

IN THE COURT OF APPEALS OF IOWA

No. 2-416 / 12-0657
Filed June 27, 2012

**IN THE INTEREST OF P.A.I.P. and S.M.P.,
Minor Children,**

M.P., Mother,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Associate Juvenile Judge.

A mother appeals from a juvenile court order terminating her parental rights to two children. **AFFIRMED.**

Molly Vakulskas Joly of Vakulskas Law Firm, P.C., Sioux City, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Patrick Jennings, County Attorney, and Diane M. Murphy, Assistant County Attorney, for appellee.

Timothy Scherle, Sioux City, for father.

Joseph Kertels, Sioux City, attorney and guardian ad litem for minor children.

Considered by Doyle, P.J., Danilson, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MILLER, S.J.

Michelle is the mother, and Dennis the father, of S.P. and P.P. (“the children” or “the girls”), who were born in March 2003 and October 2005 respectively, and were thus nine and six years of age respectively at the time of a March 20, 2012 termination of parental rights hearing. Michelle appeals from a March 21, 2012 juvenile court order terminating her parental rights to the children. (The order also terminated the parental rights of Dennis, who was serving a lengthy term of imprisonment, consented to termination of his rights, and has not appealed.) We affirm.

Michelle and Dennis were at one time married. There was a history of domestic violence and drug usage in their home. In 2008 they divorced and custody of the children was placed with Dennis. Michelle had visitation rights.

In early 2010 Dennis and Michelle were living in different towns in Nebraska. Dennis left the children with his sister in Iowa. It was suspected that he was using drugs, based on his long history of drug use. In early March 2010 the State filed an application for temporary removal of the children, and also filed a petition alleging the children to be children in need of assistance (CINA). The juvenile court ordered the children removed from the physical custody of their parents and placed them in the legal custody of the Iowa Department of Human Services (DHS) for placement with a relative, in family foster care, or in shelter.

Following a removal hearing the court continued the children in the custody of the DHS for relative or family foster care placement. The removal order resulting from the hearing notes that after Dennis had left the girls with his

sister the sister observed that P.P. “was exhibiting behaviors of a sexual nature.” Arrangements were made to have P.P. begin therapy.

The children were adjudicated CINA in April 2010, pursuant to Iowa Code sections 232.6(2)(b) (2009) (abuse or neglect by parent), (c)(2) (failure of parent to supervise), and (n) (parent’s mental condition or drug use results in inadequate care). Temporary custody was continued in the DHS for placement with a relative, in shelter care, in family foster care, or with a suitable adult. The juvenile court ordered a home study of Michelle’s Nebraska home as a possible placement for the children.

Following both a June 2010 dispositional hearing and a November 2010 dispositional review hearing, the juvenile court continued custody with the DHS for placement as before. In its June order the court noted that both children had been participating in therapy. A November 2010 report by the Nebraska Department of Health and Human Services recommended against placing the girls in the Nebraska home in which Michelle and her paramour, Brian, were living. It based its recommendation on facts that, among other things, Michelle lacked consistent involvement in the children’s lives; Michelle lacked a stable employment history; Michelle and Brian both had extensive legal histories, including Michelle’s charges on the Nebraska child abuse registry; Michelle and Brian were recovering drug addicts who did not attend regular meetings; and Michelle and Brian were recovering alcoholics who minimized their current drinking.

In an order resulting from a February 2011 dispositional review hearing the juvenile court noted that both the children's foster mother and paternal grandmother felt the children needed permanency soon, found that the children had "started to have behaviors which, according to their therapist, stem from the uncertainty for their future," and found it was important that permanency be established as soon as possible. The court continued the children in the custody of the DHS for continued placement in family foster care.

The juvenile court held a permanency hearing on May 2, 2011. In its resulting order the court found, among other things, that Michelle had relocated to Iowa and was living with Dennis's sister. It also found:

[P.P.'s] masturbation has increased lately. The girls are open with their foster mother and have shared with her how their father would leave them with friends of [his] while [he] went out of town. The girls report that these men touched the girls' privates.

Custody and placement were continued as before.

