

IN THE COURT OF APPEALS OF IOWA

No. 6-408 / 06-0673
Filed July 12, 2006

**IN THE INTEREST OF G.A.,
Minor Child,**

STATE OF IOWA,
Appellant.

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

The State appeals from the juvenile court order dismissing its petition to
terminate the parental rights of a mother. **REVERSED AND REMANDED.**

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

Eric Anderson of the Law Office of Eric Anderson, West Des Moines, for
appellee mother.

Christine Bisignano, West Des Moines, for appellee father.

Randall Wilson, Des Moines, for minor child.

Considered by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

ZIMMER, J.

The State appeals from a juvenile court order that dismissed its petition to terminate a mother's parental rights following a termination hearing. Upon our de novo review, we reverse.

I. Background Facts & Proceedings

Ashley is the mother of Gage, born in March 2005. Ashley initially informed the juvenile court that Frank is Gage's father.¹ However, after paternity test results excluded him as the biological father of her son, Ashley identified Joshua as the father of Gage during her testimony at the termination hearing. Ashley indicated she has never informed Joshua that Gage is his son.

Ashley has a lengthy history of abusing a variety of controlled substances.² She began using methamphetamine at age seventeen and has been using that drug off and on for at least five years. Gage had to be removed from his mother's custody in June 2005 because Ashley was using methamphetamine while on probation and failing to provide adequate care for her infant son. The record reveals Ashley was leaving Gage with his great-grandparents and then not returning for several days at a time. In addition, she was discovered passed out on a bed, with Gage next to her crying. The court adjudicated Gage as a child in need of assistance (CINA) on August 22, 2005, because the conditions that led to removal continued to exist.

¹ Frank is currently incarcerated at the Newton Correctional Facility for possession of methamphetamine.

² Ashley's parents also have a long history of substance abuse.

Ashley continued to use controlled substances after Gage was removed from her care. She was provided with a variety of services at the direction of the juvenile court in an attempt to eliminate the need for removal of her child from her care. Those services included in-patient treatment at Mecca from August 9 to August 30. After Ashley was discharged from Mecca, she attended only three aftercare group sessions. As a result, she was discharged from that aftercare program. Ashley then entered Beacon of Life because she was homeless. She was discharged from the program on October 1 after she failed to comply with house rules and lied to the staff. Ashley used methamphetamine again on approximately October 11, 2005. Her relapse led to her arrest for probation violations on October 25, 2005, and she was placed in jail.³

The State filed a petition to terminate Ashley's parental rights on January 10, 2006. The petition alleged Ashley's parental rights should be terminated pursuant to Iowa Code sections 232.116(1)(a), (b), (d), (e), (h), and (l) (2005). Ashley was still incarcerated when the petition to terminate was filed.

As part of the probation revocation proceedings pending in district court, Ashley was allowed to participate in Felony Drug Court in lieu of serving a prison sentence. The criminal court ordered Ashley to attend a residential treatment program at Mt. Pleasant. Ashley entered that program on January 12, 2006. She was successfully discharged from the in-patient portion of the drug court program on February 8, 2006. Following her release, Ashley again entered the Beacon of Life program as a condition of her aftercare, and she was placed on a

³ Ashley has a criminal record dating back to 2002, which includes theft, harassment of a public official, disturbing the peace, and possession of a controlled substance.

waiting list for the House of Mercy residential program. Ashley also completed a psychiatric evaluation, and she arranged for individual therapy. She obtained a job at Bruegger's Bagels, but has taken a leave of absence to participate in the House of Mercy program.

A hearing on the State's petition to terminate Ashley's parental rights was held on March 7, 2006. On the date of the hearing, Ashley had just moved into the House of Mercy or was about to do so. On April 12, 2006, the juvenile court entered an order that dismissed the petition. The court's order did not state whether the statutory grounds for termination had been met and did not indicate whether or not termination was in the child's best interests. The court concluded Ashley should be provided with an opportunity to "continue to demonstrate that she can accomplish all that is necessary for the child's safe return." The court also stated: "The child shall not immediately return to the mother's care. Services provided shall include transitional planning so as to minimize the difficulty the child may have in making the transition when and **if** transition is determined to be appropriate" (emphasis in original).

