

IN THE COURT OF APPEALS OF IOWA

No. 0-226 / 10-0151
Filed April 21, 2010

**IN THE INTEREST OF G.E.P. and K.A.P.,
Minor Children,**

**R.M.P., Mother,
Appellant.**

Appeal from the Iowa District Court for Pottawattamie County, Gary Anderson, District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Scott Strait, Council Bluffs, for appellant mother.

Phil Caniglia, Council Bluffs, for father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Matthew Wilber, County Attorney, and Dawn Landon, Assistant County Attorney, for appellee State.

Roberta Megel, Council Bluffs, for minor children.

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

MANSFIELD, J.

Randi appeals a juvenile court order terminating her parental rights to her daughter K.A.P. (born 1999) and her son G.E.P. (born 2004). Termination was ordered pursuant to Iowa Code sections 232.116(1)(d), (e), (f), (i) and (j) (2009).¹ Randi asserts that the State failed to prove the statutory grounds for termination by clear and convincing evidence and that termination was not in the children's best interests. For the reasons set forth herein, we affirm.

I. Background Facts and Proceedings.

During the summer of 2008, the Iowa Department of Human Services (DHS) received a report that K.A.P. had been inappropriately touched by a relative. While a child protective assessment was being performed, additional concerns were raised about domestic violence and possible drug use within the home. When questioned about possible drug use, Randi admitted that she had used methamphetamine and that her last usage had been approximately two weeks earlier. Drug tests were requested, and on August 7, 2008, Randi tested positive for methamphetamine and amphetamines. Randi's husband Larry (the father of K.A.P. and G.E.P.) refused to test. As a result, on August 12, 2008, the State sought and obtained a temporary removal order, and the children were placed into family foster care.² Since August 2008, both K.A.P. and G.E.P. have

¹ The juvenile court also terminated the father's parental rights pursuant to sections 232.116(1)(b), (d), (e), (f), (i) and (j). Those rights are not at issue in the present appeal.

² A third child, D.R. (born 1995), half-brother to K.A.P. and G.E.P., was removed at the same time and eventually placed with his biological father in Kansas. He is not part of the current proceeding.

remained in foster or shelter care. Their current foster home has been caring for them since January 2009.

Following the children's removal, DHS provided the family numerous services including supervised and unsupervised visitations, individual counseling, drug testing and treatment, group therapy, and family safety, risk, and permanency services.

On August 18, 2008, Randi underwent a substance abuse evaluation. Randi was found to meet the criteria for methamphetamine dependency and was recommended intensive outpatient treatment. Following the evaluation, Randi provided negative drug tests, but concerns continued because she missed five treatment sessions.

On October 2, 2008, the juvenile court adjudicated the children in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(c)(2) and (n) (2007). At this time, Randi was ordered to obtain a chemical dependency evaluation and complete domestic violence victims' counseling.

During October 2008, Randi lost her job. She and Larry were evicted from their home and moved in with Larry's stepfather.

In December 2008, Randi completed her chemical dependency treatments. However, over the next four months, Randi missed five drug tests. From April 27, 2009, until May 4, 2009, Randi wore a patch for testing. This patch tested positive for methamphetamine and amphetamines. As a result of the positive test, the juvenile court ordered Randi to obtain an updated chemical dependency evaluation. Since that time, Randi has consistently provided negative drug tests (except for a missed test in October 2009), but she has yet to

complete an updated chemical dependency evaluation. Randi maintains that she has been drug-free since April 2009, but acknowledges that she has been grappling intermittently with drug abuse issues for the last ten years or so of her life.

Randi ceased having any contact or communication with Larry in approximately May 2009. Larry was arrested on federal drug charges and eventually pled guilty. As of the date of the termination hearing, he was awaiting sentencing on those charges.

On July 13, 2009, Randi attended an orientation session for a domestic violence class at the YWCA in Omaha. Randi attended two additional orientation classes over the next two weeks, which made her eligible to participate in the weekly group sessions. However, Randi never attended the group therapy sessions. According to Randi, she believed that the orientation classes were the domestic violence classes, and she was unaware of the group therapy sessions.

On August 11, 2009, the juvenile court issued a permanency order advising the State to file a petition for the termination of parental rights in sixty days.

Following the juvenile court's order, Randi obtained part-time employment at Wal-Mart in August, and completed a six-week parenting class. Randi also moved in with her mother in a home in Omaha. However, due to a lack of space, Randi's mother would not allow overnight visits by the children, let alone the return of the children to Randi's care in that home. Also, Randi was noted as being "extremely inconsistent" in her visitations, which Randi attributed to a lack of transportation. (Randi testified that she has no vehicle of her own and relies

on borrowing her mother's vehicle or getting rides from others.) Randi was also provided the opportunity to participate in her children's medical appointments and parent-teacher conferences, but failed to attend. In addition, according to the hearing record, Randi's phone calls to the children had dropped off.

