IN THE COURT OF APPEALS OF IOWA

No. 0-525 / 10-0877
Filed August 11, 2010

IN THE INTEREST OF K.J.H.,
Minor Child,

L.N.R., Mother,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Kellyann M. Lekar, Judge.

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

Brett Schilling of Schilling Law Office, P.C., Waterloo, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Steven Halbach, Assistant County Attorney, for appellee.

Michael Bandy of Bandy Law Office, Waterloo, for father.

Kelly Smith, Waterloo, attorney and guardian ad litem for minor child.

Considered by Sackett, C.J., Potterfield and Tabor, JJ.

TABOR, J.

A mother appeals the termination of her parental rights to her now three-year-old daughter, K.H. The Department of Human Services (DHS) removed K.H. from her parents' custody at the age of twenty months and adjudicated her a child in need of assistance (CINA) based on her exposure to a pattern of violence carried out by her father, S.H., against her mother, L.R. In this appeal, we must consider whether a domestic abuse victim's continued contact with her batterer may serve as the primary impetus for terminating her parental rights. Our consideration centers on the question of whether the State proved by clear and convincing evidence that K.H. could not be safely returned to her mother's custody. The social workers testified they had no current concerns about the safety of L.R.'s home or her ability to provide for K.H.'s basic needs. Because the State did not bear its burden of proof, we exercise our de novo review to reverse the termination decision.

On November 2, 2009, the State filed a petition seeking to terminate the rights of both parents. The petition alleged that K.H. was younger than three years of age, had been adjudicated in need of assistance, had been removed from the parents' custody for at least six of the last twelve months, and clear and convincing evidence established that K.H. could not be returned to her parents' custody. *See* Iowa Code § 232.116(1)(h) (2009). The juvenile court terminated the rights of both parents, but only the mother appeals.

Domestic violence lies at the heart of this termination case. In its order, the juvenile court found: "Domestic violence has occurred between this couple

on numerous occasions and has involved court action involving domestic assault charges, no-contact orders and contempt proceedings." The court also expressed concern that "the two of them together have done nothing to address the domestic violence concerns between them . . . ." The juvenile court's findings leave the impression that the abuse was mutual, while the record reveals that L.R. was the victim of S.H.'s aggression. He faced criminal charges for assaulting L.R. in January 2008. The abuse continued through 2008 with S.H. repeatedly strangling L.R. and hitting her in the stomach when she was pregnant. And L.R. has not been the only target of S.H.'s violent conduct. As a youth, S.H. was removed from his parents' home because of his ongoing mental health issues and behavioral problems. S.H. faced juvenile adjudications for disorderly conduct, assault and robbery. When the DHS removed K.H. from the custody of her parents and placed her with her paternal grandparents in the spring of 2009, S.H. was verbally and physically aggressive toward the social workers and his own father. After a family team meeting, S.H. followed his parents into the hallway, punched the wall and threatened to "go after" his father if a removal occurred, alleging his problems with the DHS were his parents' fault.

S.H.'s threats toward his father did not prevent the DHS from placing K.H. with her paternal grandparents after she was removed from her parents' custody. The DHS workers did not consider S.H.'s continuing visits to his parents' home to see his daughter to jeopardize their status as caretakers for K.H. By contrast, the DHS workers identified L.R.'s apparent failure to sever ties with S.H. as a risk to K.H. and an impediment to returning the child to her mother's custody. The

common risk factor is the father's aggression toward others. The DHS workers apparently believe that S.H.'s parents are able to protect K.H. from exposure to her father's violent tendencies. The State did not establish that L.R. is unable to provide that same protection for K.H.

We do not minimize the seriousness of domestic violence and its negative impact on children. *See In re Marriage of Brainard*, 523 N.W.2d 611, 614 (Iowa Ct. App. 1994) (recognizing "tragic and long-term consequences of spousal abuse on children who witness the violence"). But the record indicates L.R. has diligently sought assistance from a domestic abuse victim advocate during the past two years. The advocate testified L.R. has matured to the point where she has obtained her own apartment and is holding down a job. The advocate has worked with L.R. on safety planning and understanding that S.H. is not a healthy person to be around.

