

IN THE COURT OF APPEALS OF IOWA

No. 0-606 / 10-1102
Filed September 9, 2010

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

**T.L.A., Mother,
Appellant.**

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

A mother appeals from the district court's order terminating her parental
rights to her daughter. **AFFIRMED.**

Deborah M. Skelton, Walford, for appellant.

David Fiester, Waterloo, for father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Harold Denton, County Attorney, and Rebecca Belcher,
Assistant County Attorney, for appellee.

Jessica Wiebrand, Cedar Rapids, attorney and guardian ad litem for minor
child.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

VOGEL, P.J.

Trisha appeals from the district court's order terminating her parental rights to her daughter, A.A. (born April 2005). The district court terminated Trisha's rights under Iowa Code section 232.116(1)(f) (2009) (child four or older, child adjudicated a child in need of assistance (CINA), child removed from home for twelve of last eighteen months, and child cannot be returned home).¹ We affirm.

Our review of termination of parental rights cases is de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

The Iowa Department of Human Services (DHS) became involved with Trisha in February 2006, after the police were contacted for a domestic disturbance and Trisha tested positive for marijuana. Following a hair stat test, A.A. tested positive for cocaine, for both exposure and ingestion. In March 2006 A.A. was adjudicated a CINA and placed in foster care. After initially being placed in a shelter, in February 2007, Trisha was allowed to move into the same foster home with A.A.² Trisha absconded with A.A. in July 2007, and was not located until October 2007. Trisha continued to struggle with drug addiction. In September 2008, DHS attempted a trial home placement, which ended in January 2009, after Trisha continued to associate with friends and relatives, including A.A.'s father, who were involved with illegal drugs. A.A. was again

¹ The parental rights of A.A.'s father were also terminated. He does not appeal.

² Trisha was a minor at the time of A.A.'s birth, and was also a CINA herself, until turning eighteen in July 2008.

placed in a foster home, where she has remained, with no further trial home visits.

Trisha asserts the State failed to prove by clear and convincing evidence that her rights should be terminated. While we recognize that Trisha grew up surrounded by substance abusers, she has failed to separate herself from those who had such a negative influence on her life. She has not developed a more appropriate lifestyle, chosen appropriate partners, or maintained a stable home for A.A. Prior to the termination hearing, Trisha was making positive steps by cooperating with DHS. The social workers recognized that Trisha loves A.A. and tries to be a good mother, but when asked if A.A. could be returned to Trisha's care, DHS worker Julie Ishman testified that "while Trisha has made great changes in her life as far as her substance abuse issues," she could not recommend A.A. be placed with Trisha, based on her history. She stated,

[A.A.] needs permanency. We have tried to—We've had two separate times where [A.A.] has been placed in Trisha's care, and both of those times have ended in [A.A.] having to go back to foster care. . . . It's just her pattern of thinking, and I don't know that her ways of thinking have changed and I don't know if she'll ever be able to understand that her family would have a negative effect on her and her daughter, and I would be afraid (that she would expose [A.A.] to unsafe people.

Further, Trisha has mental health needs she has failed to address. The record supports that reasonable services were provided to Trisha, and we affirm the district court's finding under 232.116(1)(f).

Trisha next argues the district court erred when it denied her motion to exclude evidence. On December 1, 2008, A.A.'s guardian ad litem subpoenaed Trisha's cell phone and text messages from her cell phone provider. This was

accomplished without prior notice served on Trisha. On December 15, Trisha filed a motion to exclude the evidence obtained, asserting a violation of the notice requirements of Iowa Rule of Civil Procedure 1.1701. Hearing was held on the motion on December 17, 2008, after which the court denied Trisha's motion. On January 30, 2009, at a permanency review hearing, Trisha's cell phone records were made a part of the court record. In its written order, the court stated, "the court is in receipt of the Notice to Court Re: Text Messages submitted by the guardian ad litem. Hearing no objection, said documents are made a part of the record." The permanency order was a final order from which Trisha failed to appeal. Thus any error claimed to have been made at the permanency hearing or within the ruling prior to the termination proceeding was not preserved for our review. Iowa R. App. P. 6.101(1)(a) (2009); *In re D.S.*, 563 N.W.2d 12, 15 (Iowa Ct. App. 1997) (holding failure to appeal a prior order in a CINA case invokes principles of res judicata for subsequent orders).

Moreover, Trisha cannot establish she was prejudiced by the admission of the cell phone records at the termination hearing because they were already made a part of the record considered by the district court at the permanency hearing. On our de novo review of the record, even if we were to ignore the cell phone records, the record contains clear and convincing evidence to support termination of Trisha's parental rights, as detailed in the district court ruling.

Trisha also argues termination of her parental rights is not in A.A.'s best interests. Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of Iowa Code

section 232.116(2). *In re P.L.*, 778 N.W.2d 33, 37, 40 (Iowa 2010). We consider “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.” *Id.* At the time of the hearing, A.A. had been in foster care thirty-five months of her life. A.A. had been moved six different times between trial home placements, relative care, and foster care, and has been acting out aggressively in response. A.A. is in desperate need of consistency and permanency. *In re J.E.*, 723 N.W.2d at 801 (Cady, J., concurring specially) (stating children’s safety and their need for a permanent home are the defining elements in determining a child’s best interests). We conclude termination of Trisha’s parental rights was in A.A.’s best interests as set forth under the factors in section 232.116(2).

AFFIRMED.