

IN THE COURT OF APPEALS OF IOWA

No. 3-1186 / 13-1569
Filed January 9, 2014

**IN THE INTEREST OF I.C.C.J.-H.,
Minor Child,**

T.H., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Peter A. Keller,
Judge.

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

Nancy A.S. Trotter, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John Sarcone, County Attorney, and Jennifer Galloway,
Assistant County Attorney, for appellee.

Paul White, Des Moines, attorney and guardian ad litem for minor child.

Considered by Vogel, P.J., and Mullins and McDonald, JJ.

MULLINS, J.

A mother appeals a juvenile court order terminating her parental rights to a son, I.J.H., under Iowa Code sections 232.116(1)(d), (e), and (h) (2013). She argues the State failed to show sufficient evidence to terminate.

I. Facts and Background Proceedings.

The child came to the attention of the Department of Human Services (DHS) shortly after he was born in October 2012.¹ Hospital staff noted the mother handled the infant roughly, was inattentive to his needs, and was unwilling to provide care for him. At birth, I.J.H. suffered from respiratory problems and tested positive for opiates. The mother admitted to using alcohol and marijuana while pregnant but did not explain why I.J.H. tested positive for opiates.

The State filed a Child in Need of Assistance (CINA) petition and a temporary removal petition on November 9, 2012. The court granted the temporary removal petition on the same day and placed I.J.H. with the foster parents with whom he continues to reside today. The mother had a long history of involvement with human services in Illinois during her own childhood due to her behavior and mental deficits, including psychiatric hospitalizations. The mother received \$870 each month in Social Security Disability payments. She

¹ The mother reported I.J.H.'s father is a former boyfriend with whom she has had no contact since she was a month pregnant. The court attempted to serve the father with notice of these proceedings, but he did not appear or become involved at any point in this case. The juvenile court terminated his parental rights in the same order in which it terminated the mother's parental rights.

had never had a job and had no other source of income. At the time she gave birth, she had been living in a homeless shelter.

On January 9, 2013, the court adjudicated I.J.H. a child in need of assistance. The juvenile court ordered the mother to obtain a mental health evaluation and intelligence testing. The court also ordered DHS to provide the mother with a number of services, including housing and transportation assistance. The mental health evaluation recommended individual therapy to deal with the mother's mental health problems and to help her learn how to assess the people in her life in order to provide a safe environment for I.J.H.. The intelligence assessment showed the mother's executive mental functions were within the normal range, and she was declined for certain services reserved for less able persons. The court also ordered visitation. DHS established supervised visitation two days each week. The mother also obtained a substance abuse evaluation, which diagnosed her with marijuana and alcohol dependency but did not recommend treatment because the mother refused to believe she had any problem.

The mother's housing throughout the case has been unstable. After I.J.H.'s birth, she was living in a homeless shelter. She was evicted and banned for life for getting into a physical altercation with another resident. She was offered a place at Hope Ministries but declined because of their rules and restrictions. Afterward, she lived briefly with a number of friends and acquaintances including a boyfriend. DHS assisted her with obtaining housing, but she repeatedly failed to file applications or appear for appointments. In May,

she did obtain a two-bedroom apartment. Visitation eventually occurred in this apartment. The Family Safety, Risk, and Permanency (FSRP) worker noted that initially there was no furniture in the apartment. Eventually, the mother obtained living room furniture but no bed for her or for I.J.H.. The mother also was in an intimate relationship with a man named Aaron for two months. She indicated he occasionally spent the night at this apartment. She did not know his last name. On one occasion, she called police when she and Aaron fought and he choked her, leaving marks on her neck.

In June she was evicted. The eviction notice stated the landlord was concerned that police had visited the unit on multiple occasions, she disturbed other residents with loud music and parties, her guests had been disorderly, and there was excessive traffic in and out of the unit. The mother discussed with the FSRP worker a Memorial Day party she hosted in the apartment.