L.R., who has a history of depression, also keeps regular appointments with a mental health counselor to work on issues of self-esteem and setting boundaries with S.H. The counselor testified that L.R. has made significant progress toward self-sufficiency and is able to manage the care of her son, who was born a month after K.H.'s removal. The counselor described L.R.'s advancement as follows:

> When I first started to work with her [L.R.] was sullen, she was very withdrawn, she avoided eye contact, she didn't speak much when [S.H.] was around. She was living back and forth between [family homes] so she didn't have a place of her own. She had no transportation of her own. She had no job. She allowed [S.H.] to make decisions for her. Her family appeared to be overly involved based on [L.R.'s] self report. It seemed like she was completely dependent on other people for all of her decision-

> making. And also she admitted she was uncomfortable making decisions.
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> At this point she is self-sufficient. She has her own vehicle. She has her own place to live. She cares for [her son]. And she admits that she does care for him . . . about 70 percent of the time . . . . And she still depends on her family for assistance with him, but it works for them, according to [L.R.].

The mother also completed a twelve-week parenting course called Incredible Years and consistently participated in the Family Safety, Risk and Permanency services offered to her. Given L.R.'s genuine efforts toward independence, we are unable to find that the State offered clear and convincing evidence that K.H. could not be returned to her custody.

We also note the State's evidence regarding L.R.'s current relationship with S.H. featured more speculation than fact. Witnesses testified that L:R. and S.H. reported being "just friends," but social workers occasionally found S.H. present during unannounced visits to L.R.'s residence leading them to believe their relationship was more involved. The most compelling evidence concerning the couple's relationship came from a family consultant who explained that the DHS implemented a safety plan for L.R.'s younger son which prohibited L.R. and S.H. from being together in his presence. The consultant testified she had no reason to believe they violated that safety plan.

The State argues on appeal that in addition to the risk of domestic violence posed by L.R.'s ongoing relationship with S.H., the mother relies too heavily on others to help parent her children. As an example, the State asserts that during supervised visits, the mother required prompting to meet the needs of K.H. and the new baby. While this may have been a legitimate concern shortly

after the baby's birth, the family consultant testified the mother has improved in her interactions with K.H. and is providing for her daughter's needs. The consultant observed that L.R. has appropriate supplies on hand for K.H. and was never lacking for food to fix for her children.

The State also points to a pattern of the mother passing off her children's care onto relatives. The mother acknowledged to her therapist that she relied on her grandparents to care for her son about thirty percent of the time. L.R.'s grandfather testified that he and his wife care for the baby "mostly on days when she works." We don't believe the mother's reliance on family members to help nurture her children as she gets back on her feet following a violent relationship necessarily supports the termination decision. The availability of a strong safety net of family caregivers should bode well for L.R.'s long-term prospects for success in parenting K.H.

In considering whether to terminate parental rights, our primary considerations are the child's safety; her physical, mental, and emotional condition and needs; and the placement which best provides for her long-term nurturing and growth. Iowa Code § 232.116(2); *see In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010) (holding there is no all-encompassing best-interest standard to override the express terms of the statute). It is not clear from this record that terminating the mother's parental rights serves the best interests of K.H.

The State presented no evidence in the termination proceedings that the mother exposed K.H. to any family violence after the child's removal and CINA adjudication. The DHS case manager agreed at the termination hearing that the

most recent reports from the Mid-Iowa Family Therapy Clinic revealed “no current safety concerns” in terms of L.R.’s home environment. According to the report, the supervised visits generally went well and the mother was following the basic expectations of the case plan. The report also noted K.H. was bonded with L.R. and enjoyed her visits with her mother and younger brother.

We respectfully disagree with the juvenile court’s conclusion that the State presented clear and convincing evidence that K.H. could not be returned to her mother at the time of the termination hearing. *See* Iowa Code § 232.116(1)(h). The termination of parental rights is generally final and irrevocable. *See Santosky v. Kramer,* 455 U.S. 745, 753-54, 102 S. Ct. 1388, 1394-95, 71 L. Ed. 2d 599, 606 (1982) (stating that parents are not given second chances after parental rights have been terminated absent some type of judicial relief). Although this is a close case, we find the bond between mother and daughter, the child’s placement with relatives, and the mother’s progress in gaining self-sufficiency after being in an abusive relationship all weigh against termination of parental rights at this time. This finding, of course, does not preclude a subsequent termination petition should events demonstrate that the child cannot remain safely in the mother's custody.

Because we find the grounds for termination were not met and that termination was not in the child's best interests, we conclude the district court erred in terminating the mother’s parental rights. Accordingly, we reverse the decision of the juvenile court.

REVERSED.