

IN THE COURT OF APPEALS OF IOWA

No. 3-986 / 13-1321
Filed October 23, 2013

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

**J.K., Intervenor,
Appellant,**

**K.L., Mother,
Appellant.**

Appeal from the Iowa District Court for Cerro Gordo County, Annette L. Boehlje, District Associate Judge.

A mother and the maternal grandmother appeal the termination of the mother's parental rights. **AFFIRMED.**

William T. Morrison, Mason City, for appellant-intervenor.

Theresa A. Staudt of Esser & Isaacson, Mason City, for appellant-mother.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, Carlyle D. Dalen, County Attorney, and Nichole Benes, Assistant County Attorney, for appellee.

Mark A. Young of Young Law Office, Mason City, attorney and guardian ad litem for minor child.

Nicholas Larson, Osage, for father.

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

DANILSON, J.

J.E.'s mother, K.L., and the intervenor-maternal grandmother, J.K. (formerly known as J.F.), appeal from the termination of the mother's parental rights pursuant to Iowa Code section 232.116(1)(e) and (f) (2013).¹ The mother did not preserve error on her claim J.E. could be placed back in her care presently, and severing parental ties so that J.E. may be adopted is in his best interests.

I. Background Facts and Proceedings.

J.E. was born in July 2009, and has been placed out of the mother's care and custody since September 2011. The child's removal was a result of the mother's untreated mental health issues and both parents' domestic violence and substance abuse issues, which remain largely unaddressed at this time. J.E. was at one time placed with the intervenor-grandmother; however, he was removed from the grandmother's care in February 2012 because J.K. failed to cooperate with the department of human services; failed to establish appropriate boundaries with the child's parents; and ignored concerns for the child's safety, including allowing the mother contact with the child despite directives not to do so, and continuing to expose the child to the parents' volatile relationship.

On January 9, 2013, this court upheld the dismissal of a previous termination petition concerning this child. *In re J.E.*, No. 12-1841, 2013 WL 100093 (Iowa Ct. App. January 9, 2013). The juvenile court had found there were statutory grounds for termination pursuant to Iowa Code section

¹ The father's rights were also terminated. He does not appeal.

232.116(1)(e) (2011) (authorizing termination where parent failed to maintain significant contact over last six months) and (h) (authorizing termination where child under three has been adjudicated CINA, has been out of parent's custody for at least last six months, and cannot be returned home at present). See *J.E.*, 2013 WL 100093, at *1. However, the juvenile court concluded termination of parental rights was not in the child's best interests *at that time*. The court wrote:

Further evaluation of relative placements needs to occur, on an expedited basis, so that additional permanency options for [J.E.] can be analyzed. Possible permanency options to be explored may include guardianship of [J.E.] with [great aunt and uncle] . . . or possible adoption by [them]. The court may also determine, after a full consideration of placement of [J.E.] with [them], that continued placement in family foster care and adoption by foster parents may be the most appropriate permanency option.

At the present time, no exceptions set out in section 232.116(3) appear to apply. However, that subsection states that the court need not terminate parental rights if the child is placed with relatives. In this matter, further exploration of placement with relatives needs to occur.

Id.

Despite the existence of grounds for termination, we deferred to the juvenile court's finding that the maternal great aunt and uncle may be an appropriate placement for J.E. See *id.* at *2. We therefore affirmed the juvenile court's dismissal of the termination petition.

A home study was completed and indicated the great aunt and uncle's home would be appropriate for J.E. In January 2013, they attended a meeting with the foster mother, Jenni Dillavou (the department case worker), Caren Brusvold (a social worker with Lutheran Social Service who conducted the home study), and others. The great aunt and uncle stated they did not want to disrupt

J.E. from his current placement if he felt stable and secure. They were satisfied with letting J.E. stay where he was. They also stated at the meeting that they were interested in ongoing visits with J.E., yet they visited the child only once after that January meeting, and they did not contact the department at all.

J.E. has been placed with the same foster family since March 2012, he is integrated into that home, and the family has expressed a willingness to adopt.

On February 26, 2013, the child's GAL filed a petition for termination of parental rights. A termination trial was held on July 23, 2013.

The mother did not appear at the termination hearing and no evidence indicated the child could be returned to her care. She has missed more than half of her scheduled visits with J.E. She does not have a stable home. Her mental health issues are largely untreated. She does not take prescribed medication—she stated during a psychological evaluation that she used marijuana to handle her emotions and anxiety. The mother had seen her therapist on only five occasions in the year prior to the termination trial, the most recent session was in May 2013. The mother has not provided samples for drug testing and does not believe she has a substance abuse problem. The mother has pending criminal charges, and her relationship with the child's father continues to be punctuated by violence.

