

IN THE COURT OF APPEALS OF IOWA

No. 0-759 / 10-1385
Filed October 20, 2010

**IN THE INTEREST OF D.T.D.J. and A.C.C.J.,
Minor Children,**

T.J.-J., Mother,
Appellant,

D.M.J., Father of A.C.C.J.,
Appellant.

Appeal from the Iowa District Court for Clarke County, Monty W. Franklin,
District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Carol A. Clark, Lamoni, for appellant mother.

Jeffery Wright, Des Moines, for appellant father.

Thomas J. Miller, Attorney General, Katherine Miller-Todd, Assistant
Attorney General, and Ronald Wheeler, County Attorney, for appellee State.

Kristian Lehmkuhl, Osceola, for minor children.

Considered by Mansfield, P.J., and Danilson and Tabor, JJ.

MANSFIELD, P.J.

A mother appeals from the juvenile court order terminating her parental rights to her two children, D.T.D.J. (born 2003) and A.C.C.J. (born 2005).¹ She argues the juvenile court failed to address placement of the children with out-of-state relatives before terminating parental rights. We find the juvenile court gave adequate consideration to the mother's proposals for relative placement and correctly concluded termination was in the children's best interests. Therefore, we affirm.

I. Background Facts and Proceedings.

On August 5, 2008, the mother went to prison on a fifteen-year sentence for possession with intent to deliver crack cocaine. She remains there to this date. Upon entering prison, the mother voluntarily placed her two children into the care of their maternal grandmother.

A.C.C.J.'s father was also incarcerated at that time, and remains so to this date. The whereabouts of D.T.D.J.'s father were and still are unknown.

In December 2008, the Iowa Department of Human Services (DHS) became involved with these children due to concerns over the maternal grandmother's mental health and substance abuse. The maternal grandmother had been hospitalized for "psychotic behaviors" and tested positive for cocaine. The grandmother's boyfriend had brought the children to the hospital, stating that he did not know what to do with them and that the grandmother was not equipped to care for them at that point.

¹ The juvenile court also terminated the parental rights of each child's father. Only A.C.C.J.'s father appealed; his appeal was dismissed as untimely.

On February 11, 2009, both children were adjudicated in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(c)(2) and (n). The maternal grandmother was allowed to retain custody of them under DHS supervision. But on October 15, 2009, the grandmother had a second hospitalization for mental health issues and substance abuse. She again tested positive for cocaine. At this point, the children were removed from her and placed into family foster care.

On January 19, 2010, the mother filed an application for relative placement of the children, requesting that the court order DHS to conduct home studies on the children's maternal grandfather and A.C.C.J.'s paternal grandmother. Both relatives live in Georgia. Following the request, the juvenile court continued two permanency hearings to allow DHS time to conduct in-home studies through Interstate Compact.

At a permanency hearing on June 4, 2010, the juvenile court was informed that the State of Georgia had rejected requests for home studies due to a "lack of information." At this time, the juvenile court decided to move forward with permanency because further delay was not in the best interests of the children. The court then confirmed the children's placement in foster care for adoption.

On June 10, 2010, the State filed a petition for the termination of parental rights. The petition came to a hearing on July 28, 2010. At the hearing, a DHS caseworker testified that in-home studies through Interstate Compact still had not been completed by the State of Georgia. She testified that she had submitted the appropriate documentation on two occasions, but that Georgia continued to

deny the requests. It was the caseworker's opinion that the State of Georgia had "dropped the ball."

The mother also testified by telephone. She agreed that she could not presently care for the children because she was incarcerated. She stated that her first appearance before the parole board would occur on November 9, 2010.

The juvenile court also asked a series of questions to establish the extent to which the children's maternal grandfather and A.C.C.J.'s paternal grandmother have or have not been involved with the children. The guardian ad litem spoke in favor of termination of parental rights, arguing as follows:

While we can't say that the family options or alternative placement would be unacceptable, we don't have the information to say that we can safely place the children with another family member either, and so I think termination is in their best interest in this case.

