

IN THE COURT OF APPEALS OF IOWA

No. 2-477 / 12-0768

Filed June 27, 2012

**IN THE INTEREST OF N.T.J.,
Minor Child,**

H.J., Mother,
Appellant.

Appeal from the Iowa District Court for Scott County, Christine Dalton,
District Associate Judge.

A mother appeals the termination of her parental rights. **AFFIRMED.**

Jack E. Dusthimer, Davenport, for appellant mother.

Thomas J. Miller, Attorney General, Amy C. Licht, Assistant Attorney
General, Michael J. Walton, County Attorney, and Gerda C. Lane and Julie A.
Walton, Assistant County Attorneys, for appellee State.

Christine D. Frederick of Zamora, Taylor, Woods & Frederick, Davenport,
attorney and guardian ad litem for minor child.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

POTTERFIELD, J.

A mother appeals the decision of the district court terminating her parental rights to her daughter, pursuant to Iowa Code sections 232.116(1)(d), 232.116(1)(e), and 232.116(1)(i) (2011). The mother contends the evidence admitted against her was improper, and that there is a lack of clear and convincing evidence to support the statutory grounds for termination. For the reasons set forth below, we affirm the termination of her parental rights.

I. Background Facts and Proceedings

We recite the facts as we set them out in the mother's previous appeal of the order waiving reasonable efforts in *In re N.T.J.*, No. 11-2073, 2012 WL 1067075, at *1–2 (Iowa Ct. App. March 28, 2012).

This family came to the attention of the Iowa Department of Human Services (DHS) in February 2011, based on allegations of denial of critical care and failure to provide adequate supervision and clothing to N.J. At that time, N.J., born in 2003, was walking to school without appropriate clothing for the cold weather and there were also concerns she was being locked in her room at home. Staff members at N.J.'s elementary school were also concerned about her small size and about reports from N.J. that she was not allowed to eat before or after school. DHS met with the family twice—once in February and once in March of 2011. N.J.'s adoptive mother, Holly, [N.J. was adopted by Holly, her maternal aunt, after the parental rights of N.J.'s biological parents were terminated.] was "hostile and resistant to DHS involvement." In late February 2011, Holly withdrew N.J. from her elementary school and began homeschooling her.

In May 2011, additional information was reported to DHS when N.J. missed medical appointments to check her height and weight, as she was previously diagnosed as "failure to thrive." Holly denied DHS's attempts to have contact with the child. On June 9, 2011, N.J. was examined by a physician; at seven years old she weighed thirty-four pounds and was forty-two inches tall. The diagnosis of "failure to thrive" continued and the physician contacted DHS. Holly was again contacted by DHS but resisted efforts to resolve the situation. A home visit was attempted on

August 16, 2011, with Holly refusing to permit DHS worker, Lisa Wischler, to enter the home to see N.J. On August 25, 2011, DHS filed an application for order for home visit pursuant to Iowa Code section 232.71 B(4) and (5) (2011). The district court granted DHS the authority to enter Holly's home in order to make an assessment of possible child abuse, to evaluate the home environment, and to observe and interview N.J.

Pursuant to this order, Eric Gruenhagen, a Davenport police officer, accompanied DHS workers, Shannon Anderson and Laurie Lyndman, as well as Cheryl Fullenkamp, the child's guardian ad litem, to Holly's home on August 25, 2011. After twenty minutes of knocking on the doors, and attempting to gain the attention of the occupants, N.J. opened the side door. The condition of the home was described by DHS as follows:

The home was filthy, smelled strongly of cat and dog urine and feces, and had garbage strewn throughout the home. The garbage was overflowing onto the floor, and there were dirty dishes all over the kitchen, old food on the floor and throughout the home. Additionally, it was discovered that there were locks on the outside of [N.J.'s] door and that there were no furnishings or bedding in her room. The only thing found in [N.J.'s] room was a twin bed frame leaned up against the wall with a deflated air mattress hanging over the frame. [N.J.] was filthy, smelling strongly of cat urine. She was wearing dirty clothing and had dirty hands and feet. She also had numerous bruises on her body.

Photographs, which corroborated the descriptions above, were taken of N.J. and of the interior of the house. N.J. was removed from Holly's care and taken to Genesis East Hospital for three days of evaluation and treatment. On August 26, 2011, DHS filed an ex parte application for temporary removal. The district court ordered temporary care and custody of N.J. be placed with DHS. On August 31, a contested temporary removal hearing was held. On September 12, the district court ordered N.J. be placed in the custody of DHS for placement in foster care. On October 6, a protective order was filed in Holly's criminal proceeding to prevent Holly from contacting N.J. On October 7, all parties stipulated to the adjudication of N.J. as a child in need of assistance under Iowa Code section 232.2(6)(b), (6)(c)(2), (6)(e), (6)(g), and (6)(n). On November 10, DHS filed an application for hearing to waive reasonable efforts. A contested hearing as to the waiver of reasonable efforts was held on November 23, along with an uncontested dispositional hearing. On December 8, the district court issued an order waiving reasonable efforts, and ordering

N.J.'s continued custody with DHS, continuing placement in foster care, and approving the proposed DHS case plan.

On appeal, this court affirmed the district court's order and waiver of reasonable efforts. *Id.* at *6.

After the district court's disposition but before our opinion on appeal, Holly finally underwent evaluation with a DHS referred psychiatrist. The report of this evaluation noted Holly's response pattern suggested "denial, avoidance and probable misrepresentation of what occurred." The report was also notable for Holly's denial of N.J.'s diagnosis of failure to thrive. Instead she stated N.J. was found to be short for her age and questioned the physician's diagnostic methods. A termination hearing was held on March 21, 2012. Holly's parental rights to N.J. were terminated April 9, 2012.