The maternal grandmother does have custody of J.E.'s sibling because the mother voluntarily consented to a guardianship.² J.K. did appear at the termination trial. She is currently involved with a boyfriend who has tested

² It appears the guardianship was established to avoid juvenile court involvement.

positive for methamphetamine, has a founded child abuse report against him “because of meth and the domestic [abuse incident],” and has all visitation with his own children supervised. Despite the fact that the man’s visits with his children were to be supervised³ (by J.K. per consent of man’s wife), J.K. left the children in his sole care on more than one occasion—this is the type of behavior on J.K.’s part that led to J.E. being removed from her care. J.K. denies any “immediate” plans to move in with this man, but does not deny staying at his residence often.

The juvenile court terminated the mother’s parental rights pursuant to Iowa Code section 232.116(1)(e) (authorizing termination where parent failed to maintain significant contact over last six months) and (f) (authorizing termination where child four or older has been adjudicated CINA, has been out of parent’s custody for at last consecutive twelve months, and cannot be returned home at present).

The mother and the intervenor-grandmother now appeal.

II. Scope and Standard of review.

Our review of termination of parental rights proceedings is de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We are not bound by the juvenile court’s findings of fact, but we do give them weight, especially in assessing the credibility of witnesses. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). We will uphold an order terminating parental rights if there is clear and convincing evidence of grounds for termination under Iowa Code section 232.116. *Id.* Evidence is “clear

³ Due to domestic violence, there is a no contact order between the man and his wife. The wife has custody of the couple’s children.

and convincing” when there are no “serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.” *Id.*

III. Discussion.

A. Grounds for termination. “On appeal, we may affirm the juvenile court’s termination order on any ground that we find supported by clear and convincing evidence.” *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010). Grounds for termination exist under section 232.116(1)(f)—J.E. is a four-year-old child who has been adjudicated CINA, has been removed from the parent’s physical custody for at least the last twelve consecutive months, and cannot presently be returned to the mother’s custody.

The mother argues there is not clear and convincing evidence the child cannot be returned to her care at present. The evidence presented at trial indicates the mother has no stable housing, has failed to visit her child, has not cooperated with provided services, and has ongoing mental health issues that pose a safety threat to her child. In fact, the mother did not argue at trial that the child could be returned to her care. She did not appear at the trial, but sent a text message to her mother during trial: “I’m not coming. I can’t do it, mom [A]ll I want is for you to help my baby have a good future while living with you.”

The intervenor complains that the department failed to make reasonable efforts to reunite the child with the mother. The grandmother was allowed to intervene to be considered as a placement. But the grandmother cites no

authority suggesting she has standing to challenge the termination, and we have found no such authority.⁴

B. Termination is in the child's best interests. The mother and the intervenor contend termination is not in the child's long-term best interests. J.K. contends the juvenile court did not comply with the court's earlier order to explore relative placement options *with her*. But we note the prior termination petition was dismissed to explore placement with the great aunt and uncle—who then demonstrated they were not interested in being the long-term placement for the child. Placement with the intervenor was unsuccessfully attempted and the child was moved to foster care.

Giving primary consideration to “the child's safety, . . . the best placement for furthering the long-term nurturing and growth of the child, and . . . the physical, mental, and emotional condition and needs of the child,” Iowa Code § 232.116(2), we conclude termination and adoption here best provide the stability and security this child deserves. J.E. has been in the care of the same

⁴ In any event, the only service the mother did request that was not offered was Parent Child Interaction Therapy (PCIT). The juvenile court addressed this issue:

This spring, [K.L.] wanted to explore Parent Child Interactive Therapy (PCIT) with [the child]. Her last visit with Ms. Mayland [the mother's therapist] was May 13, 2013. Ms. Mayland sent a letter to Ms. Dillavou about the therapy on May 20, 2013. The therapy was never pursued. Given [K.L.'s] lack of follow through with mental health appointments, visits with [J.E.], the pending termination hearing and her attitude toward providers, it is easy to see why this therapy was not pursued at this time. Since [K.L.] herself did not go back to Ms. Mayland after [K.L.'s] request for therapy, the Court is satisfied that [the department] did what was necessary in regards to this potential therapy program. [J.E.] was evaluated and found not to need therapy in June 2013.

The record does not substantiate the grandmother's contention.

foster family for a year and a half of his four years. He is integrated into that home and is doing well there. As found by the juvenile court, the best placement for the child was with the foster parents where “the child is not exposed to domestic violence, drug use and untreated mental health problems.”

The mother does not argue, and we do not find any exception or factor in section 232.116(3) applies to make termination unnecessary. See *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010); see also *In re D.S.*, 806 N.W.2d 458, 474-75 (Iowa Ct. App. 2011) (noting the factors weighing against termination in section 232.116(3) are permissive, not mandatory).

We affirm the termination of the mother’s parental rights.

AFFIRMED.