IN THE COURT OF APPEALS OF IOWA

No. 1-384 / 11-0454
Filed June 15, 2011

IN THE INTEREST OF J.R.,
Minor Child,

T.N.R., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Colin Witt, District Associate Judge.

A mother appeals the juvenile court's order terminating her parental rights to her child. **AFFIRMED.**

Tammi M. Blackstone of Gaudineer, Comito & George, L.L.P., West Des Moines, for appellant.

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

Alexandra Nelissen of Nelissen Law Firm, Des Moines, for father.

John Jellineck, Des Moines, attorney and guardian ad litem for minor child.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

TABOR, J.

A mother appeals the juvenile court's order terminating her parental rights to her then one-year-old daughter. She claims the State failed to prove the statutory grounds for termination and that the court should have placed the child with her maternal grandmother in Missouri. The mother also claims termination was not in her daughter's best interests. Given the child's "medically delicate state of growth and development," we find that she cannot be safely returned to her mother or placed with her grandmother. Accordingly, we affirm the juvenile court.

At the termination hearing, the mother engaged in the following exchange with the assistant county attorney:

> Q. What are you asking the Court for today? What do you want to happen? A. For my children[1] to be placed with my mom.
> Q. Are you okay with having your parental rights terminated? A. I'm not sure.

In later testimony the mother acknowledged that her daughter could not be returned to her "today." The mother could not predict when she would be ready to take over the parenting: "when I get myself stabilized, I guess." When questioned by her own attorney, the mother said that she would like to maintain her parental rights. The mother's equivocal position toward reunification with her daughter strengthens our view that termination was proper.

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[1] The mother had a second daughter in June 2010. That child is not the subject of this termination appeal.

I. Background Facts and Proceedings

J.R. was born prematurely in June 2009. She weighed less than five pounds at birth and spent the first three weeks of her life in the hospital. She gained little weight over the next two months while in her parents' care. Doctors diagnosed her with "failure to thrive," a condition where a child does not show normal growth.

J.R. came to the attention of the Department of Human Services (DHS) in the summer of 2009 following several incidents of domestic violence between her parents; the police responded to calls at the home five times following J.R.'s birth. On August 10, 2010, the mother allegedly threatened the father with a kitchen knife. The mother was on probation from a domestic abuse assault in 2008 when she reportedly menaced her husband with a butcher knife and threatened to set him on fire. While the DHS worked on its child protection assessment, the family fled to Missouri—with assistance from J.R.'s maternal grandmother. When the grandmother was informed that the judge requested the family return to Iowa, she indicated that would not be possible. The court approved removal of J.R. from her parents' custody on August 25, 2009, and adjudicated her as a child in need of assistance (CINA) on September 10, 2009.

In the fall of 2009, the parents obtained housing and received mental health services. Visits with the child were generally going well. By December 2009, the DHS recommended overnight visitation.

On January 4, 2010, the juvenile court approved returning the child to her parents' custody, but with the following caution:

> The parents have not addressed the issues that brought them before the court. It is clear from Exhibits 4 & 5 [psychological evaluations] that to fully address the domestic abuse will take months if not years of counseling & treatment. I am not convinced the mother and father see the value of such an undertaking. While I am returning [J.R.] to her parents' custody today—I would anticipate the court would continue to supervise this case for at least one year with frequent reviews.

Unfortunately, the juvenile court's concern came to fruition just ten days later. On January 14, 2010, the DHS received another child abuse referral. The parents engaged in a physical fight, including throwing things and biting one another in their residence, while seven-month-old J.R. was left unbuckled in her car seat. The DHS returned J.R. to foster care; her foster parent reported that the child's demeanor had changed dramatically during the ten days in the care of her biological parents. She was exhausted, fussy, woke up during the night screaming, and was difficult to console. It took J.R. about two weeks to transition back to being a calm and happy baby. While in foster care during February and March 2010, she gained significant weight. In April 2010, the juvenile court ordered the parents to have no contact with one another.

The parents were inconsistent with their visits with J.R. during the spring and summer of 2010. They failed to attend important doctor's appointments and did not grasp the critical nature of their daughter's feeding needs.

In June 2010, the mother gave birth to a second daughter. After that time, the mother's attendance at her therapy sessions became sporadic. The second baby was removed from her mother's care on August 3, 2010.

The State filed a petition on August 31, 2010, seeking to terminate the rights of both parents to J.R. In September, authorities arrested the parents for

violating the no-contact order. In October 2010, the DHS reported that the mother had been discharged from several social service programs and was homeless.

On October 26, 2010, the juvenile court held the first phase of the termination hearing. The court left the record open for submission of a home study for the maternal grandmother to be completed by child welfare officials from Missouri. The court heard evidence during a second day of the termination hearing on December 16, 2010. By that time, the mother and father had moved back to Missouri and resided together at least part of the time. The home study completed by Missouri social workers found the grandmother would be a suitable caregiver, but did express reservations about the insular nature of the family—posing difficulty for state workers trying to monitor the child's progress—and the previous reluctance of the grandmother to follow through with medical recommendations when a nephew was placed in her care.

The court also received a report from Blank Children's Hospital concluding that J.R. was in "a medically delicate state of growth and development" and needed a "consistent and stable environment." In addition, the State offered a report from LifeWorks. The report noted the bond between J.R. and her foster family and raised concerns about placement of the child with the maternal grandmother. The clinical social worker from LifeWorks testified that the mother's family revealed multi-generational dysfunction that could hinder the grandmother's ability to protect J.R. from harm.

