

IN THE COURT OF APPEALS OF IOWA

No. 3-325 / 12-2106

Filed April 24, 2013

**IN THE INTEREST OF L.R.V.,
Minor Child,**

J.V., Mother,
Appellant,

K.K. and J.V., Grandparents,
Appellants.

Appeal from the Iowa District Court for Webster County, Angela L. Doyle,
District Associate Judge.

A mother challenges the juvenile court's order terminating parental rights
to her daughter. **AFFIRMED.**

Derek Johnson of Johnson & Bonzer, P.L.C., Fort Dodge, for appellant-
mother.

K.K., Fort Dodge, pro se grandparent.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Ricki Osborn, County Attorney, and Jordan Brackey, Assistant
County Attorney, for appellee.

Monty Fisher, Fort Dodge, for father.

Marcy Lundberg, Fort Dodge, attorney and guardian ad litem for minor
child.

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

TABOR, J.

Jessica challenges a juvenile court's order terminating parental rights to her ten-year-old daughter, L.V. She contends insufficient evidence supports the court's best-interest finding. Since L.V. began living with her father, she has substantially improved in all aspects of her life and has developed a strong relationship with him. Because the record shows the bond between Jessica and L.V. is deteriorating due to Jessica's refusal to address her substance addiction, we agree termination is in L.V.'s best interest and affirm.

I. Background Facts and Proceedings

L.V. is the daughter of Jessica and Anthony. Before L.V. turned three, she began living with Jessica's parents, who lived a few houses away. The girl has not resided with her mother since. While L.V. lived with her grandparents, Jessica would often visit her. Anthony paid child support and spent time with L.V. as well.

Jessica has a history of methamphetamine use. In September 2010, a juvenile court terminated Jessica's parental rights to two other daughters, based on substance abuse and domestic violence.

Anthony has a history of alcohol abuse and has pled guilty to operating while intoxicated (OWI) on three occasions. His third offense was three years ago, and he claims to no longer have dependency issues. The Iowa Department of Human Services (DHS) records corroborate his claim.

On August 5, 2011, DHS received a report that Jessica kicked L.V. in the thigh. L.V. told one worker the blow caused a reddish-purple bruise that lasted

three days. According to the report, Jessica also used methamphetamine in L.V.'s presence. Jessica also had charges pending following a drug raid, where officers found methamphetamine and a digital scale in her purse.

Jessica agreed to undergo a substance abuse evaluation. The evaluator noted Jessica behaved like she was under the influence of a substance, refused to provide a urine sample, had needle marks on her arms, and was "filthy." The evaluator recommended L.V. be removed from Jessica's custody. The court temporarily placed L.V. with Anthony.

In an August 23, 2011 removal hearing, all parties except Jessica agreed L.V. should remain in Anthony's custody.¹ On October 11, 2011, all parties stipulated and the juvenile court adjudicated L.V. to be a child in need of assistance (CINA) under Iowa Code sections 232.2(6)(c)(2) and 232.2(6)(n) (2011). Over the next year, Jessica periodically visited L.V., but would not acknowledge using drugs.

On October 25, 2012, the juvenile court held a hearing to address permanency for L.V. and the State's petition to terminate Jessica's parental rights. Jessica did not attend the hearing.² The court received exhibits and heard testimony from Anthony, social worker Lindsay Davis, and service provider Suzanne Elberg. L.V.'s guardian ad litem recommended the court terminate Jessica's rights and place L.V. in Anthony's care.

¹ Because L.V. spent a substantial portion of her life with her maternal grandparents, the juvenile court granted the grandparents' motion to intervene during the child in need of assistance proceeding, but not in the termination-of- parental-rights proceeding.

² Jessica's attorney assured the court Jessica was aware of the proceedings, but that he had not heard from her in more than two months.

On November 12, 2012, the juvenile court found the State proved grounds to terminate Jessica's parental rights to L.V. under sections 232.116(1)(g) and 232.116(1)(f).³ The court also found termination was in L.V.'s best interest, which would be further served by transferring full custody to Anthony. Jessica appeals the order, arguing termination was not in her daughter's best interest.

II. Standard of Review

We review a juvenile court's termination of parental rights de novo. *In re A.B.*, 815 N.W.2d 764, 774 (Iowa 2012). We accord weight to its factual findings, especially regarding witness credibility, but we are not bound by them. *Id.*

III. Analysis

Jessica argues because witnesses testified she and L.V. maintained a strong bond, it was not in the child's best interest to terminate her parental rights.

³ Those sub-subsections authorize termination if the court finds:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family or a court of competent jurisdiction in another state has entered an order involuntarily terminating parental rights with respect to another child who is a member of the same family.

(3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.

(4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has a severe substance-related disorder and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

Iowa Code § 232.116(1)(g), (f).

She also contends terminating her rights would place a financial strain on Anthony and the State, and L.V. would be better served by requiring Jessica to pay child support.

The State highlights testimony that L.V. has more of a friendship with Jessica than a mother-daughter bond. According to the State's evidence, Jessica's "blow-ups" during visits upset L.V. The State asserts any loss of child support does not justify preserving Jessica's rights.

When assessing the best interests of a child, we consider factors such as the child's mental, physical, and emotional needs; safety; and long-term nurturing and growth. Iowa Code § 232.116(2). By reviewing evidence of a parent's past performance, which may be indicative of future capabilities, we look to what the future will likely hold if the child is returned to the previous environment. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994).