At the time of the termination hearing, the mother was living with a woman named Monique, whose last name she did not know. She admitted Monique's home was not an appropriate place to reunite with I.R.H.. The mother's individual therapy is intended to help her make better decisions about the people with whom she associates to create a safe parenting environment. However, she attended only four sessions in January and February and has not returned. She also enrolled in parenting classes but never attended. DHS has provided bus passes and tokens and repeatedly offered her information and other assistance to aid her attendance.

The mother repeatedly and frequently missed visitation, often with dubious excuses. Visits had been reduced from one-and-a-half hours twice a week to once a week because of her inconsistency. Although the FSRP worker reported that the mother's parenting skills had improved, she also reported they continued to be inadequate. The FSRP worker reported the mother required constant prompting to feed or change the baby, provide him appropriate toys, or interact with him appropriately. The FSRP worker testified the mother's parenting deficiencies in simple daily tasks persisted despite frequent and repeated instruction. The mother demonstrated an inability to understand I.J.H.'s abilities and needs for his age, including how to feed him (giving him bottles to hold by himself or leaning him back and propping a bottle up on blankets beneath his chin) and what to feed him (attempting to feed him baby food too advanced for his age.) The mother had been unprepared for visitations, providing I.J.H. no toys, or occasionally no food or diapers. She left him unattended to handle other matters. At the time of the termination hearing in August, she had not attended a visitation since June.

Throughout the case, communication with the mother was made more difficult by the mother's failure to obtain or operate a telephone. Although she was given a government-sponsored cellular telephone, she frequently had many excuses for not communicating, such as her phone was broken or stolen. On July 15, the mother was arrested for a theft from Walmart. At no time during these proceedings was she employed.

The State filed a petition to terminate her parental rights and amended that petition on June 18, 2013. The court held a termination hearing on August 19, 2013 after I.J.H. had been out of his mother's care for more than ten months. The court ordered the mother's parental rights to be terminated on September 16, 2013. The court terminated parental rights pursuant to Iowa Code sections 232.116(1)(d), (e), and (h). The mother appeals.

II. Standard of Review.

We review a juvenile court order terminating parental rights de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We give weight to the factual determinations of the juvenile court but are not bound by them. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Our primary concern is the best interests of the child. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

III. Analysis.

We will uphold termination of parental rights where there is clear and convincing evidence of the statutory grounds for termination. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). Evidence is clear and convincing when there are no serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence. *Id.* When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the cited sections to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Here, we focus on the evidence supporting the court's termination of the mother's parental rights under Iowa Code section 232.116(1)(h).

To terminate parental rights under Iowa Code section 232.116(1)(h), the State must show by clear and convincing evidence the child is three years old or younger, has been adjudicated a child in need of assistance, has been removed from the parent's care for at least the last six consecutive months, and cannot be returned to the parent's custody at the time of the termination hearing.

I.J.H. was born October 2012, removed from his mother's care in November 2012, and adjudicated a child in need of assistance in January 2013. At the time of the termination, he was less than a year old and had been out of his mother's care for over ten consecutive months. He has never been returned to his mother for any trial period. The mother contends the district court erred in finding that I.J.H. could not be returned to her custody because she "has gained parenting skills enabling her to safety and successfully parent her son." The record does not support this assertion.

The mother has demonstrated and continues to demonstrate little understanding of I.J.H.'s needs and abilities. Her parenting requires constant prompting. During supervised visits, she repeatedly placed I.J.H. in unsafe situations. Her housing remains unstable. She admits her current situation, living with Monique, is inappropriate for I.J.H.. DHS has made many efforts to assist her in obtaining suitable housing. She was unable to retain an apartment for more than two months because of decisions she made regarding her activities and the people with whom she associates. She is not attending any therapy to address these issues, nor is she attending parenting classes. DHS has made many efforts in resources and information to aid her attendance, to no avail. She

does not have employment and has never been employed. The evidence is clear and convincing that I.J.H. cannot be returned to her custody. Therefore, the statutory grounds for termination under Iowa Code section 232.116(1)(h) are satisfied.

IV. Conclusion.

Upon our de novo review, we find by clear and convincing evidence statutory grounds to terminate the mother's parental rights under Iowa Code section 232.116(1)(h). Therefore, we affirm the juvenile court order.

AFFIRMED.