IN THE COURT OF APPEALS OF IOWA

No. 1-402 / 01-0026
Filed June 29, 2001

FILED
JUN 29 2001
CLERK SUPREME COURT

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

S.C., Mother,
Appellant,

R.L., Father,
Appellant.

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

A mother and father appeal separately from a juvenile court order terminating their parental rights to their child. **AFFIRMED.**

Anne M. Laverty of Mullin & Laverty, P.L.C., Cedar Rapids, for appellant mother.

Ronald L. Ricklefs, Cedar Rapids, for appellant father.

Thomas J. Miller, Attorney General, Tabitha Gardner, Assistant Attorney General, and Rebecca Belcher, Assistant County Attorney, for appellee-State.

James E. Bobenhouse, Cedar Rapids, for minor child.

Considered by Sackett, C.J., Huitink and Streit, JJ.

SACKETT, C.J.

Stacy and Robert appeal separately from a juvenile court order terminating their parental rights to their child, Kayneasha. Stacy claims the district court erred in determining there was clear and convincing evidence sufficient to support termination. Robert claims the record does not contain clear and convincing evidence to comply with the termination of parental rights statutes. We affirm.

Background facts and proceedings

Kayneasha was born May 17, 1998 and experienced medical problems. At the time, termination proceedings were pending concerning her two older sisters with the termination hearing set in early June. Stacy refused to allow the hospital to release information on Kayneasha's condition to the Department of Human Services. The court ordered Kayneasha removed from Stacy's care in an emergency order dated May 19. Following a hearing on May 26, Kayneasha was returned to Stacy's care under several conditions. Stacy was to have no contact with Robert, cooperate with family preservation services, and complete a psychological evaluation and any recommended treatment.

On June 9, Robert was sentenced to 144 months in federal prison on drug charges. At the time of his incarceration, Robert had never seen Kayneasha. Also on June 9, Stacy's parental rights to her two older daughters was terminated under Iowa Code section 232.116(1)(a), based on Stacy's written release of custody and consent to termination. The court found Stacy and the father had been "offered or provided necessary services to effect the goal of family

reunification without meaningful change in the situation of either parent within a reasonable time."

On September 12, 1998, Stacy was arrested following a fight with two women. On November 10, 1998 Kayneasha again was removed by emergency order following Stacy's arrest for first-degree kidnapping, based on a June 1997 warrant. On January 20, 1999, Stacy pled to reduced charges and was sentenced to a prison term not to exceed five years.

After a March 4, 1999 combined adjudicatory and dispositional hearing, the court removed Kayneasha from foster care and placed her with her maternal grandmother. After a review hearing in October 1999, the court continued Kayneasha's placement with her grandmother.

At a review hearing in April, 2000, the State recommended termination of parental rights. A petition to terminate Stacy's and Robert's parental rights to Kayneasha was filed on May 4, 2000, based on Iowa Code sections 232.116(1)(f), (g), and (i).

Termination proceeding

At the time of the termination hearing on September 14, 2000, both parents were incarcerated. Stacy was not eligible for parole until January, 2001. Robert was not expected to be released until 2005. The juvenile court terminated Stacy's parental rights under Iowa Code sections 232.116(1)(f) and (g). The court found Stacy would not respond to services designed to correct the situation that led to Kayneasha's removal. The court terminated Robert's parental rights under Iowa Code sections 232.116(1)(g) and (i). It found Robert was incarcerated on federal drug charges and had never seen Kayneasha. The

court considered whether it should place Kayneasha with her grandmother under a guardianship or terminate Stacy's and Robert's parental rights so she could be adopted by her grandmother. The court found termination to be in Kayneasha's best interest as it would provide stability and prevent Stacy from challenging Kayneasha's placement.

Claims on appeal

Stacy and Robert each appeal. Stacy claims the district court erred in determining there was clear and convincing evidence sufficient to support termination under Iowa Code chapter 232. Robert claims the record does not contain clear and convincing evidence to comply with the termination of parental rights statutes.

Discussion

Stacy. Stacy first argues the trial court applied an incorrect legal standard in that it narrowed the issue to the grounds in Iowa Code section 232.116(1)(f)(3) and (4) and "failed to acknowledge that it was not mandated to terminate" her parental rights. *See* Iowa Code section 232.116(3)(a). In the alternative, she argues there was not clear and convincing evidence she lacked the ability or willingness to engage in services. Finally, Stacy argues termination was not in Kayneasha's best interest because the family relationships would be better served if her grandmother was only her guardian. Stacy does not appear to challenge the termination under Iowa Code section 232.116(1)(g).

Stacy resisted services or superficially complied. The court's findings are correct as they relate to the grounds set forth in Iowa Code section 232.116(1)(f).

The juvenile court considered whether to establish a guardianship or to terminate parental rights. Iowa Code § 232.116(3). The decision made assures Kayneasha's stability. We affirm the termination of Stacy's parental rights.

Robert. Robert does not challenge either of the statutory grounds for termination found by the court. His argument is that the court should have named Kayneasha's grandmother her guardian instead of terminating his parental rights. *See* Iowa Code § 232.116(3). Robert has never even seen Kayneasha. He sent her cards and presents, but has no relationship with her. We affirm the termination of Robert's parental rights.

AFFIRMED.