When a parent has a history of substance abuse, we consider her treatment history to gauge the likelihood she will be able to care for the child in the foreseeable future. See *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). When parents are unable to rise above their addictions and stop using controlled substances in a noncustodial setting or to establish the support system necessary to stay drug free, little hope of success in parenting exists. *Id.*

Jessica has denied using drugs since February 2010. But the record reveals several times that she has either refused testing or tested positive for methamphetamine during 2011 and 2012. Rather than accepting responsibility for relapses, Jessica alleged to social workers that someone tampered with her

specimens or spiked her prescription Adderal to cause positive results. In May 2012 Jessica entered an *Alford* plea⁴ for possession of methamphetamine.

DHS worker Lindsey Davis testified when Jessica is on drugs, she becomes a “wild card” and regularly upsets L.V. during visits. L.V. confided that her mother used to yell and kick her. Jessica commonly misses or is late to her visits. Jessica shouts at L.V. and has accused her daughter of choosing Anthony’s family over her own. She brings up court matters with L.V. and questions her about her initial abuse allegations. Davis recalled a visit to celebrate L.V.’s birthday, when Jessica began accusing L.V. of favoritism and told L.V. she didn’t want any more visits with her. L.V. became “incredibly upset,” which ended her birthday party. Although Jessica has had constructive visits with L.V., Davis believes the negative outweighs the positive in the relationship, because L.V. takes the hurtful interactions to heart and remembers them, causing her extreme anxiety.

Davis voiced concern over the prospect of L.V. returning to her maternal grandparents. In the 2010 juvenile case, the grandparents failed a DHS home study because of their inability to provide a safe and appropriate environment. The grandfather tested positive for methamphetamine. According to the DHS, he acts angry, is accusatory, and tries to dominate and intimidate others. The

⁴ An *Alford* plea is a variation of a guilty plea where the defendant does not admit participation in the acts constituting the crime but consents to the imposition of a sentence. See *North Carolina v. Alford*, 400 U.S. 25, 37 (1970).

worker also believed the grandparents would be unable or unwilling to restrict Jessica's access to L.V.

Finally, Davis described Jessica's chance of recovery as "bleak" based on her denial of any drug addiction.

Davis testified to the strong bond between Anthony and his daughter, and described L.V.'s improvements since living with him:

she's always been a smart kid, but I just see that she's just really matured, and she's come out of her shell in that way. I think she feels very comfortable at her dad's house. And she has support there. Things are calm. Things are stable. She has a routine. And I just see that she's just really kind of blossoming I guess.

Service provider Suzanne Elberg echoed Davis's sentiments that L.V. was flourishing in her father's care and Jessica was not likely to stop using drugs. Elberg testified L.V. is involved in extracurricular activities, is well-liked by her teacher and peers, has not missed school, and is earning very strong grades.

In his testimony Anthony described his work routine and bond with L.V. Because Anthony is a restaurant manager, he works most evenings, but has two nights off per week and returns home early on two additional nights. His mother looks after L.V. while he works. Because Anthony's mother lives nearby, she takes L.V. home to sleep in her own bed on nights when Anthony works late. Anthony gets L.V. ready for school in the morning, and his sister picks her up. Anthony testified L.V. returns upset from almost half of her visits with Jessica, either because her mother does not attend or because the visit goes poorly.

The record does not support Jessica's claim she is well-bonded with her daughter or that L.V. benefits from their visits. The DHS reported to the court

that Jessica's inappropriate interactions with her daughter strained their relationship. The report notes a tenuous connection between the two, and that since moving in with Anthony, L.V. misses her grandparents more than her mother. In a January 2012 visit, Jessica said she felt more like a friend or sister to L.V. than her mother. And DHS records show instances in which L.V. took on the maternal role with Jessica. Both have voluntarily ended supervised visits early.

The report praises Anthony's ability to provide and care for L.V. Based on weekly visits, service workers have no concerns about his home or sobriety. The report also describes a very strong emotional attachment between L.V. and her father.

Based on our de novo review of the record, we conclude L.V.'s current environment promotes her best interest. See *In re A.S.*, 743 N.W.2d 865, 868 (Iowa Ct. App. 2007) (holding child's best interests were met by foster home, where child lived since removal). Continued interaction with Jessica would cause L.V. more harm than good. We cannot ask L.V. to endure Jessica's unpredictable behavior which undermines Anthony's efforts to provide a stable, nurturing environment. See *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990) ("Children simply cannot wait for responsible parenting. Parenting . . . must be constant, responsible, and reliable.").

Jessica also contends the best-interest goal would be better served by requiring her to pay child support rather than terminating her parental rights.

Anthony testified he is aware terminating Jessica's rights would end her child support obligation, and he is willing to take full responsibility for L.V.

Although parents are legally responsible for supporting their children, even when the juvenile court has adjudicated the children to be CINA or removed them from the parents' custody, termination of parental rights also terminates the obligation to provide support. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). But the potential financial burden on the custodial parent or the State does not trump our concern for the child's safety, nurturing, and growth or the child's physical, mental, and emotional needs. *Id.* at 748–49.

The damage done to L.V.'s mental and emotional well-being by Jessica's uncertain contacts outweighs any benefit from Jessica's financial support. We find the State offered sufficient evidence to support the juvenile court's best-interest finding. Accordingly, we affirm.

AFFIRMED.