Randi admitted she failed to call ahead of time when she missed visitations, because she believed the foster parents would be mad. She recognized that failing to call in advance hurt her kids.

On October 15, 2009, the State filed a petition for the termination of the parental rights to K.A.P. and G.E.P. A termination hearing was held on November 17, 2009. At the hearing, the DHS case manager recommended the termination of Randi's parental rights, citing Randi's failure to maintain stable or appropriate housing, her failure to complete a follow-up chemical dependency evaluation, and her failure to complete domestic violence classes. The case manager also testified that the children were "devastated" when Randi missed visitations and that the children would "typically act out throughout the day if they were supposed to be on a visit and [Randi] didn't show up." The case manager also stated that the children have a "strong bond" with their mother. In addition, the case manager indicated there is some uncertainty surrounding the children's future if termination occurs. The foster family would be interested in adopting K.A.P. but were unsure about adopting G.E.P. due to his behavioral issues.

The attorney for the children also spoke in favor of terminating parental rights.

On January 12, 2010, the juvenile court entered an order terminating Randi's parental rights to K.A.P. and G.E.P. pursuant to Iowa Code sections 232.116(1)(d), (e), (f), (i) and (j) (2009). Randi appeals.

II. Scope of Review.

We review proceedings for the termination of parental rights de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We give weight to the factual findings of the juvenile court, but we are not bound by them. *Id.*

III. Analysis.

Randi challenges each of the statutory grounds for termination. "When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one section cited by the juvenile court to affirm." *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). We find that termination was proper under section 232.116(1)(f).

Section 232.116(1)(f) requires that the children be four years of age or older, have been adjudicated in need of assistance, have been removed from the home for the last twelve consecutive months, and cannot presently be returned home. The only dispute regarding termination under this section is whether there is clear and convincing evidence that the children could not have been returned to Randi's care at the time of the termination hearing.

At the time of the termination hearing, Randi had still not adequately addressed concerns regarding her history of methamphetamine use. Randi used methamphetamine during the pendency of this case and has not followed through on getting an updated chemical dependency evaluation. Randi also has missed several drug tests. In addition, Randi admitted she still does not have

suitable housing, because her current residence is “way too small” and her mother would not allow even overnight visitation.

We also have concerns about G.E.P.’s behavioral issues. He has been diagnosed with attention deficit hyperactive disorder and oppositional defiant disorder. According to the psychologist’s report, he has “a lot of aggressive behaviors,” “will hit, kick, bite, and pull people to the ground,” and is “also verbally aggressive and yells a lot and gets angry easily.” The foster mother has been more successful in controlling this behavior than Randi.

In sum, while we credit Randi for taking meaningful steps to straighten out her own life, we agree with the juvenile court’s conclusion that the children cannot be returned to Randi’s care at the present time.

Randi also challenges whether termination is in the children’s best interests. See Iowa Code § 232.116(2); *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). In evaluating this issue, the court gives 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.” *P.L.*, 778 N.W.2d at 39. The children have been removed from Randi’s care since August 2008. Randi is still not able to provide her children with a suitable home. Her methamphetamine abuse, which led Randi to neglect her children in the past, has not been fully addressed. Randi also has been inconsistent in her visits, without notifying the foster family in advance of her “no shows,” leaving the children “devastated.” In summary, we agree that it is clearly best right now for these children, from a physical, mental, and emotional standpoint, to have permanency rather than limbo. See *In re D.J.R.*,

454 N.W.2d 838, 845 (Iowa 1990) (“We have long recognized that the best interests of a child are often not served by requiring the child to stay in ‘parentless limbo.’”). We agree with the testimony of the case manager:

The children are at a point where they need to know—they need—if termination is going to happen, it needs to happen so we can start working with the children to overcome it instead of making their stay in foster care longer and all of the questions that they have unanswered.

Randi further asserts that termination is not appropriate because it would be detrimental to the children due to the closeness of the parent-child relationship. See Iowa Code § 232.116(3)(c); *P.L.*, 778 N.W.2d at 39. We disagree. Although there is a strong bond between the children and Randi, Randi continues to be unable to meet the children’s needs, to give those needs priority, or to appreciate fully the significance of that bond for the children. The children deserve permanency. We conclude that the parent-child bond should not foreclose termination in this case.

Accordingly, we affirm the judgment of the juvenile court terminating Randi’s parental rights to K.A.P. and G.E.P.

AFFIRMED.