

IN THE COURT OF APPEALS OF IOWA

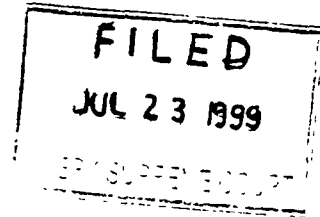
No. 1999-114 (9-301) / 99-0103

Filed July 23, 1999

**IN THE INTEREST OF T.G. and B.G.,
Minor Children,**

J.G. Mother,

Appellant.



Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Associate Juvenile Judge.

The mother of two minor children appeals a district court order terminating her parental rights. **AFFIRMED.**

Karen J. Epp, until withdrawal, and then Dawn Mastalir and Kimberly Wolff of Berenstein, Moore, Berenstein, Heffernan & Moeller, L.L.P., Sioux City, for appellant.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and Marleen J. Loftus, Assistant County Attorney, for appellee State.

Roger E. McEntaffer of McEntaffer Law Office, Sioux City, guardian ad litem for minor children.

Heard by Sackett, C.J., and Mahan, and Zimmer, JJ.

ZIMMER, J.

Jaime G. appeals a juvenile court order terminating her parental rights. We affirm.

I. Background Facts and Proceedings. Jaime G. is the mother of two minor children, Trey, born September 15, 1992, and Blake, born October 16, 1994. In October 1996, the children were adjudicated in need of assistance after workers from the Department of Human Services (DHS) reported the family home was unsanitary and unsafe for human habitation. The children were also found to be poorly fed and in need of dental care. The adjudication order also determined Jaime was not appropriately supervising the children. The children were temporarily placed with their maternal grandmother.

Following a dispositional hearing in December 1996, the children were placed in foster care. The juvenile court found the conditions leading to the CINA adjudication had not been resolved and that neither the mother nor the grandmother demonstrated the ability or willingness to properly supervise, discipline, or otherwise parent the children. Neither was interested in pursuing services offered to avoid the necessity of removal of the children from their care. The court also noted Jaime's inability to properly care for Trey and Blake had lead to a founded report of abuse for denial of critical care and failure to provide adequate supervision.

In August 1998, the State filed a petition to terminate Jaime's parental rights. On December 10, 1998, the juvenile court filed an order terminating Jaime's parental rights to Trey, pursuant to Iowa Code sections 232.116(1)(c) (1997) and

232.116(1)(e) (1997).¹ The court also terminated her parental rights to Blake, pursuant to Iowa Code sections 232.116(1)(c) and 232.116(1)(g) (1997).² The court found Jaime had failed to place the children among her life's priorities despite intensive intervention by the court. It also found that despite extensive and

¹ These sections provide for termination when:

c The court finds that both of the following have occurred:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

e. The court finds that all of the following have occurred:

(1) The child is four years of age or older.

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

Iowa Code § 232.116(1)(c), (e) (1997).

² Code section 232.116(1)(g) provides for termination when:

g. The court finds that all of the following have occurred:

(1) ~~The child is three years of age or younger.~~

(2) ~~The child has been adjudicated a child in need of assistance pursuant to section 232.96.~~

(3) ~~The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.~~

(4) ~~There is 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) (1997).

reasonable parental rehabilitation services offered by the State, Jaime had consistently failed to make any significant changes in her life which would prove her capable of or interested in parenting and placing her children's needs ahead of her own. It noted the circumstances that lead to the CINA adjudication had not been resolved and that the case workers as well as the children's therapist all recommended termination of Jaime's parental rights. The court found the children had waited long enough for their mother to prepare for the children's return. It concluded termination was in the children's best interests and supported by clear and convincing evidence.

Jaime now appeals. She contends (1) the State has failed to prove by clear and convincing evidence the children cannot be returned to her care; (2) the circumstances that led to the CINA adjudication are no longer in existence; and (3) it is not in the children's best interests that her parental rights be terminated. We consider her contentions collectively.³

II. Scope of Review. We review terminations of parental rights de novo. See *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). Nevertheless, we give weight to the findings of the juvenile court, particularly with respect to the credibility of witnesses whom the court heard and observed firsthand, but are not bound by them. See Iowa R. App. P. 14(f)(7); *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *In re Dameron*, 306 N.W.2d at 745.

³ The boys' fathers agreed to the juvenile court's termination of their parental rights. They are not involved in this appeal.

III. Termination of Parental Rights. Where, as here, proceedings are brought under Iowa Code sections 232.116(1)(e) and 232.116(1)(g), we must determine whether there is clear and convincing evidence to support the termination of parental rights. See Iowa Code § 232.116(1)(e)(4), (1)(g)(4); *In re E.K.*, 568 N.W.2d 829, 830 (Iowa App. 1997); *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996). We must ascertain whether the evidence supports the conclusion the children cannot be returned to the parent's custody as provided in Iowa Code section 232.102. *Id.*

Similarly, termination under 232.116(1)(c) must be supported by clear and convincing evidence. See *In re T.A.L.*, 505 N.W.2d 480, 484 (Iowa 1993). Specifically, we must determine: (1) whether parents were offered reasonable and adequate services to correct the circumstances which lead to the CINA adjudication and the children's temporary removal from the home; and (2) whether the circumstances continue to exist despite the offer or receipt of services. See Iowa Code § 232.116(1)(c); *In re T.A.L.*, 505 N.W.2d at 484; *In re R.J.*, 495 N.W.2d 114, 117 (Iowa App. 1992).

Ultimately, we must consider the best interests of the children. *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995) (primary concern in termination proceedings is the best interests of the child); see also Iowa R. App. P. 14(f)(15) ("In child custody cases the first and governing consideration of the courts is the best interest of the child."). In determining the best interests of the children, we consider both their present and future interests. See *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997).

Jaime has received almost two years of reasonable and adequate counseling and parenting services, yet has made no significant or permanent progress since the CINA adjudication in October 1996. Jaime has routinely missed appointments with service providers and has failed to adopt appropriate disciplinary techniques as suggested by case workers. She has made little effort to improve her parenting skills and has routinely shown a disinterested attitude towards visitation. She has not demonstrated the ability or willingness to provide emotional support for her children. Nor has she demonstrated an ability or willingness to provide proper physical care and safety for her children and she does not appear at this time to be capable of providing adequate housing. In addition, contrary to the State's recommendations, she has not utilized a conservator to help manage her finances and she has not been able to improve her financial standing on her own.

Though having been afforded ample opportunity to do so, Jaime has failed to resolve the problems which led to the children's removal from her custody. We cannot justify affording Jaime additional time to mend her ways. We will not force Trey and Blake to endure the social, physical, and psychological hardships associated with the parentless limbo of foster care imposed upon them in the course of endlessly awaiting the maturity of their natural mother. See *In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990); *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). Jaime has a poor track record and we discern little evidence she will be able to resume her children's care and supervision in the future. See *In re T.T.*, 541 N.W.2d 552, 556 (Iowa App. 1995) (stating the "parent's past performance may be indicative of the quality of future

the parent is capable of providing"). Trey and Blake have waited long enough for the their mother to mature into a caring, responsible parent. They need stability in their lives and we find no reason in the record to force them to further await permanency.

Upon careful review of the record, we determine Trey and Blake cannot be safely returned to their mother's custody. Their physical, mental, and emotional needs demand termination of natural parental rights and permanent placement in a supportive environment. *See Iowa Code § 232.116(2) (1997)*. Termination of Jaime's parental rights is supported by clear and convincing evidence in the record and is in the children's best interests. We therefore affirm.

AFFIRMED.