

IN THE COURT OF APPEALS OF IOWA

No. 1-690 / 11-1198
Filed September 21, 2011

**IN THE INTEREST OF K.M.,
Minor Child,**

R.G.M., Father,
Appellant,

P.M., Mother,
Appellant.

Appeal from the Iowa District Court for Calhoun County, Angela L. Doyle,
District Associate Judge.

A mother and father each appeal from the juvenile court's order
terminating their parental rights. **AFFIRMED.**

Laura M. Barnaby, Fort Dodge, for appellant father.

Derek J. Johnson of Derek Johnson Law Office, Fort Dodge, for appellant
mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Cynthia Voorde, County Attorney, and Tina Meth-Farrington, Assistant
County Attorney, for appellee State.

Sarah L. Smith, Fort Dodge, attorney and guardian ad litem for minor
child.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

Robert and Pamela are the parents of eight children, including K.M. This family came to the attention of the Iowa Department of Human Services (DHS) in May 2004 because of an extreme case of neglect suffered by J.M., the child of one of K.M.'s adult siblings.¹ J.M. was cared for by Robert and Pamela in the same home and environment as K.M. Paternity testing showed Robert was the father of J.M. and another child born to another of his adult daughters. The court found Pamela knew or had reason to know of the incestuous relationships. K.M.'s parents were both sentenced to prison for felony child endangerment. Robert was also convicted of incest. Robert remains incarcerated.

On March 9, 2005, ten-year-old K.M. was removed from her parents' care. On May 19, 2005, K.M. was adjudicated a child in need of assistance. On June 17, 2005, K.M. entered family foster care and has remained with the same foster family throughout the pendency of these proceedings. In April 2006, the court made a finding that termination of Robert's and Pamela's parental rights to K.M. was not in K.M.'s best interests because K.M. objected to termination and because it allowed her to maintain a relationship with her siblings.

Pamela was released from prison in February 2010, and K.M., now fifteen years old, was anxious to have contact with her mother. Two months after her release, Pamela requested visitation, and DHS agreed to allow supervised visitation once Pamela signed a document listing visitation rules. Pamela refused to sign the document in spite of receiving a letter from K.M. pleading with

¹ K.M. is the only child at issue in this case.

her to sign the visitation agreement. Eventually, DHS agreed to allow Pamela supervised visits in spite of her refusal to sign the document, but visits never began. No scheduled visits between Pamela and K.M. ever took place. At the time of the termination hearing, Pamela had not seen K.M. since May 2010 when she showed up unannounced at K.M.'s foster home.

In October 2010, K.M. reported that all of her brothers had sexually abused her over a period of several years. Pamela chose not to believe K.M. and supported the brothers.

On March 16, 2011, the State filed a petition for termination of each parent's parental rights. At trial, Pamela appeared personally with counsel; Robert participated by telephone from prison and through his counsel who was present in the courtroom. K.M.'s guardian ad litem offered into evidence two letters written by K.M. The letters expressed to the court K.M.'s opinion with respect to termination of each parent's parental rights; K.M. addressed her feelings toward each parent and stated she had chosen to no longer be the daughter of either parent. She expressed a desire to cut all ties with each parent.

The court received the letters as exhibits, overruling Pamela's and Robert's objections to their admission on the grounds of lack of foundation and hearsay. In response, Pamela called K.M. as a witness. K.M.'s guardian ad litem objected and requested the court to hear counsel regarding how the testimony would be conducted. Discussions with counsel apparently took place off the record, and, other than a brief summary of these discussions, the contents are not part of the record on appeal.

The court decided to allow the child's testimony and to temporarily excuse the parents while the child testified. Each parent objected and expressed a desire to remain in the courtroom during K.M.'s testimony. The court overruled the parents' objections, and the parents were not present for K.M.'s testimony. Counsel for each parent was present in the courtroom for K.M.'s testimony, which was limited to questions regarding the foundation and authenticity of the letters, along with brief information regarding the preparation of the letters and K.M.'s statements that she continued to feel as expressed in her letters. The direct examination was conducted by K.M.'s guardian ad litem. Cross-examination was permitted, but no counsel asked questions.

The juvenile court terminated Robert's and Pamela's parental rights. Each parent now appeals asserting the juvenile court erred in: (1) removing the parents from the courtroom while K.M. authenticated the exhibits, and (2) finding termination was in K.M.'s best interests. We review this case de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010) (“[T]he proper standard of review for all termination decisions should be de novo.”).

