

IN THE COURT OF APPEALS OF IOWA

No. 0-153 / 10-0065
Filed March 24, 2010

**IN THE INTEREST OF A.A.,
Minor Child,**

**M.A.M., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Joe E. Smith, District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Andrea Flanagan of Sporer & Flanagan, P.C., Des Moines, for appellant mother.

Nathaniel Tagtow of Nelissen & Juckette, P.C., Des Moines, for father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Jennifer Galloway, Assistant Attorney General, for appellee State.

Michael Sorci of the Youth Law Center, Des Moines, for minor child.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

MANSFIELD, J.

Monica appeals the juvenile court order terminating her parental rights to her daughter, A.A. (born in March 1996).¹ Monica argues the State failed to prove the statutory grounds by clear and convincing evidence, and termination was not in the child's best interests. Upon our de novo review, we affirm.

I. Background Facts and Proceedings.

Monica, A.A., and A.A.'s father were originally from Sudan, but they immigrated to the United States when A.A. was about five years old. Shortly after arriving in the United States, Monica and A.A.'s father divorced, and A.A. primarily resided with her father.

In late August 2006, the Iowa Department of Human Services (DHS) became involved with A.A. after the Des Moines Police Department received several reports that A.A. was running away from her father's home. As a result, A.A. was removed from her father's home and placed at the Youth Emergency Service and Shelter (YESS). Monica stipulated to the removal and continued placement at YESS in September 2006.

At the time of her removal, A.A. was noted as having significant negative behaviors including being argumentative, assaultive, aggressive, and disrespectful towards peers and authority figures. Her behavior resulted in several reprimands at YESS and in her being suspended from school twice.

On October 3, 2006, A.A. was adjudicated a child in need of assistance under Iowa Code section 232.2(6)(I) (An unmarried child "[w]ho for good cause

¹ The juvenile court also terminated the parental rights of A.A.'s father, which are not at issue in this appeal.

desires to have the child's parents relieved of the child's care and custody.""). Specifically, the juvenile court found placement outside the family home was necessary due to "unresolved child safety issues because of running away."

Following adjudication, DHS initiated several services including individual therapy for A.A. and Monica, family therapy, translation services, parenting classes, a psychosocial evaluation, an attachment assessment, and supervised visitation.

Progress was initially made, and an in-home trial placement with Monica was attempted in April 2007. However, after only thirteen days, A.A. ran away from the home and was returned to YESS.

In October 2007, A.A. was moved to a family foster home. At the family foster home, A.A.'s negative behaviors significantly improved for a period of time. For the next two years, A.A. remained with the same foster care family. Monica exercised visitation with A.A. On many occasions, though, A.A. would try to avoid seeing Monica.

Unfortunately, beginning in January 2009, A.A.'s behavior again deteriorated. According to a DHS report, "There have been two occasions where [the foster mother] required the assistance of police officers to assist her with deescalating [A.A.'s] behaviors." Also, in school, A.A. "had almost daily referrals to the office." In addition to her negative behaviors, concerns were raised that A.A. was sexually active. A.A. and her foster mother argued over birth control issues.

A.A. was placed into the Psychiatric Medical Institute for Children (PMIC) at Orchard Place in July 2009. As of the date of the termination hearing, she was still at the PMIC. Behavioral issues are still being reported there. A.A. is noted as being “often rude to staff and peers,” “often defiant when angry and refuses to accept consequences,” and as struggling “with appropriate physical boundaries.” For example, on one occasion, A.A. attempted to run out of the PMIC building. When A.A. was stopped, she became “very aggressive in hands on and bit a staff [member].” In addition, A.A. “has been observed by staff provoking peers. She will continue a behavior after a peer has asked her to stop. She has also pointed out peers’ failures or mistakes . . . to make them feel bad.”

Monica attended at least two joint therapy sessions at Orchard Place with A.A. Monica’s primary focus appeared to be on A.A.’s having lost her virginity. Orchard Place did not recommend further visitation. The foster mother has also maintained contact with A.A. at Orchard Place and worked with her in therapy.

The State filed a petition to terminate parental rights on October 28, 2009. A termination hearing was held on November 23, 2009. At the termination hearing, A.A., Monica, and A.A.’s father were the only witnesses.² A.A. testified unequivocally that she wanted her parental rights terminated. She also claimed her mother had hit her with wires, despite an earlier claim that her father was responsible for this specific conduct. In her testimony, Monica denied any physical abuse. DHS reports that even the alleged physical abuse by the father was not confirmed.

