

IN THE COURT OF APPEALS OF IOWA

No. 1-914 / 11-0999
Filed January 19, 2012

IN THE INTEREST OF S.D.S.,
Minor Child,

A.B.S., Mother,
Appellant,

T.J.M., Father,
Appellant.

Appeal from the Iowa District Court for Johnson County, Stephen C. Gerard II, District Associate Judge.

A mother appeals the termination of her parental rights to her child.

AFFIRMED.

Noelle Murray of Moore & Egerton, L.L.P., for appellant-mother.

Sandra R. Hart, Coralville, for appellant-father.

Thomas J. Miller, Attorney General, Kathryn S. Miller-Todd, Assistant Attorney General, Janet M. Lyness, County Attorney, and Emily Voss, Assistant County Attorney, for appellee.

Anthony Haughton, Cedar Rapids, attorney and guardian ad litem for minor child.

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

TABOR, J.

A mother, who has battled an addiction to methamphetamine, challenges the termination of her parental rights to her now five-year-old daughter, S.D.S. She contends the State did not prove by clear and convincing evidence that the child could not be presently returned to her custody. While the mother has been working toward recovery, she was not ready to resume care of her daughter at the time of the termination hearing. Because the State met its burden of proof, we affirm the juvenile court's termination order.¹

I. Background Facts and Proceedings.

Angela acknowledges her long history of substance abuse. When she gave birth to S.D.S. in July 2006, she “made a personal vow” to turn her life around. She recalled being sober through the pregnancy and until S.D.S. was about eight months old. Then Angela relapsed. She recalled using methamphetamine sporadically while S.D.S. was a toddler.

In December 2009, Angela was hospitalized for an overdose of methamphetamine. S.D.S. was at home and “saw her mom unresponsive on the ground.” The child abuse assessment report completed by the Iowa Department of Human Services (DHS) determined that Angela had injected herself with a mixture of methamphetamine and lighter fluid. Angela denied in her testimony that she had tried to commit suicide. Because the child's father was in prison at that time, S.D.S. stayed with her paternal grandmother while her mother was

¹ The juvenile court also terminated the parental rights of S.D.S.'s biological father, but his appeal was dismissed as untimely.

involuntarily committed for treatment at the University of Iowa Hospitals psychiatric unit from January 4 through January 12, 2010.

On January 28, 2010, after successfully completing treatment at the Family Recovery Center Program in Ottumwa, Angela returned to Iowa City where she immediately resumed seeing an old boyfriend and using methamphetamine again. Angela admitted that she was ambivalent about reunifying with S.D.S. during this period.

On February 3, 2010, Angela stipulated that S.D.S. was a child in need of assistance (CINA). The DHS placed the child in family foster care, where she remained through the rest of the case.

Angela returned to the Ottumwa treatment program on March 2, 2010, but left against medical advice less than one week later. Angela spent two weeks using methamphetamine before she became serious about her substance abuse problem and started a month-long in-patient treatment program on March 26, 2010. In April 2010, the Family Recovery Center closed due to lack of funding. During that spring, Angela pursued out-patient services and resumed her visits with S.D.S.

On May 24, 2010, Angela started intensive outpatient services at St. Luke's chemical dependency unit. While in that program, she remained clean for ninety days. But on July 27, 2010, Angela showed up at St. Luke's acting erratic and belligerent and was dismissed from the group. She refused to submit a urine sample to her supervisor, saying that she knew it would be positive for methamphetamine. The next day, Angela went to the emergency room for

methamphetamine intoxication. As a result of the overdose, Angela was actively psychotic and hearing voices. She stayed in the hospital psychiatric unit until August 11, 2010.

Angela last visited her daughter on August 26, 2010. Angela tried to get treatment at MECCA on September 1, 2010, but staff refused her admission because she had used methamphetamine before arriving. She spent three days in the hospital to detoxify.

Angela entered MECCA in Des Moines on September 9, 2010, and was discharged on October 11, 2010. Her drug treatment was interrupted by a psychiatric hospitalization from September 27 to October 4—when she was again hearing voices. After leaving the MECCA program, Angela stayed with her father. Her time there did not go well. She used alcohol and marijuana, engaged in physical fights with her father, and was arrested for shoplifting. On December 6, 2010, Angela checked herself into the hospital, where she stayed for three weeks. After leaving the hospital, Angela spent thirty days at the Madge Phillips Center in Cedar Rapids and then she moved to transitional housing.