On August 11, 2010, the juvenile court entered separate orders for each child terminating both parents' parental rights under Iowa Code section 232.116(1)(f). Further, although the juvenile court did not have in-home studies in hand, it nonetheless addressed the possible out-of-state relative placements based on the information available and determined they were not in the best interests of the children. The mother appeals.

II. Standard of Review.

We review proceedings to terminate parental rights de novo. *In re L.S.*, 483 N.W.2d 836, 839-40 (Iowa 1992). Our primary consideration is the best interests of the children. *In re R.J.*, 495 N.W.2d 114, 115 (Iowa Ct. App. 1992).

III. Analysis.

The mother does not dispute the juvenile court's findings that the specific grounds for termination set forth in Iowa Code section 232.116(1)(f) have been

met as to both children, that termination is in the children's best interests under section 232.116(2), and that none of the circumstances in section 232.116(3) applies here. Rather, invoking section 232.99(4) (requiring the court to make the "least restrictive disposition"), the mother argues the juvenile court failed to address placement of the children with either the maternal grandfather or A.C.C.J.'s paternal grandmother. Section 232.99 relates to disposition of children who have been adjudicated CINA where parental rights have not been terminated. The mother's argument thus appears to be a challenge to the court's pre-termination orders, from which she did not appeal, rather than its termination of parental rights. Placement of a child with a relative under a permanency order is not a legally preferable alternative to termination of parental rights if the evidence is sufficient to establish a ground to terminate. *In re L.M.F.*, 490 N.W.2d 66, 67 (Iowa Ct. App. 1992).

Nonetheless, like the juvenile court, we will treat the mother's argument as an objection to termination itself. In this case, the juvenile court carefully considered the proposed relative placements based on the record made at the hearing. In particular, the juvenile court found:

The Court has no home study to assist the Court in determining if either of these placements would be appropriate for th[e] child[ren] but the Court has determined from the evidence and information available to the Court that there has been and there is currently no close, significant or meaningful relationship in existence between the child[ren] and either [the maternal grandfather] or [A.C.C.J.'s paternal grandmother]. Neither has shown the level of concern which would be anticipated from a grandparent actively seeking custody of a grandchild. Neither has attempted to establish or to reestablish a relationship with the child[ren] by writing to the child[ren] regularly, telephoning the child[ren] regularly, talking with the foster parents about the child[ren] regularly, coming to Iowa to see the child[ren] or appearing at (or intervening in) any Court hearing or proceeding to

provide information about their homes and to formally make their homes available for placement of the child[ren].

There is nothing in the record to indicate that placement of the child[ren] with either [the maternal grandfather] or with [A.C.C.J.'s paternal grandmother] would be appropriate and in the child[ren]'s best interests. There are however numerous unanswered questions that raise doubts about the advisability and appropriateness of placing th[e] child[ren] with either of them. This Court is not willing to risk the safety, welfare, and well being of th[e] child[ren] by sending him to unknown grandparents with unknown child caring abilities in unknown living arrangements in the State of Georgia where cooperation with our child welfare system has already been shown to be lacking.

. . . Accordingly, the court hereby specifically finds that it would not be in the best interests of th[e] child[ren] to place [them] in the custody of [the paternal grandfather] or [A.C.C.J.'s paternal grandmother].

We agree with these findings and adopt them as our own. We further find, like the juvenile court, that termination of the mother's parental rights is in the best interests of both children, considering their safety, the best placement for furthering their long-term nurturing and growth, and their physical, mental, and emotional condition and needs. Iowa Code § 232.116(2). D.T.D.J. and A.C.C.J. were seven and five respectively at the date of the termination hearing. They have been out of their mother's care for two years. Although they have done well in foster care since being removed from their maternal grandmother, their current placement is not a pre-adoptive one. These children need permanency.

Accordingly, we affirm the order of the juvenile court terminating the mother's parental rights.

AFFIRMED.