² In this case, it might have been helpful to have the perspective of a witness, subject to cross-examination, who had worked with A.A. and was not part of the family.

Monica testified that she has six younger children living with her, that she has not had a job since June 2009, and that she is currently relying on public assistance. She acknowledged missing some meetings at Orchard Place. It is also clear that Monica's ability to communicate in English is somewhat limited; an interpreter was used at the termination hearing. Monica complains that on some occasions, she was called to meetings where there was no interpreter.

On December 28, 2009, the juvenile court entered an order terminating both the father's and Monica's parental rights pursuant to Iowa Code sections 232.116(1)(d), (e), and (f) (2009). The juvenile court explained:

[A.A.] cannot be safely maintained in either parents' home. She would run if placed with them and running is inimical to her safety. This is truly an unfortunate situation. [A.A.] does not want to be with either parent. The day may well come when she will regret her decision, but that is where she is and this court cannot escape that reality. [A.A.'s] best interests will be served by termination. It would be highly destructive to force her into a situation she does not want to be in.

Monica appeals.

II. Scope and Standard of Review.

We review termination of parental rights proceedings de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We give weight to the juvenile court's factual findings, but are not bound by them. *Id.* The State must prove the grounds for termination by clear and convincing evidence. *Id.* "Clear and convincing evidence" means there are no serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

III. Analysis.

A. Statutory Grounds.

Monica asserts that the State failed to prove the statutory grounds for termination by clear and convincing evidence. Because we conclude termination of Monica's parental rights was proper under section 232.116(1)(f), we need not and do not address her claims regarding sections 232.116(1)(d) and (e). See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) ("When the juvenile court terminates parental rights 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.").

Section 232.116(1)(f) provides that termination is appropriate when:

- (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.

Monica does not dispute the first three elements under this section were established. Instead, she contends there is not clear and convincing evidence that A.A. cannot presently be returned to her care. We disagree. Rather, like the juvenile court, we are convinced that if A.A. were returned to her mother's care, she would again run away.

At the time of the termination hearing, A.A. had been removed from Monica's care for over three years. Additionally, A.A. continues to have

significant behavioral issues that require close attention. We do not believe Monica at the present time, despite having received services from DHS, is able to address those issues. Accordingly, we agree with the juvenile court that A.A. cannot be safely returned to Monica's custody.

B. Best Interests of the Child.

Although a ground for termination may exist, we must still determine whether termination is in the best interests of the child. In doing so, we "give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child." *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010) (quoting Iowa Code § 232.116(2)). For a child who has been placed in foster family care, the best interests considerations may also include:

whether the child has become integrated into the foster family to the extent that the child's familial identity is with the foster family, and whether the foster family is able and willing to permanently integrate the child into the foster family. In considering integration into a foster family, the court shall review the following:

- (1) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining that environment and continuity for the child.
- (2) The reasonable preference of the child, if the court determines that the child has sufficient capacity to express a reasonable preference.

Iowa Code § 232.116(2)(b).

In addition to the safety and behavioral concerns stated above, A.A. testified unequivocally at the termination hearing that she did not want to return to either parent's custody. As A.A. testified:

Q. It is important for you to have the Court terminate your parental rights? A. Yes.

Q. Why? A. Because I don't have a relationship with my parents.

Moreover, the record indicates A.A. wanted to be adopted by her foster family, and her foster family was willing to adopt her. Thus, we conclude that termination is in A.A.'s best interests.

IV. Conclusion.

A recurring theme we have seen when reading the orders, exhibits, and briefs in this case is that of "a clash of cultures." According to this narrative, a conflict has arisen between a girl who wants to be a typical American teenager and parents who want her to be raised according to Sudanese traditions. We are not necessarily persuaded by this viewpoint. Rather, as we see this case, a girl has serious behavioral issues. She is engaging in conduct that would be unacceptable under *either* society's norms. Those issues have manifested themselves both when the girl was with her natural parents and when she was with her foster family. Nevertheless, in the final analysis, we agree with the juvenile court that the parental relationship between Monica and A.A. is irretrievable at this point, and adoption of A.A. by her foster family would be the best placement for furthering her long-term nurturing and growth. To her credit, the foster mother appears to have worked very hard to address A.A.'s behavioral issues.

We conclude clear and convincing evidence supports the termination of Monica's parental rights, and that termination is in A.A.'s best interests. Therefore, we affirm the order of the juvenile court.

AFFIRMED.