

IN THE COURT OF APPEALS OF IOWA

No. 2-527 / 11-0606
Filed July 11, 2012

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

A.J., Mother,
Appellant,

S.C.J., Father,
Appellant.

Appeal from the Iowa District Court for Johnson County, Deborah Farmer Minot, District Associate Judge.

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

AFFIRMED.

Raymond M. Tinnian, Kalona, for appellant-mother.

Natalie Cronk of Law Office of Natalie Hope Cronk, Iowa City, for appellant-father.

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

Dai Gwilliam of Moore & Egerton, L.L.P., Iowa City, attorney and guardian ad litem for minor child.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

TABOR, J.

A mother challenges the termination of her parental rights to her now nine-year-old daughter, E.J. The mother, whose parental rights to her two youngest children were terminated in 2010, alleges the juvenile court erred in not recognizing that she has made substantial progress with services. The mother also claims the court improperly based its termination decision on the theory that her foster family provided E.J. with a “better parent.”

Because our review of the record leads us to the same conclusion as the juvenile court, we reject the mother’s claims and affirm the termination order. The State presented clear and convincing evidence that additional services will not enable E.J.’s mother to provide the child with proper care. Moreover, the consideration of a child’s best interests under Iowa Code section 232.116(2) (2009) may include a review of her integration into a foster family. Accordingly, we find no error in the court’s discussion of E.J.’s progress while in foster care.

I. Facts and Procedural History

Angela and Stephen have four children: N.J., who was born 2000; E.J., who was born in 2003; T.J., who was born in 2006; and M.J., who was born in 2008. Both parents have limited cognitive abilities that have affected their parenting skills. The juvenile court adjudicated N.J., T.J., and E.J. as children in need of assistance (CINA) in November 2008. The father and mother were not providing proper care or supervision of the children. Care providers testified E.J. received the least amount of attention of all the children. At that time, E.J. was

five years old and still wearing diapers. The juvenile court described the family home as “increasingly dirty, disorganized, and dangerous.”

The parents were even more overwhelmed after the birth of their fourth child, M.J. The guardian ad litem (GAL) characterized the home environment as “chaotic, verbally abusive, and where the children are not supervised nor are the parents actively engaged in their development.” The GAL reported E.J. suffered from severe delays in her language skills, to the extent that she could “only express herself in a few words.” The court ordered removal of all four children from their parents’ custody in August 2009.

The Department of Human Services (DHS) placed E.J. with a foster family where she has remained throughout the case. E.J. came to her foster family with a variety of health issues, including asthma, a urinary bladder disorder, and chronic constipation. After consultation with gastrointestinal specialists, her foster mother treated E.J.’s condition with laxatives and a high-fiber diet. Doctors also diagnosed E.J. with an attention deficit disorder and prescribed Ritalin. The foster mother testified that Angela and Stephen did not seem to take E.J.’s dietary needs seriously.

In December 2009, the DHS case workers reported “no significant progress with reunification efforts since the children were removed despite an intensive level of services and support.”

On June 8, 2010, the juvenile court terminated the parents’ rights to the two youngest children, T.J. and M.J. The order found the parents had engaged in “chronic neglect of their children”—manifesting through problems with nutrition,

hygiene, home environment, and supervision. In an opinion affirming the termination issued on October 26, 2010, our court stated: “There is no doubt the children would be at risk of further neglect if returned to the parents’ care.” *In re T.J.*, No. 10-1030, 2010 WL 3894592, at *2 (Iowa Ct. App. Oct. 6, 2010).

On June 16, 2010, the Johnson County Attorney filed its petition to terminate the parent’s rights regarding E.J. The GAL recommended termination, observing: “[N]either Angela nor Stephen have anything like the parenting abilities to meet [E.J.’s] special needs.”

About a month later, the juvenile court returned E.J.’s older brother, N.J., to Angela’s custody. N.J., who is a high functioning child, expressed a strong desire to stay with his mother. But the DHS workers noted that Angela struggled to perform basic parenting tasks even when N.J. was the only child in her care; for example, she did not consistently enforce a regular bedtime or ensure that he arrived at school on time.

In September 2010, professionals at the University of Iowa’s Center for Disabilities and Development (CDD) evaluated E.J.¹ A speech pathologist determined she was only sixty percent intelligible to an unfamiliar listener. E.J.’s vocabulary and language skills ranged from below average to very poor. Angela did not comprehend the severity of E.J.’s speech problem; she told the speech pathologist that it was only hard to understand E.J. if you didn’t know her; “once you get to know her, you’ll be able to understand her.”

¹ This was her second assessment from the CDD, having first been evaluated there in August 2007. At that time, cognitive testing revealed her skills ranked within the borderline to mild intellectual disability range.

E.J.'s full scale IQ was "significantly below average for her age." The evaluation recommended E.J. continue in special education classes with an emphasis on the development of "functional academic skills" that could be used in her everyday life. E.J.'s foster mother testified to the sobering, yet constructive nature of the results:

I guess I didn't have a handle on that until it was told to me, and it hit me pretty hard. But the diagnosis has helped a lot because it's sure changed the way that we worked with her and the school's worked with her.

The juvenile court heard evidence regarding termination of parental rights to E.J. over three days: January 31, 2011; February 1, 2011, and February 7, 2011. On April 5, 2011, the juvenile court entered an order terminating the legal ties of both Angela and Stephen to their daughter, E.J.² The court based its termination decision on three statutory alternatives: Iowa Code section 232.116(1)(f) (allowing termination if a child age four or older has been adjudicated CINA, removed from the parent's care for at least twelve consecutive months, and cannot be returned home at the time of the termination hearing); section 232.116(1)(g) (allowing termination if a child has been adjudicated CINA, the court has terminated parental rights with respect to another child in the family, the parent continues to lack the ability or willingness to respond to services, and additional time would not correct situation); and section 232.116(1)(i) (allowing termination if finding of abuse or neglect leads to CINA, the abuse or neglect

² The mother filed a petition on appeal on May 9, 2011. On July 22, 2011, our supreme court dismissed the father's appeal as untimely. The State and GAL filed responsive petitions in August 2011. This appeal was transferred to the Iowa Court of Appeals on June 14, 2012.

posed a significant risk to the life of the child or constituted imminent danger to the child, and the receipt of services would not correct situation). Angela appeals.

