be placed in the custody of DHS for placement in foster care and adoption of the case plan proposed by DHS.

On February 7, 2001, the State filed a petition to terminate Linda's parental rights, and the hearing was held on March 26, 2001. The juvenile court terminated Linda's parental rights pursuant to Iowa Code section 232.116(1)(b), 232,116(1)(c), 232.116(1)(d), 232.116(1)(f), 232.116(1)(g), and 232.116(1)(k) (2001). On appeal, Linda contends (1) the juvenile court erred in finding clear and convincing evidence to terminate her parental rights and (2) she was denied effective assistance of counsel.

II. Standard of Review. The standard of review in termination cases is de novo. *In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa Ct. App. 1998). Accordingly, we review both the facts and the law and adjudicate rights anew. *In re T.A.L.*, 505 N.W.2d 480, 482 (Iowa 1993). We give weight to the factual determinations of the juvenile court, especially when considering the credibility of witnesses, but are not bound by them. *Id.* The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 831 (Iowa Ct. App. 1997). Our primary concern is the best interest of the child; we look to both the child's long-range and immediate interests. *In re M.T.*, 613 N.W.2d 690, 691 (Iowa Ct. App. 2000).

III. Sufficiency of the Evidence. Linda contends the State did not present sufficient evidence to justify termination of her parental rights. The juvenile court terminated Linda's parental rights on six separate statutory grounds. When termination of parental rights is based on more than one statutory ground, we need only find grounds to terminate under one of the

sections cited by the juvenile court to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (citing *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996)). In this case, we find clear and convincing evidence supporting the termination of Linda's parental rights under Iowa Code section 232.116(1)(g).

Linda challenges the juvenile court's findings as to the last element under Iowa Code section 232.116(1)(g), that there be "clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time." Iowa Code § 232.116(1)(g)(4). The requirement under subsection (4) is met when it is shown by clear and convincing evidence that the child cannot be returned to the parent because the child remains in need of assistance as defined by section 232.2(6). *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa Ct. App. 1995); *see also In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990).

We find clear and convincing evidence several of the factors enumerated under section 232.2(6) are present demonstrating Rashaun remains a child in need of assistance and thus custody cannot be given to Linda at the present time. We agree with the juvenile court's concern regarding Linda's failure to participate in services. Linda failed to comply with the requirements of the Case Permanency Plan and ignored services offered to assist her in creating a home for her child. Furthermore, we agree with the juvenile court's concerns regarding Linda's inappropriate and chaotic lifestyle which would place Rashaun at high risk of abuse and neglect. Accordingly, we affirm the juvenile court's order terminating the parent-child relationship between Linda and Rashaun.

IV. Ineffective Assistance of Counsel. Linda contends her appointed counsel was ineffective in failing to cross-examine witnesses and request her presence at the termination hearing. The test for ineffective assistance of counsel in termination cases is generally the same as in criminal proceedings. *In re A.R.S.*, 480 N.W.2d 888, 891 (Iowa 1992). In order to establish an ineffective assistance claim, it must be shown that (1) counsel's performance is deficient, and (2) actual prejudice resulted. *Id.* It is not necessary to determine whether counsel's performance was deficient before examining the prejudice component of an ineffective assistance claim. *In re D.P.*, 465 N.W.2d 313, 316 (Iowa Ct. App. 1990) (citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984)). Therefore, we may affirm the trial court's decision because of a failure to prove prejudice without deciding whether there was a breach of duty. *Id.*

We conclude Linda failed to prove the prejudice prong stemming from her counsel's failure to cross-examine witnesses or request her presence at trial. The record contains overwhelming evidence justifying termination of Linda's parental rights. The juvenile court noted six separate statutory grounds warranting termination, all conclusively demonstrative of Linda's inability to properly care for her son. We conclude Linda failed to prove prejudice resulting from her counsel's performance and therefore affirm the decision of the juvenile court.

AFFIRMED.

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