II. Presence in Courtroom

In excusing the parents from the courtroom during K.M.'s foundational testimony, the juvenile court referenced Iowa Code section 232.38(2) (2011), which provides:

“In any such hearings or proceedings the court may temporarily excuse the presence of the parent . . . when the court deems it in the best interests of the child. Counsel for the parent . . . shall have the right to participate in a hearing or proceeding during the absence of the parent”

The court noted this section applied to delinquency proceedings. The court further referenced section 232.91(1), which states: “Any hearing or proceedings under this division [child-in-need-of-assistance proceedings] subsequent to the filing of a petition shall not take place without the presence of the child’s parent . . . in accordance with and subject to section 232.38.” The court noted this section applied to child-in-need-of-assistance proceedings and specifically noted, “[T]here is no similar provision in the section of the Iowa Code that applies . . . in termination of parent/child relationship proceedings.” The court continued, “However, the court finds that because that particular section is present in the sections related to delinquency and child in need of assistance, that we are going to follow that particular section” Pamela and Robert both assert the court erred in relying on sections 232.38(2) and 232.91(1), given that no similar provision applies to hearings on termination of parental rights. Each parent contends the court erred in removing the parents during K.M.’s testimony.

We are unable to determine whether the district court’s decision to exclude the parents was necessary to the best interests of the child, as the record is insufficient to allow us to understand the reasons for the guardian ad litem’s request or for the court’s ruling. While we presume the guardian ad litem explained the reasons for her objection and the court considered these reasons in making its ruling, such discussions were conducted off the record. The court later summarized these discussions for the record but did not explain why excluding the parents was requested or was necessary.

However, we do have the transcript of K.M.’s brief foundational testimony and conclude the decision to exclude the parents from the courtroom did not

compromise their ability to present their defenses to termination. The parents did not offer a reason at trial why their presence in the courtroom was necessary to their defense, at least not on the record before us. Nor did either parent cite to any authority on appeal supporting a claim that the parents had an absolute right to be present for the entire duration of the termination hearing. *See In re J.S.*, 470 N.W.2d 48, 52 (Iowa Ct. App. 1990) (“Where a parent receives notice of the petition and hearing, is represented by counsel, counsel is present at the termination hearing, and the parent has an opportunity to present testimony by deposition, we cannot say the parent has been deprived of fundamental fairness.”). Neither parent explains what effect, if any, their presence would have had on the admission of K.M.’s letters or testimony. We conclude the juvenile court’s decision to exclude the parents during K.M.’s brief foundational testimony did not result in reversible error.² Further, the court’s decision fulfills the purpose of chapter 232 by allowing the child to testify regarding her wishes outside the presence of her parents. *See In re N.H.*, 383 N.W.2d 570, 572 (Iowa 1986) (“The overriding purpose of chapter 232 is the child’s welfare and best interests.”).

III. Best Interests of the Child

Each parent also asserts termination of parental rights is not in K.M.’s best interests. Using the framework provided in section 232.116(2), we conclude a termination of each parent’s parental rights best provides for K.M.’s safety, long-term growth, and physical, mental, and emotional needs. K.M. has become

² Although not raised by the parents, we further note that the confrontation clause does not apply to trials of termination of parental rights, which are civil cases. The parents do not have a constitutional right to confront witnesses. *See In re D.J.R.*, 454 N.W.2d 838, 846 (Iowa 1990) (finding the confrontation clause only applies in criminal cases).

integrated into and bonded with her foster family, who have expressed an interest in adopting her. See Iowa Code § 232.116(2)(b). K.M.'s foster parents, with whom K.M. has lived for over six years, have provided K.M. with a stable environment, and K.M. has thrived under their care. See *id.* § 232.116(2)(b)(1). K.M. has expressed that she considers her foster parents to be her "real parents." See *id.* § 232.116(2)(b). K.M.'s letters expressed a clear preference to remain in her foster home where she feels safe and supported and to terminate her parents' parental rights. See *id.* § 232.116(2)(b)(2). Pamela and Robert have shown no ability to provide K.M. with a safe home environment, allowing her to be continually subjected to sexual abuse by family members. K.M. has flourished socially, academically, and emotionally under the care of her foster family, and we agree with the findings of a DHS caseworker assigned to this family that a return to her mother would be "disastrous" for K.M.

AFFIRMED.