II. Standard of Review

Our courts perform a de novo review of proceedings to terminate parental rights. *In re Interest of H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). “We give weight to the juvenile court's factual findings, especially when considering the credibility of witnesses, but we are not bound by them.” *Id.*

III. Analysis

A. Statutory Grounds

Angela claims the juvenile court erred in concluding E.J. could not be returned to her custody without facing harm. See Iowa Code § 232.116(1)(f). She further contends that she has made “substantial progress with services” and has been able to correct the situation that resulted in E.J.’s adjudication as CINA. See *id.* § 232.116(1)(g).³

When the juvenile court has relied on more than one code provision for its termination decision, we will affirm if clear and convincing evidence supports at least one ground. *In re R.K.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). In this case, termination was proper under section 232.116(1)(f).

³ The State argues that Angela has not preserved error on Iowa Code section 232.116(1)(i), the third ground cited by the juvenile court. That provision requires proof that the parents’ neglect posed a significant risk to the life of the child or posed an imminent danger to the child. Because the record evidence does not confirm that the parents’ neglect of E.J. was life-threatening, we focus our attention on other statutory grounds.

At the time of the termination hearing, E.J. had been out of her mother's care for nineteen months. Witnesses described E.J. as a "vulnerable child" who needed "almost constant supervision" and "a lot of structure." None of the care providers believed Angela was capable of meeting E.J.'s special needs.⁴ The DHS workers noted that Angela was having difficulty following routine parenting schedules since regaining custody of her older son N.J., who was very self-sufficient. If Angela could barely parent N.J., the workers did not think she could, in addition, handle the high maintenance necessary to keep E.J. on track medically and developmentally. Our appellate courts will uphold terminations where parents, despite a marginal response to services, do not have the cognitive abilities to provide reliable, long-term care. See *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010) (affirming termination where a mother had made "marginal improvements" but was unable to display an ability to properly care for her child).

The GAL asserts the following in his appellate brief: "If [E.J.] were placed back in her original environment, I would be fearful that she would regress into the introverted, barely functional child she was when this case began." We agree with the juvenile court's determination that E.J. could not be returned to Angela's care without facing developmental or medical setbacks.

⁴ In her petition on appeal, Angela summarily asserts that the State failed to make reasonable efforts to reunify her with her children. The reasonable-efforts requirement of Iowa Code section 232.102(7) is not a strict substantive requirement of termination, but instead impacts the State's burden of proving the elements. See *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). The termination ruling lists the numerous and intensive services provided to this family over the years. We agree with the juvenile court's conclusion that the DHS made reasonable efforts toward reunification.

B. Best Interests/“Better Parent” Theory

Angela also argues that termination is not in E.J.’s best interests. She urges us to reverse the juvenile court’s ruling because it was “improperly based on the ‘better parent’ theory.” In support of her position, Angela points to “compliments” in the ruling for the foster mother on her care of the child “as a counterpoint to the problems the parents have experienced.”

It is true that our courts are not permitted to “take children away from their parents simply by deciding another home offers more advantages.” *Matter of Burney*, 259 N.W.2d 322, 324 (Iowa 1977). But we do not read the juvenile court’s decision as terminating Angela’s rights so that E.J. can reap greater advantages offered by her foster family. In fact, the juvenile court recognized case law holding that a foster mother’s superior capability to care for a child is not sufficient reason to terminate the relationship with a natural parent. See *In re S.J.*, 451 N.W.2d 827, 831 (Iowa 1990). Yet the juvenile court noted that when a disabled parent lacks the capacity to meet a child’s future needs, it is relevant to the best-interest determination. See *In re A.M.S.*, 419 N.W.2d 723, 733-34 (Iowa 1988).

Our termination statute anticipates that—in determining what placement best serves a child’s immediate and long-term interests—the juvenile court will consider: (a) whether the natural parent’s ability to provide for the child’s needs is affected by his or her mental capacity and (b) for a child in family foster care, whether the foster parents are able and willing to permanently integrate the child into their family and the desirability of maintaining that stable environment. Iowa

Code § 232.116(2). With that statutory guidance in mind, the juvenile court appropriately determined that if E.J. were returned to her mother's care she would be at risk for "medical and educational neglect, lack of appropriate supervision, and physical and emotional abuse." We agree with the court's findings that it is in E.J.'s best interests to have parental rights terminated so that she may be placed for adoption. The foster mother testified she was willing to continue caring for E.J. and would be open to maintaining E.J.'s ties to her biological relatives.

The instant circumstances resemble the facts of *A.M.S.* In that case, our court found compelling reasons to separate siblings, where one sister had normal intelligence and the other required exceptional parenting skills because of her mental disability and significant health problems. *A.M.S.*, 419 N.W.2d at 734. Our court determined that the natural mother, because of her own mental disability, was not capable of parenting the special needs child. *Id.* (recognizing child's marked improvement due to parental stimulation in the foster home). Similarly here, the record showed that E.J. was thriving in her foster home and could not receive the attention, supervision, nurturing, and patience she required from Angela. Considering the family's history of neglect and E.J.'s vulnerability, the juvenile court was correct in terminating Angela's parental rights.

AFFIRMED.