During the period of foster placement between removal and the termination of rights hearing, N.J. gained weight, grew, and became more confident. Her foster parents have been vigilant in assisting with her needs, including following through with her many doctors' appointments. Adoption by the foster family has been recommended.

II. Analysis

A. Standard of Review

We review termination of parental rights appeals de novo. See *In re M.S.*, 519 N.W.2d 398, 399 (Iowa 1994) (stating our standard of review is de novo). We give weight to the findings of the district court, which had the opportunity to observe the witnesses and their demeanor, but we are not bound by those findings. See *In re Marriage of Forbes*, 570 N.W.2d 757, 759 (Iowa 1997). The

grounds for termination must be proved by clear and convincing evidence. *In re T.P.*, 757 N.W.2d 267, 269 (Iowa Ct. App. 2008). In termination cases, our primary concern is the best interests of the children. *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007). “We only need to find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm its ruling.” *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2002).

B. Admissibility of Evidence

Holly first contends the evidence submitted at the termination hearing was inadmissible. Iowa Code section 232.96 provides for admissibility of certain evidence containing hearsay statements in child-in-need-of-assistance (CINA) proceedings. Iowa Code § 232.96 (2011). This evidence includes:

A report, study, record, or other writing or an audiotape or videotape recording made by the department of human services, a juvenile court officer, a peace officer or a hospital relating to a child in a proceeding under this division is admissible notwithstanding any objection to hearsay statements contained in it provided it is relevant and material and provided its probative value substantially outweighs the danger of unfair prejudice to the child’s parent, guardian, or custodian. The circumstances of the making of the report, study, record or other writing or an audiotape or videotape recording, including the maker’s lack of personal knowledge, may be proved to affect its weight.

This hearsay exception applies to termination of parental rights proceedings as well. *In re N.N.*, 692 N.W.2d 51 (Iowa Ct. App. 2004) (citing *In re E.J.R.*, 400 N.W.2d 531, 532–33 (Iowa 1997)). Thus, the evidence relied upon by the district court, including DHS records, the police report, and hospital records were all properly admissible.

C. Grounds for Termination

Holly next contends clear and convincing evidence did not exist to support termination of her parental rights. Iowa Code section 232.116(1)(d) permits termination when both of the following occur:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

N.J. was adjudicated CINA in October 2011 having been abused and neglected as a result of Holly's acts or omissions. Holly was offered services to help her handle psychological issues and address parenting needs. She failed to participate meaningfully in these services, asserting her Fifth Amendment right not to incriminate herself prevented her from participation. We previously decided:

In balancing Holly's Fifth Amendment right against self-incrimination with her ability to respond to services that would correct the conditions that led to the abuse or neglect of the child within a reasonable period of time, we conclude that Holly's invocation of her Fifth Amendment right had consequences, including the district court's finding that Holly, 'is not able to participate in any remedial process to resolve the adjudicatory harm so that reunification can occur.'

In re N.T.J., 2012 WL 1067075 at *5. We cited *In re C.H.*, noting these services did not "compel Holly to provide information to incriminate herself." *Id.* (citing *In re C.H.*, 652 N.W.2d 144, 150 (Iowa 2002)); cf *In re B.V.*, No. 11-1730, 2012 WL 150581, at *1 (Iowa Ct. App. Jan. 19, 2012) (case plan requirement that father

admit to involvement in physical abuse to regain custody was violation of right against self-incrimination).

Even during her eventual psychiatric evaluation, Holly denied N.J.'s diagnosis and refused to take responsibility for the state of her house or acknowledge the severity of N.J.'s health concerns. The circumstances leading to N.J.'s CINA adjudication therefore still exist, and upon our de novo review, we find clear and convincing evidence supports the termination of Holly's parental rights pursuant to Iowa Code section 232.116(1)(d).

D. Best Interests of the Child

Although grounds exist for termination under Iowa Code section 232.116(1), we turn to whether the best interests of the child require termination of parental rights.¹ *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010). In determining the best interests of the child, we turn to the framework in Iowa Code section 232.116(2). *Id.* This section reads:

In considering whether to terminate the rights of a parent under this section, the court shall give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child. This consideration may include any of the following:

. . . .

b. For a child who has been placed in foster family care by a court or has been voluntarily placed in foster family care by a parent or by another person, whether the child has become integrated into the foster family to the extent that the child's familial identity is with the foster family, and whether the foster family is able and willing to permanently integrate the child into the foster family. In considering integration into a foster family, the court shall review the following:

¹ We address these issues, which were not raised on appeal, in the interest of completeness in light of the mother's request for full briefing.

(1) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining that environment and continuity for the child.

(2) The reasonable preference of the child, if the court determines that the child has sufficient capacity to express a reasonable preference.

Iowa Code § 232.116(2) (2011). Here, N.J. has thrived in foster care since August 2011 and her foster parents are willing to adopt her. She has expressed a desire to remain with that family, and is becoming mentally and physically healthier with the help of her foster parents.

Finally, the court must determine whether any factor weighing against termination exists under section 232.116(3). *In re P.L.*, 778 N.W.2d at 40. None of these factors exist in this case. Holly and N.J. do not have a bond that would make termination of parental rights detrimental to N.J. On the contrary, mother and child have a strained relationship and the child does not wish to return to her mother. Therefore, it is in the best interests of the child that parental rights be terminated.

III. Disposition

The properly-admitted evidence is clear and convincing, fully satisfying the statutory grounds for termination. In addition, the child is thriving in foster care with high potential for permanency with that family. Therefore, termination is in the best interests of the child and we affirm the district court's ruling.

AFFIRMED.