In January 2011 Michelle had filed a motion seeking modification of the dispositional order, to change custody of the children to herself. The juvenile court held a permanency modification hearing in early October 2011. It found that a transitional visitation plan had been implemented and it was expected that the girls would "return to their mother's care on a full-time basis by October 24, 2011." The court ordered that temporary custody remain with the DHS for continued placement in foster care pursuant to the transition plan, resulting in custody being transferred to Michelle on October 24, subject to protective supervision by the DHS.

As of October 13, 2011, pursuant to the transition plan the girls began staying in Michelle's home part of the time. Michelle struggled with caring for them, and wanted to move back to Nebraska. In late November she asked a family, one that appears to have been a foster family for the girls, if the family wanted the girls, stating that she was not capable of taking care of them. Michelle left the girls with this family on November 26, and went to Nebraska. She returned to Iowa on December 2, and on that date signed a voluntary foster care placement agreement for both girls. On December 8 she executed a written, detailed voluntary consent to termination of her parental rights.

The State filed a petition for termination of parental rights on February 21, 2012. Following the termination hearing, the court ordered Michelle's parental rights terminated pursuant to Iowa Code sections 232.116(1)(a) (parent voluntarily and intelligently consents to termination and for good cause desires the termination) and (d) (child adjudicated CINA for abuse or neglect resulting from acts or omission of parent, parent was offered or received services but circumstance continues to exist). Michelle appeals.

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

In re C.B., 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

Michelle first contends the juvenile court erred in finding she voluntarily and intelligently consented to termination and for good cause desired the

termination. She alleges that after the termination hearing she discovered one of the children had “made allegations of sexual abuse in the foster home.” Michelle argues that “[a]s DHS did not discuss with Mother the events surrounding the sexual abuse allegations in the foster home, the Mother’s consent could not be voluntary and intelligent.”

A DHS case plan dated March 12, 2012, and filed with the juvenile court on March 13, 2012, stated in part:

There has been a recent allegation that the foster parents’ 13-year-old son had inappropriately touched [S.P.] in her private area. This is being investigated. The 13-year-old is not currently residing in the home and does not have access to either girl.

Michelle, represented by counsel, attended the termination hearing. Through counsel she acknowledged receipt of the exhibits offered by the State, which included the March 12 case plan, stated she had had an opportunity to review them, and stated she had no objections to the exhibits. Michelle’s statement in her brief that “**[o]ther than a brief mention in the Family Case Plan dated March 12, 2012,** no one from DHS contacted Mother to inform her of the investigation regarding the alleged sexual abuse in the foster home” further implicitly acknowledges that she was well aware of the allegation before the termination hearing. At no time during the CINA and termination proceedings in the juvenile court did Michelle ever contend that her consent to termination of her parental rights was not voluntarily and intelligently given.

On our de novo review we fully agree with and affirm the determination of the juvenile court that Michelle’s consent to termination of her parental rights was voluntarily and intelligently given.

Having found the ground for termination of Michelle's parental rights pursuant to section 232.116(1)(a) was proved by clear and convincing evidence, we need not address her additional contention that the juvenile court erred in finding the State had also proved the grounds for termination pursuant to section 232.116(1)(d). See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (holding that one statutory ground will suffice to affirm termination on appeal).

Michelle also contends the juvenile court erred in finding that termination of her parental rights is in the best interests of the children.

In determining whether termination of parental rights is in a child's best interest, we apply the statutory factors found in Iowa Code section 232.116(2). *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010). We consider the child's safety, long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child. Iowa Code § 232.116(2); *P.L.*, 778 N.W.2d at 37.

Michelle presents no argument as to why termination of her parental rights is not in the best interest of the children. When the children were transitioned to her home in October 2011, she struggled with caring for them. The evidence shows that when given this opportunity to be closer to the children and develop a more meaningful relationship with them, she placed greater importance on her relationship with Brian. Shortly after the children were transitioned to her home in October she left them at their foster home. By her own admissions, Michelle is unable to parent the girls.

For most of their lives the girls have lacked stability, security, permanency, and a sense of belonging with a person or persons who are committed to them. More than a year before the termination hearing the juvenile court noted concerns about the children's behaviors stemming from uncertainty as to their future, and opinions that they needed permanency soon. The children are fully integrated into a foster home, with their foster parents ready to adopt them.

After considering the statutory factors concerning best interests, we agree with and affirm the juvenile court's decision that termination of Michelle's parental rights is in the best interest of the children.

AFFIRMED.