On March 21, 2011, the juvenile court issued its order terminating parental rights.[2] The court concluded that termination of the mother's rights was proper under Iowa Code sections 232.116(1)(d) and (h) (2009). The mother now appeals.

II. Standard of Review

We review the juvenile court's order terminating parental rights de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). While we are not bound by the juvenile court's findings of fact, we give them weight—especially in deciding whether witnesses are credible. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010).

We will reverse an order terminating parental rights only if the juvenile court record lacks clear and convincing evidence of the elements necessary for termination under the alternative grounds listed in Iowa Code section 232.116. *Id.* We will find the State's evidence to be "clear and convincing" when there are no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.* When the juvenile court bases termination on multiple grounds, an appellate court may affirm on any ground supported by clear and convincing evidence. *Id*. at 707.

III. Merits

The mother first asserts the record lacks clear and convincing proof supporting the statutory elements under sections 232.116(1)(d) and (h). Specifically, the mother argues that she can presently provide a safe and stable home for J.R. in Missouri. *See* Iowa Code § 232.116(h)(4). She also notes there

[2] The father does not appeal from the termination order.

have been no reports of domestic violence between her and the child's father since January 2010, and thus contends the conditions that led to adjudication no longer exist. *See* Iowa Code § 232.116(d)(2).

In our de novo review of the record, we find ample evidence supporting the juvenile court's conclusion that a "high risk of domestic violence between the cohabiting parents" continues to exist and J.R. cannot be safely returned to her mother's care at the present time. Just ten days after J.R. was returned to their care in January 2010, the mother and father violently clashed in the child's presence, resulting in immediate and noticeable anxiety for the seven-month-old, who already suffered from failure to thrive. In April 2010, the juvenile court ordered no contact between the parents, but they were arrested for violating that prohibition in September 2010. The DHS social worker testified that the mother had not adequately addressed the pattern of domestic violence in her relationship with J.R.'s father. By the time of the second phase of the termination hearing, the mother had moved to Missouri, the home of the maternal grandmother, and admitted to spending time with the father. The social worker believed that the maternal grandmother minimized the impact of domestic violence on the child. As of December 16, 2010, the mother had not visited with J.R. for five to six weeks.

The mother's continued involvement with J.R.'s father, despite their history of domestic violence, provides a strong basis for termination. *See In re C.C.*, 538 N.W.2d 664, 667 (Iowa Ct. App. 1995); *see also In re L.B.*, 530 N.W.2d 465, 468 (Iowa Ct. App. 1995) (finding child could not be returned to mother because she

failed to recognize that her abusive husband's presence in her life and home presented a continuing danger to the child). J.R.'s health is too fragile to risk placing her in an environment that in the past has quickly deteriorated to mutual combat between the parents. The absence of a domestic violence report in the fifteen months the parents have been ordered to stay apart does not convince us that the danger of violence is erased now that the mother has decided to reunite with the father in Missouri. Evidence of a parent's past performance signals the future quality of care that parent is capable of providing. *See In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000). The risk of domestic violence remains within this family and the child cannot presently be returned to her mother's care. We affirm the juvenile court's decision that the State satisfied the statutory grounds for termination.

The mother next contends that termination was not in the child's best interests. She argues that J.R. should be returned to her care so that the child can be raised by her biological family "who are of the same race and religion as J.R." These factors were not discussed in any detail at the termination hearing. The termination order did not analyze the issue of the child's race and religion and the mother did not file a motion under Iowa Rule of Civil Procedure 1.904(2) seeking to enlarge or amend the court's findings. *See In re A.M.H.*, 516 N.W.2d 867, 872 (Iowa 1994) (applying that civil procedure rule to juvenile court proceedings). Accordingly, we are unable to consider on appeal what impact the factors of race and religion have on the child's long-term best interests given the available placement options.

What we do consider is the child's safety; the best placement for furthering her long-term nurturing and growth; and her physical, mental, and emotional condition and needs. Iowa Code sec. 232.116(2); *P.L.*, 778 N.W.2d at 37. J.R.'s medical condition demands a stable environment where her nutritional needs will be closely monitored. J.R.'s mother has not placed a high priority on her daughter's need for specialized care. As the juvenile court observed, the mother

> has some knowledge regarding some of the special concerns related to [J.R.'s] health, but she has chosen to continue her volatile relationship with [the father] and move out of state with him instead of working towards reunification with [J.R.] or her other child.

The mother acknowledged at the termination hearing that she was not ready for full-time parenting and asked the juvenile court to place J.R. with the girl's grandmother. The juvenile court recognized that chapter 232 favors relative placements over non-relative placements. *See In re N.M.*, 528 N.W.2d 94, 97 (Iowa 1995). But the juvenile court remained "unconvinced the maternal grandmother would be able to protect" J.R. from the hazards of her parents' unstable relationship. The court also highlighted the Missouri social worker's concern that the grandmother perpetuates a "closed" family unit that would be hard for child protection agencies to infiltrate on behalf of J.R. Further, the grandmother did not establish a strong bond with J.R., making no efforts to visit the child in Iowa between the October and December termination hearings. Given all of the circumstances in this case, we agree with the juvenile court that termination and placement in a pre-adoptive family is in the child's best interest.

Finally, the mother has not identified any factors in Iowa Code section 232.116(3) that would compel the juvenile court to exercise its discretion not to terminate her parental rights.

AFFIRMED.