

IN THE COURT OF APPEALS OF IOWA

No. 6-335 / 06-0376
Filed May 24, 2006

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

J.R.B., Mother,
Appellant.

Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

A mother appeals from the order terminating her parental rights to her son.

AFFIRMED.

Mark J. Neary, Muscatine, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Gary Allison, County Attorney, and Korie Shippee, Assistant County Attorney, for appellee-State.

Arlen Pooch, Muscatine, guardian ad litem for child.

Considered by Mahan, P.J., and Hecht and Eisenhauer, JJ.

HECHT, J.

I. Background Facts and Proceedings.

Jeanette is the mother of Jaydon, who was born in 1999. Jaydon initially came to the attention of the Iowa Department of Human Services (DHS) in July of 2004 due to supervision concerns in his home. A taped message that was presented to DHS revealed Jeanette screaming profanities at Jaydon and others. Jaydon was removed from the home and placed in foster care to protect him from severe emotional abuse, possible physical abuse, and Jeanette's failure to cooperate with services. On September 30, 2004, Jaydon was adjudicated as a child in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(b), (c)(2), and (n) (2003). This order continued Jaydon's removal, but placed him with his paternal aunt and uncle.

The State later filed a petition seeking to terminate Jeanette's parental rights. Following a hearing, the court terminated Jeanette's parental rights under sections 232.116(1)(d), (e), and (f). Jeanette appeals.

II. Scope and Standards of Review.

We review termination orders de novo. *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). While the district court terminated the parental rights on more than one statutory ground, we will affirm if at least one ground has been proved by clear and convincing evidence. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Our primary concern in termination proceedings is the best interest of the child. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

III. Indian Child Welfare Act.

We must initially address Jeanette's contention that the State inadequately complied with the notice provisions of the Indian Child Welfare Act (ICWA). Iowa Code ch. 232B. An August 2004 foster care report noted that Jeanette claimed no Native American heritage, but that she believed Jaydon's father, Larry, might have native ancestors. On October 3, the day of the termination hearing, Larry denied any Indian heritage, and the court consequently denied Jeanette's request to continue the matter until Jaydon's Indian status could be resolved. However, at a subsequent December 9 hearing on the applicability of ICWA, Jeanette and her mother claimed for the first time they had just discovered the possibility of Native American heritage on the maternal side of the family. Jeanette informed the court during the hearing that she believed her ancestors were members of either the Blackfoot tribe or an unnamed Sioux tribe and that Sitting Bull was her great-grandfather. Despite this imprecise and vague evidence, the State agreed to provide ICWA notice to both the Blackfoot Tribe and the Sioux tribe of which Sitting Bull was a member. After the appropriate notice, neither tribe responded or appeared at the subsequent termination hearing. The court thereafter issued its termination order.

On appeal, Jeanette first appears to generally maintain the ICWA notice, which was only given following the termination hearing, was tardy. We reject this. In *In re R.E.K.F.*, 698 N.W.2d 147 (Iowa 2005), our supreme court found post-termination notice was adequate. After concluding the tribal notification requirements of the Iowa ICWA were not met, the court conditionally affirmed the juvenile court's termination order and remanded for the purpose of providing

notice to the appropriate tribe. *R.E.K.F.*, 698 N.W.2d at 150. Here, promptly upon being informed of Jeanette's claim of Indian heritage, the State served notice upon the two tribes suggested by Jeanette. We find no reversible error on this issue.

Jeanette further contends the State failed to comply with section 232B.5(4), which requires that ICWA notice be sent by registered mail, return receipt, *to the child's parents*. She claims there is no evidence she received such notice. As the *R.E.K.F.* court noted, "[t]he provisions of the Iowa ICWA do not apply until the court determines the children are 'Indian' as defined in the Iowa ICWA. Therefore there can be no violation of the Iowa ICWA until the court determines it applies to the proceedings." *Id.* Here, Jeanette concedes notices were given to the appropriate tribes. Neither tribe responded to the notices and neither appeared at the subsequent hearing. It was therefore established that Jaydon is not an "Indian child" for purposes of, and as defined by, ICWA. See Iowa Code § 232B.3(6) (defining Indian child as one who "an Indian tribe identifies as a child of the tribe's community"). See also 5 C.J.S. *Appeal & Error* § 734, at 156-57 (1993) (noting a ruling not appealed from is binding and conclusive on the appellate court as the law of the case concerning the matter to which it is directed). Accordingly, ICWA was inapplicable and we therefore find no reversible error as a consequence of the State's failure to provide an ICWA notice to Jeanette.

Termination.

Jeanette next maintains the record contains insufficient evidence to support the termination under any of the grounds found by the juvenile court.

Upon our careful de novo review of the record, we find termination of Jeanette's parental rights was appropriate under Iowa Code section 232.116(1)(f) (child four or older, CINA, removed for twelve months, cannot be returned to parent's custody). Clear and convincing evidence supports the juvenile court's findings regarding Jeanette's lack of meaningful participation in services, her minimization of troubling behaviors, and her chaotic lifestyle, and we adopt those findings as our own.

As social worker Jennifer Blake observed, Jaydon could not be returned to Jeanette's custody because she had never exhibited any lengthy period of stability. Blake reported her strong concerns about Jeanette's continuing anger issues and irrational behaviors. Likewise, child welfare specialist Melissa McCoy reported concerns about Jeanette's continuing lack of stability with regard to housing, relationships, employment, and mental health. She also reported observing Jeanette's irrational, inappropriate, and sometimes irate behavior.

Jeanette's significant mental health issues clearly preclude any immediate return of Jaydon to her care. Although Jeanette was provided treatment for her mental health issues, we are not convinced that she took advantage of it in ways that improved her ability to provide safe and suitable parenting for Jaydon. She was discharged from treatment with Allied Therapies in October of 2004 for missing numerous appointments. She was again discharged from treatment provided by Family Resources in mid-2005 for lack of progress and failure to cooperate with providers. At the time of the hearing, Jeanette had recently resumed treatment, but our concerns for Jaydon's safety and general welfare persist because she demonstrates no understanding of the adverse

consequences of her behavior on Jaydon, and she has been unable or unwilling to take responsibility for her behaviors.

We conclude clear and convincing evidence supports our finding that termination of Jeanette's parental rights is in Jaydon's best interest. At the time of the termination hearing, Jaydon was in a stable foster care placement with his paternal uncle and aunt, who had expressed a desire to adopt him. Social workers witnessed significant improvements in Jaydon's general behavior and his anger management during the time he was in the care of these relatives. DHS has intermittently provided services to Jeanette since at least November of 1993. Despite more than sixty-six months of services intended to preserve her relationship with her four children, we discern no realistic prospect of Jeanette's reunification with Jaydon in the foreseeable future. Accordingly, we affirm the juvenile court's finding that termination is in Jaydon's best interest.

AFFIRMED.