The State appealed from the dismissal of the petition to terminate. It contends the evidence supports the statutory grounds for termination and argues termination of the mother's parental rights is in the best interests of Gage. Gage's court-appointed guardian ad litem supports the State's contentions on appeal.

II. Scope & Standards of Review

We review termination proceedings de novo, and the grounds for termination must be supported by clear and convincing evidence. *In re S.N.*, 500

N.W.2d 32, 34 (Iowa 1993); *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). We give weight to the juvenile court's findings of fact, but we are not bound by them. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). We are primarily concerned with the best interests of the child. *In re E.H. III*, 578 N.W.2d 243, 248 (Iowa 1998). We look to the child's long-range as well as immediate best interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997).

III. Discussion

The State's petition to terminate Ashley's parental rights was based in part on Iowa Code sections 232.116(1)(e) (child CINA, child removed for six months, parent has not maintained significant and meaningful contact with the child) and (h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home). For the reasons which follow, we find the evidence supports termination on each of the statutory grounds.⁴

As we have mentioned, Ashley placed her infant son at risk by using methamphetamine after his birth. Ashley was allowed to visit Gage after he was removed from her care; however, between July 7 and October 5, 2005, she failed to show up for five visits and was fifteen to forty minutes late for seven other visits. Despite receiving numerous services after her child was adjudicated CINA, including in-patient drug treatment, Ashley continued to abuse methamphetamine, and she failed to fully cooperate with services. Ashley became pregnant again in September of 2005. She is due to give birth in June of

⁴ When a juvenile court relies on multiple statutory grounds to terminate parental rights, we only need to affirm the court on a single ground for termination. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

2006. According to her testimony, she has not informed the father of her unborn child that she is expecting.

Ashley violated the conditions of her probation by using methamphetamine in October 2005 and was incarcerated. Ashley did not exercise any visitation with Gage from mid-October until mid-February, 2006, because she was either in jail or in-patient treatment. When visitation resumed after Ashley finished in-patient treatment at Mt. Pleasant, Gage did not recognize his mother and cried throughout most of her first two visits with him. We recognize Ashley made some progress in the weeks immediately preceding the termination hearing; however, we conclude clear and convincing evidence supports the State's contention that Ashley failed to maintain significant and meaningful contact with Gage during the six months prior to the termination hearing. Accordingly, we conclude the State proved the statutory grounds for termination of Ashley's parental rights under Iowa Code section 231.116(1)(e).

We also conclude the record clearly demonstrates Ashley was not ready for Gage to return to her care when the termination hearing was held. Ashley has a lengthy history of serious substance abuse. Her progress in the weeks immediately preceding the termination hearing is commendable; however, she has a long way to go. Ashley will not be successfully discharged from her current treatment program until she completes a halfway house placement and remains clean and sober for six months. The record also indicates she is still on probation. If she violates the terms of her probation, it is highly likely she will be imprisoned. Ashley did not make a serious effort to address her substance abuse problem until after she was jailed. Ashley needs to demonstrate she can

take care of herself by maintaining a sober and stable lifestyle for a significant period of time before she cares for children. Although the juvenile court declined to terminate Ashley's parental rights, it acknowledged Gage could "not immediately return to the mother's care." We find Gage cannot be safely returned to Ashley's custody. Accordingly, we conclude the State proved the statutory grounds for termination of Ashley's parental rights under Iowa Code section 231.116(1)(h).

Even if the statutory grounds for termination of parental rights are met, the decision to terminate must still be in the best interests of the child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). Gage has resided with his putative paternal great aunt and uncle since he was removed from Ashley's care nearly a year ago. He is thriving in this home and receives excellent care there. Despite Ashley's assertion to the contrary, Gage does not share a bond with his mother because of his lack of contact with her. Despite the provision of numerous services, it is uncertain whether or not Ashley will be able to successfully address her substance abuse addiction. Ashley's in-home worker and Gage's guardian ad litem both recommend that Ashley's parental rights be terminated. Gage should not have to wait while Ashley attempts to learn how to become a responsible parent. *In re A.C.*, 415 N.W.2d 609, 614 (Iowa 1987). We find it is in Gage's best interests to terminate Ashley's parental rights.

We reverse the juvenile court's dismissal of the State's petition to terminate Ashley's parental rights, and we terminate the mother's parental rights and remand for further proceedings not inconsistent with this opinion.

REVERSED AND REMANDED.