

IN THE COURT OF APPEALS OF IOWA

No. 0-923 / 10-1700
Filed December 22, 2010

**IN THE INTEREST OF A.H. and A.H.,
Minor Children,**

**J.C.C., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Carol Egly, District Associate Judge.

A mother appeals the termination of her parental rights to a son and a daughter. **AFFIRMED.**

Steven E. Clarke of Pargulski, Hauser & Clarke, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Kevin Brownell, Assistant County Attorney, for appellee.

Kimberly Ayotte, Des Moines, attorney and guardian ad litem for minor children.

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

TABOR, J.

A mother appeals the termination of her parental rights to her daughter, Aliza, age fourteen, and her son, Aaron, age twelve. The mother contends the State failed to prove grounds for termination, and that termination is not in the best interests of the children. Upon de novo review, we conclude the State proved the mother abandoned her children and termination is necessary for the children's continued and future well-being.

I. Background Facts and Proceedings

The Department of Human Services (DHS) removed Aliza and Aaron from their father's care in September 2008 after he left them with their stepmother. The father and stepmother were in the process of divorcing and the stepmother alleged the father did not provide for the children's support. The father consented to a foster home placement after an investigation revealed the children were being seriously neglected and abused at the hands of their stepmother. The children were adjudicated in need of assistance pursuant to Iowa Code sections 232.2(6)(c)(2),(f), and (g) (2007). After the father's interventions disrupted the children's initial foster home placement, the DHS placed the children in their current foster home in January 2009. Their placement has not changed since.

Initially, the DHS did not know the mother's whereabouts and believed her parental rights may have already been terminated. The DHS later learned the mother's parental rights were intact, but the father had sole legal custody of the children by California court order. In November and December of 2008, the DHS

was contacted by the mother, who lived in California and had been made aware of the juvenile court proceedings. The mother reported that she had not had contact with the children since the father moved to Iowa in 2004.

Although the mother told DHS workers she planned to attend a January 2009 hearing, she was not heard from again until March 25, 2010. At that time, she had entered a rehabilitation facility in California after giving birth to a child who tested positive for methamphetamine. The mother has a lengthy history of methamphetamine use. She resumed contact with Aliza and Aaron by telephone after starting drug rehabilitation.

In the meantime, the children became established in their foster home. The foster family was willing and able to adopt the children and the children flourished in that environment, enjoying a sense of security for the first time in their lives. But at that time the children wished to have their father's parental rights maintained so they could enjoy a relationship with him as a non-custodial parent while they continued in their foster placement until they reached the age of majority. Because permanency had been established under this arrangement, the State saw no reason to terminate the mother's parental rights.

The children's wishes changed in the year leading up to termination. The father failed to maintain consistent contact or acknowledge the abuse the children had suffered. He also made statements that threatened their sense of security in their foster care placement. Because the children value the stability they have established while living in their foster home over maintaining the rights of their natural parents, the children requested parental rights be terminated.

The State filed a petition to terminate the parents' rights on July 29, 2010. Following an August hearing, the juvenile court entered its order terminating the parental rights of the mother and father on October 5, 2010. The mother filed a timely notice of appeal.

II. Standard of Review

We review termination orders de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We are not bound by the district court's factual findings, but we give weight to them, especially those that involve witness credibility. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

III. Analysis

The mother contests all four of the State's grounds for termination. She also argues termination is not in the best interests of the children where the children could be placed in a guardianship with their foster parents. We reject her arguments.

A. The Grounds for Termination are Established.

The State petitioned for termination under Iowa Code sections 232.116(1)(b), (d), (e), and (f) (2009). The juvenile court terminated parental rights under each of these sections. We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Termination is appropriate under section 232.116(1)(b) where clear and convincing evidence establishes the child has been abandoned or deserted. Abandonment is characterized as a giving up of parental rights and responsibilities accompanied by an intent to forego them. *In re A.B.*, 554 N.W.2d

291, 293 (Iowa 1996). Two elements are involved in this characterization: (1) the conduct of the parent and (2) the parent's state of mind. *Id.*

We find the State has established the mother abandoned the children. The evidence shows the mother failed to maintain any contact with the children following their move to Iowa in 2004. After a few contacts with the department in late 2008, she was not heard from again until March 2010. Although she has kept in regular phone contact since that point, parental responsibilities include more than subjectively maintaining an interest in a child. See *In re A.B.*, 554 N.W.2d at 293. The concept requires affirmative parenting to the extent it is practical and feasible in the circumstances. *Id.* The mother's failure to maintain any significant and meaningful contact with the children over a six-year period evinces her abandonment.

B. Termination is in the Children's Best Interest.

The mother argues termination is not in the children's best interest. We disagree. The best-interests-of-the-child analysis places priority on three factors: (1) a child's safety, (2) the best placement for furthering the long-term nurturing and growth of the child, and (3) the physical, mental, and emotional condition and needs of the child. Iowa Code § 232.116(2); *In re P.L.*, 778 N.W.2d at 41 (noting it is "well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child").

The evidence shows the children have enjoyed the type of physical, mental, and emotional caregiving in foster care that they failed to receive in the care of their parents. But maintaining parental rights threatens to erode any security the children had gained with their foster family. In her telephone calls to the children, the mother has told them that they will be coming to live in California. The children know the mother cannot provide for their safety, security, and day-to-day needs. The mother demonstrated earlier in 2010 that she is still not ready for parenting when she gave birth to a child who tested positive for methamphetamine.

Having parental rights terminated eliminates the specter of the children being taken from the excellent care of their foster family and returned to the substandard care of their parents. It also allows the foster family to adopt the children to give them a permanent home. These children are fourteen and twelve years old and badly need stability for their remaining childhood years. Termination is in the children's best interest.

The State proved the grounds for termination in section 232.116(1)(b) and termination is in the children's best interests as set out in section 232.116(2). We affirm.

AFFIRMED.