

IN THE COURT OF APPEALS OF IOWA

No. 3-850 / 13-1087
Filed September 18, 2013

**IN THE INTEREST OF M.B. and T.B.,
Minor Children,**

J.E., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Louise Jacobs,
District Associate Judge.

J.E. appeals the district court order terminating her parental rights.

AFFIRMED.

Emily A. Schmidt of Tucker Law Office, Des Moines, for appellant.

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

John Heineke, Des Moines, for father.

Kayla Stratton, Juvenile Public Defender, Des Moines, attorney and
guardian ad litem for minor children.

Considered by Potterfield, P.J., and Mullins and Bower, JJ.

BOWER, J.

J.E. appeals the district court order terminating her parental rights. She claims significant and meaningful contact with the children during the six months preceding the termination order and the best interests of the children preclude termination. We find J.E. has failed to maintain sufficient contact with the children and has not made reasonable efforts to resume care of the children despite being given an opportunity to do so. We also find termination is in the childrens' best interests. We affirm.

I. Background Facts and Proceedings

M.B. and T.B. are the children of J.E. and A.E.¹ The children were adjudicated children in need of assistance (CINA) by the district court on May 10, 2012. The children had been removed from their parent's home on April 6, 2012.² The petition to terminate parental rights was filed on April 4, 2013, and the termination hearing was held on May 31, 2013.

The children first came to the attention of the department of human services (DHS) following allegations of domestic abuse between the parents. There were also allegations of substance abuse by the parents. During the DHS investigation, it was also alleged A.E. violated a no-contact order at the request of J.E.

J.E. was the only witness called during the termination hearing. She appeared by phone because she does not have a vehicle and could not find transportation to the courthouse. During the hearing J.E. admitted to a history of

¹ A.E.'s parental rights were also terminated by the district court. He has not appealed.

² The children currently reside with relatives.

substance abuse and not consistently following recommendations to address her drug problem. She also admitted she has missed twenty-three of twenty-five drug screens, and does not yet have a sobriety plan. J.E. also admitted she has not complied with mental health recommendations and has not followed up with service providers in an effort to do so. J.E. testified she was doing a good job taking care of her children while they were in her care despite admitting they were witnesses to domestic violence and one child had begun acting out in an aggressive manner. She also claimed she can rely on family and friends for support, though she was unable to find anyone to transport her to the termination hearing.

Following removal of the children from J.E.'s care, she moved to Florida for several months in 2012 to address her substance abuse problems. Because she failed to submit to drug testing, the success of her efforts is in doubt. Her contact with the children during her stay in Florida was inconsistent. J.E. asserted to the district court she has made greater efforts since January 2013 to maintain a consistent and healthy relationship with the children. Her plan for reunification is to find a job, which she believes will address her substance abuse problem. She has done little, however, to find employment. When she has visitation, one of her children refuses to see her. J.E. continues to minimize her substance abuse and domestic abuse history, and maintains she was providing an appropriate environment for the children. After a brief verbal confrontation during the termination hearing, J.E. hung up her phone before the termination hearing was concluded.

II. Standard of Review

We review termination of parental rights de novo and consider whether the State has presented clear and convincing evidence in support of termination. *In re D.A.W.*, 552 N.W.2d 901, 902 (Iowa Ct. App. 1996).

III. Discussion

On appeal, J.E. argues her visitation with the children had been consistent since January 2013, prior to termination under section 232.116(1)(e) (2013). She also argues termination is not in the best interests of the children.

Section 232.116(1)(e) allows for termination of parental rights when three requirements have been satisfied. First, the child must have been adjudicated as in need of assistance. Iowa Code § 232.116(1)(e)(1). Second, the child must have been removed from the parent's custody for at least six consecutive months. *Id.* § 232.116(1)(e)(2). There is no question both of these requirements have been met. The dispute is whether the requirements of section 232.116(1)(e)(3) have been satisfied.

Section 232.116(1)(e)(3) requires clear and convincing evidence the parent has failed to maintain "significant and meaningful contact with the child" during the previous six consecutive months and the parent has made no reasonable efforts to resume care of the child. This section defines "significant and meaningful contact" to require "a genuine effort to complete the responsibilities prescribed in the case permanency plan." *Id.* § 232.116(1)(e)(3). Failing to comply with the plan is not grounds for termination, though [it is] evidence of the parent's attitude toward recognizing and correcting the problems

which resulted in the loss of custody.” *In re J.L.P.*, 449 N.W.2d 349, 352 (Iowa 1989).

The district court recognized J.E. had been more consistent with visitation during the six months preceding the termination hearing. However, consistency in contact with the children is not the only requirement of the statute. J.E. must also have shown reasonable efforts to resume care. We agree with the district court that J.E. has failed in this regard. J.E. missed almost all of her drug screens, failed one other, and has demonstrated no interest in complying with services aimed at addressing her substance abuse or mental health. She disappeared from her children’s lives for a period of time and does not recognize the danger she placed the children in by subjecting them to a pattern of abuse within her home. She has failed to find steady employment or take minimum steps to do so. J.E.’s attitude about the grounds for removal and her refusal to seriously address her substance abuse and mental health is evidence of her lack of interest or ability to resume the responsibilities of being a parent and demonstrates conclusively that the children cannot be returned to her care.

Once the district court has determined grounds for termination exist under section 232.116(1), the second step of the analysis is determining whether the best interests of the children supports termination. See *In re P.L.*, 778 N.W.2d 33, 40–41 (Iowa 2010). J.E. argues the best interests of the children preclude termination due to the closeness of the parent-child relationship. See Iowa Code § 232.116(3)(c). We disagree. The children are doing well in their placement. They have been attending therapy and are with relatives who are willing to make

a long-term commitment to their well-being and development. As previously discussed, J.E. is unable to provide a stable home free from illegal substances. She also is unable to recognize the risk she placed her children in by subjecting them to domestic abuse in the home. The children will have their physical, mental, and emotional needs best served by living in a stable and safe environment. The best interests of the children are served by terminating J.E.'s parental rights.³

AFFIRMED.

³ Step three of the termination analysis requires examining which, if any, exceptions to termination found in section 232.116(3) might apply. J.E. does not contend any of these exceptions except the closeness of the parent-child relationship, are applicable to the present matter. Accordingly, we do not review exceptions under section 232.116(3).