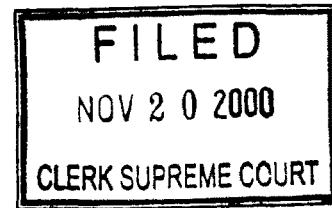


IN THE COURT OF APPEALS OF IOWA

No. 0-449 / 00-216
Filed November 20, 2000



IN THE INTEREST OF

J.I.,
Minor Child,

J.M., Mother,
Appellant.

Appeal from the Iowa District Court for Poweshiek County, Michael R. Stewart, District Associate Judge.

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

AFFIRMED.

Thomas D. Grabinski, Grinnell, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, and Kelly T. Bennett, Assistant County Attorney, for appellee- State.

Stephen Brennecke of Brennecke Law Office, Grinnell, guardian ad litem for minor child.

Heard by Streit, P.J., and Vogel and Miller, JJ.

STREIT, P.J.

Jamie M. appeals the termination of her parental rights. She claims the juvenile court did not have grounds for terminating her parental rights and the court should have entered a permanency order instead of terminating her rights. We affirm.

I. Background Facts & Proceedings.

Jamie M. and Melvin I. are the biological parents of Jacob I., born August 4, 1998. Jacob was removed from his parents' custody when he was two weeks old because of concerns about his health and his parents' ability to care for him. Jacob, who has been in the custody of his paternal grandparents since August 28, 1998, was adjudicated a child in need of assistance on October 2, 1998. Both of his parents' rights were terminated on January 11, 2000, pursuant to sections 232.116(1)(d) and (g) of the Iowa Code.

Jamie appeals. She claims the juvenile court should not have found grounds for terminating her parental rights under either statutory provision. She also claims the court should have entered a permanency order instead of terminating her rights.

II. The Merits.

We review termination proceedings de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). The State must prove the grounds for termination by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa App. 1997). Our primary concern is the best interests of the child. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

A. Grounds for Termination.

Jamie argues the juvenile court should not have terminated her parental rights pursuant to section 232.116(d). The termination was justified if Jacob had been adjudicated a child in need of assistance; Jacob had been removed from Jamie's physical custody for at least six consecutive months; and Jamie had not maintained significant and meaningful contact with Jacob during the previous six months and had made no reasonable efforts to resume care of Jacob despite being given the opportunity to do so. See Iowa Code § 232.116(1)(d) (1999). Only the final element is at issue in this case.

Jamie admitted at the termination hearing her contact with Jacob since he was removed from her custody had not been significant and meaningful. Her self-assessment is supported by the evidence in the record. For example, even though Jamie lived within walking distance of Jacob's paternal grandparents' home, she did not visit Jacob there on a regular basis. Jacob's grandparents both testified Jamie and Melvin visited Jacob only a few times each month. When they did visit, their visits apparently only lasted fifteen to thirty minutes. There is clear and convincing evidence Jamie did not maintain significant and meaningful contact with Jacob and made no reasonable efforts to resume care of him.

Instead of attempting to convince us she actually did maintain significant and meaningful contact with Jacob, Jamie argues the circumstances of this case

warrant excusing her shortcomings as a mother.¹ She asserts social workers informed her in the spring of 1999 she had to meet certain goals by either May or December of 2000 in order to be reunited with Jacob. She further asserts she was not given enough time to meet these goals because the petition to terminate her parental rights was filed in November of 1999. By the time the petition had been filed, Jacob had been out of Jamie's custody for fifteen consecutive months. Jamie thus had ample time to prove she was a capable mother. Indeed, section 232.116(1)(d)(2) provides a child's parent's rights can be terminated if he has only been out of the parent's physical custody for six consecutive months. *Cf. In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997). The termination of Jamie's rights was not premature.

Jamie also asserts Jacob's paternal grandparents are largely responsible for her failure to maintain significant and meaningful contact with Jacob. Specifically, she asserts Jacob's grandmother intimidated her and made her feel unwelcome at the grandparents' home when she went to visit Jacob there. Jamie admitted at the termination hearing she is at least partially at fault for some of the tension between her and Jacob's grandmother. In any event, Jamie could have arranged to visit Jacob at the grandparents' home when Jacob's grandmother was working or away from the home for some other reason. Jamie's relationship was not significantly impeded by Jacob's grandparents.

¹ Jamie's argument is premised on section 232.117(3), which states "[i]f the court concludes that facts sufficient to sustain the petition have been established by clear and convincing evidence, the court *may* order parental rights terminated." Iowa Code § 232.117(3) (emphasis added). In light of this provision, Jamie urges the juvenile court could have exercised its discretion and declined to terminate Jamie's parental rights despite the evidence supporting a termination pursuant to section 232.116(d).

Finally, Jamie asserts Melvin contributed to her failure to maintain significant and meaningful contact with Jacob. According to Jamie, Melvin had relatively little reason to fight the possible termination of his and Jamie's parental rights because his access to Jacob was not at risk given his parents were caring for Jacob. She asserts Melvin's disinterest in avoiding termination thus "lulled" her into complacency. Once again, Jamie's blame is misplaced—her choices led to the termination of her parental rights. We will not excuse Jamie's shortcomings as a parent and further postpone the stability and permanency Jacob needs.

The juvenile court correctly terminated Jamie's parental rights pursuant to section 232.116(1)(d). We need not, therefore, address Jamie's claim the State did not prove the grounds for terminating her parental rights pursuant to section 232.116(1)(g).² See *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996).

B. Permanency.

Jamie also claims the juvenile court should have entered a permanency order instead of terminating her parental rights. She asserts there was no need to terminate her rights given Melvin still has access to Jacob through his parents. A permanency order may be appropriate if "termination of the parent-child relationship would not be in the best interest of the child." Iowa Code §

² The termination of Jamie's parental rights under 232.116(1)(g) was justified if Jacob was less than three years old; Jacob had been adjudicated a child in need of assistance; Jacob had been removed from Jamie's physical custody for at least six of the twelve months prior to the termination; and there was clear and convincing evidence Jacob could not be returned to Jamie's custody at the time of the termination. See Iowa Code § 232.116(1)(d) (1999). Jamie claims the juvenile court should not have found there was clear and convincing evidence Jacob could not be returned to her custody.

232.104(3)(a). Termination, in turn, is in the best interest of the child whenever there is sufficient evidence to prove any of the grounds for termination outlined in section 232.116. *In re L.M.F.*, 490 N.W.2d 66, 68 (Iowa App. 1992). As discussed previously, the State proved by clear and convincing evidence the grounds for terminating Jamie's rights pursuant to section 232.116(1)(d). Jamie may be impacted more severely by the termination of her rights than Melvin will be by his. This incidental consequence of their respective terminations does not undermine our conclusion the termination of Jamie's rights is in Jacob's best interest. A permanency order was not appropriate. We affirm the juvenile court.

AFFIRMED.