

IN THE COURT OF APPEALS OF IOWA

No. 0-224 / 09-1688
Filed May 12, 2010

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

**J.R.S., Father,
Petitioner,**

**A.J.S., Mother,
Appellant.**

Appeal from the Iowa District Court for Wapello County, William S. Owens,
Judge.

A mother appeals the termination of her parental rights to her child.

AFFIRMED.

Mary Baird Krafka of Krafka Law Office, Ottumwa, for appellant-mother.

Jeffrey R. Logan of Currant Law Office, Ottumwa, for appellee-father.

Cynthia Hucks, Ottumwa, for minor child.

Considered by Vogel, P.J., Eisenhauer, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

EISENHAUER, J.

A mother appeals the termination of her parental rights to her child. She contends the district court erred in granting termination pursuant to Iowa Code section 600A.8(3) (2009). She also contends termination is not in the child's best interest. Finally, the mother contends the court erred in taking judicial notice of a prior child-in-need-of-assistance (CINA) file involving the child. We review termination proceedings de novo. *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998).

The child was born in April 2005. The father has had physical care of the child since October 2007. Custody was placed with the father by the juvenile court during the CINA proceedings. The CINA action was dismissed in March 2008, after the father obtained a default decree granting him sole legal and physical care of the child.

From October 2007 through February 2009, the mother did not attempt to contact the child and did not provide any support for his care. On March 23, 2009, the father filed a petition seeking to have the mother's parental rights terminated pursuant to chapter 600A. At trial in June 2009, the court received evidence over the mother's objection and took judicial notice of the CINA file. In a September 30, 2009 order, the court terminated the mother's parental rights pursuant to section 600A.8(3).

Termination is appropriate under section 600A.8(3) if the parent has abandoned the child. Under this section, a child is deemed to have abandoned the child under the following circumstances:

b. If the child is six months of age or older when the termination hearing is held, a parent is deemed to have abandoned the child unless the parent maintains substantial and continuous or repeated contact with the child as demonstrated by contribution toward support of the child of a reasonable amount, according to the parent's means, and as demonstrated by any of the following:

(1) Visiting the child at least monthly when physically and financially able to do so and when not prevented from doing so by the person having lawful custody of the child.

(2) Regular communication with the child or with the person having the care or custody of the child, when physically and financially unable to visit the child or when prevented from visiting the child by the person having lawful custody of the child.

(3) Openly living with the child for a period of six months within the one-year period immediately preceding the termination of parental rights hearing and during that period openly holding himself or herself out to be the parent of the child.

c. The subjective intent of the parent . . . does not preclude a determination that the parent has abandoned the child. In making a determination, the court shall not require a showing of diligent efforts by any person to encourage the parent to perform the acts specified in paragraph "a" or "b".

Iowa Code § 600A.8(3)(b), (c).

Upon our de novo review of the record, we conclude the father has established the mother has failed to maintain the requisite "substantial and continuous or repeated contact with the child." She has lent nothing to his support and failed to have any contact or communication with either the child or the father in the nearly eighteen months preceding the filing of this action. As the juvenile court found, the father did nothing to keep the mother from seeing the child and the mother "has exercised little, if any, effort to see [the child], or to remain in contact with him by telephone, cards, gifts, or letters." Despite the mother's assertions to the contrary, we find the mother has abandoned the child and therefore termination is appropriate under section 600A.8(3).

The mother also contends termination is not in the child's best interest. Section 600A.1 states the best interests of the child "shall be the paramount consideration" while also "giving due consideration" to "the interests of the parents." In determining the best interest, this court's primary considerations are "the child's safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child." *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010) (citing Iowa Code § 232.116(1)(2)).

We conclude termination is in the child's best interest. The mother has a history of mental illness that is often untreated. Just prior to the termination hearing, the mother threatened to kill someone and attempted suicide, which resulted in her commitment for mental health treatment. Coupled with the mother's instability and her failure to maintain contact with her child, we find the child's safety, long-term growth, and physical, mental, and emotional needs would best be served by termination the mother's parental rights.

Finally, we address the mother's contention the juvenile court erred in taking judicial notice of the CINA file, arguing the case was closed following entry of the custodial decree. Although the mother argues this evidence should not have been admitted on grounds of res judicata/claim preclusion, those concepts have no applicability. A key element of res judicata is the claim in a second suit has been fairly adjudicated in the prior suit. *Spiker v. Spiker*, 708 N.W. 2d 347, 353 (Iowa 2006). No prior proceeding addressed the issue of termination of parental rights.

The juvenile court is authorized to judicially notice any part of the record from previous CINA proceedings involving the same child or children. *In re A.M.H.*, 516 N.W.2d 867, 873 (Iowa 1994) (holding the court may take judicial notice of the pleadings and exhibits from previous CINA adjudications); *In re H.R.K.*, 433 N.W.2d 46, 48 (Iowa Ct. App. 1988) (holding judicial notice is not limited to the evidence, but includes any part of the CINA record). Although these are cases reviewing a termination under Chapter 232, sections 600A.7(1) and (2) provide in pertinent part that

[t]he hearing on termination of parental rights shall be conducted in accordance with the provisions of sections 232.91 to 232.96 Relevant information, including that contained in reports, studies or examinations and testified to by interested persons, may be admitted into evidence at the hearing and relied upon to the extent of its probative value.

See *In re E.J.R.*, 400 N.W.2d 531, 532 (Iowa 1987). The juvenile court did not err.

We affirm the order terminating the mother's parental rights.

AFFIRMED.