

IN THE COURT OF APPEALS OF IOWA

No. 0-048 / 09-1769
Filed February 10, 2010

**IN THE INTEREST OF J.B.,
Minor Child,**

**J.B., Minor Child,
Appellant.**

Appeal from the Iowa District Court for Linn County, Susan Flaherty,
Associate Juvenile Judge.

The attorney for the child appeals the dismissal of the petition for
termination of parental rights. **AFFIRMED.**

Angela M. Railsback, Cedar Rapids, attorney for appellant minor child.

Collin Olander, Hiawatha, for appellee father.

Melody Butz, Cedar Rapids, for appellee mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, and Harold Denton, County Attorney.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

DANILSON, J.

The attorney for the child appeals the juvenile court's dismissal of the State's petition for termination of the mother and father's parental rights to their twenty-month-old daughter, J.B. We affirm.

J.B. was born in April 2008, approximately one month premature, and with some medical issues, including a congenital heart defect and Down Syndrome. J.B.'s parents have been married for ten years and have a four-year-old son who has always resided with them without any intervention by the State. While J.B. was in the hospital after her birth, her doctor became concerned with the parents' ability to provide J.B. with the care she required. Specifically, the doctor was concerned that the mother, who would be the primary caregiver for J.B., did not have the cognitive ability to safely feed, carry, and meet the medical needs of J.B. The doctor's concerns prompted him to request assistance from DHS.

On May 6, 2008, a caseworker for the Iowa Department of Human Services (DHS) visited the family in the hospital and completed a child protective assessment. Several services were immediately provided to the family, a child in need of assistance (CINA) action was initiated, and J.B. was discharged from the hospital in her parents' care on May 8, 2008. A number of assistive services were thereafter established for the family to help them care for J.B. On June 13, 2008, however, J.B. was removed from the parents' care due to a diagnosis of failure to thrive. The record suggests that J.B. was not gaining enough weight.¹

¹ However, testimony in the record further indicates that slow weight gain is common for infants with Down Syndrome.

J.B. was adjudicated CINA and placed in family foster care, where she remained at the time of the termination hearing.

Since J.B.'s removal, the parents willingly and actively participated in numerous services. Concerns continued regarding the mother's cognitive ability and how it impacted her ability to care for J.B., but the father has proved capable of maintaining primary responsibility for J.B.'s care. The main apprehension of caseworkers appeared to be whether the father would *actually* take a role of primary care provider, or whether he would continue to allow the mother to care for J.B. We agree with the district court that due to the lack of expanded visitation and limited opportunity afforded to the parents, this concern is no more than conjecture at this point in time. Caseworkers also worried about roughhousing and wild behavior by J.B.'s older brother while he was around J.B., and the parents' lack of discipline.

There is no evidence that either parent has a history of child abuse or neglect, or a history of substance abuse or mental health issues. The father has stable employment, and the family has a stable residence that is clean and adequate for young children. By all accounts, the parents very much love J.B., were cooperative with all suggested services, and were involved with J.B.'s development, medical appointments, and daily activities. Although the record indicates that the parents showed improvement, DHS did not significantly increase the parents' visitations with J.B.

On February 27, 2009, the State filed a termination petition, seeking termination of the parents' rights pursuant to Iowa Code section 232.116(1)(h) (2009). The termination hearing was held on June 4, 8, 9, and 11, August 12

and 13, and October 14, 2009. On November 6, 2009, the court entered an order dismissing the State's petition, concluding the State failed to establish by clear and convincing evidence that J.B. could not be returned to the custody of the parents as provided in section 232.102. The court also ordered DHS to prepare a plan to transition J.B. to her parents' care. The attorney for the child now appeals. The State and DHS do not contest the court's ruling.

Upon our de novo review, see *In re P.L.*, ___ N.W.2d ___, ___ (Iowa 2010), we agree with the juvenile court's order dismissing the State's petition for termination of parental rights. This record does not contain clear and convincing evidence to support a finding that the grounds for termination have been met. See *In re E.K.*, 568 N.W.2d 829, 831 (Iowa Ct. App. 1997); Iowa Code § 232.116(1)(h). We conclude it is in J.B.'s long-range and immediate best interests to have the petition for termination of parental rights dismissed and have her transition back to her parents' care. See *In re M.T.*, 613 N.W.2d 690, 691 (Iowa Ct. App. 2000).

AFFIRMED.