On December 7, 2010, the State filed a petition to terminate the mother's rights pursuant to Iowa Code sections 232.116(1)(f) and (l) (2009). At the termination hearing on March 21, 2011, Angela testified that she had not used methamphetamine for nearly seven months and had abstained from alcohol and marijuana for about four months. Angela's attorney asked the court to allow her client additional time to reunify with S.D.S. On June 15, 2011, the juvenile court ordered the mother's parental rights be terminated under section 232.116(1)(f).

II. Scope and Standard of Review.

We exercise de novo review in termination of parental rights cases. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). The juvenile court's factual findings do not dictate our result, but we accord them weight, especially in assessing witness credibility. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010).

III. Analysis.

The district court based its termination decision on section 232.116(1)(f), which requires proof of the following elements:

- (1) The child is four years of age or older.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

On appeal, Angela contests only the fourth element, the State's proof that S.D.S. could not be returned to her care at the present time. Specifically, she asserts the juvenile court "failed to recognize [her] sobriety and stability" at the time of the termination trial.

We disagree with the mother's assertion that the juvenile court overlooked the positive strides she made in addressing her methamphetamine addiction. In our de novo review of the record, we reach the same conclusion as the juvenile court. It is true that Angela has sought substance treatment repeatedly. But she has also fallen back under the spell of methamphetamine repeatedly. The

juvenile court tallied seven documented relapses during the pendency of the CINA case.

While Angela had not used methamphetamine for about six months at the time of the termination hearing, she had consumed alcohol and marijuana more recently. It is also difficult to gauge Angela's long-term prospects for remaining drug-free based on her recent successes that coincided with periods of hospitalization, in-patient treatment, and transitional housing. At the time of the termination hearing, Angela had not yet demonstrated she could avoid illicit drug use when she was living independently in the community.

Although Angela argues in her petition on appeal that S.D.S. could have been presently returned to her care, she expressed a different position at the termination hearing. When asked if she was prepared to have S.D.S. "come home with [her] today," Angela replied:

I am in a position where I am definitely prepared to have supervised contacts and resume visits. . . . I don't think that the Department of Human Services or [S.D.S.'s] therapist would let [S.D.S.] come home with me today, so I don't really see—You know right now in my current housing situation, I elected to just focus on my recovery and move into a housing situation where children are not allowed because I needed to put my health on the agenda, too.

She went on to say that with "a little bit of advanced notice" she would be able to secure her own apartment and have a place for S.D.S.

The mother's own testimony defeats her argument on appeal. The word "present" in section 232.116(1)(f)(4) is not defined in the juvenile code, but its common meaning is "now existing; at hand." See Black's Law Dictionary 1202 (7th ed. 1999). The phrase "present time" means at the time of the termination

hearing. Angela had notice of the grounds for the State's termination petition since early December 2010. Her attorney's request at the termination hearing for additional time for Angela to work toward reunification with S.D.S. was not granted by the juvenile court. She does not renew her request for additional time in the petition on appeal.

A parent's inability to control an addiction, despite efforts at treatment, poses a long-term threat to a child's well-being. *In re R.J.*, 436 N.W.2d 630, 637 (Iowa 1989). The DHS case worker expressed concern Angela would again relapse and not be able to safely care for S.D.S. The concern is well-founded. Our supreme court has recognized the hazards of placing children in the custody of chronic methamphetamine users. *See State v. Petithory*, 702 N.W.2d 854, 858 (Iowa 2005). We conclude this record contains clear and convincing evidence that at the present time S.D.S. could not be returned to Angela's custody.

Angela's petition on appeal also includes a one-sentence argument that the juvenile court erred by failing to address the State's request to terminate parental rights under section 232.116(1)(f). It is not clear how Angela would have benefitted from the court's consideration of a second ground for termination. In any regard, 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).

Because Angela does not challenge the termination order under Iowa Code sections 232.116(2) or (3), we do not address those provisions.

AFFIRMED.