

IN THE COURT OF APPEALS OF IOWA

No. 6-409 / 06-0647
Filed June 28, 2006

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

**J.E., Mother,
Appellant.**

Appeal from the Iowa District Court for Webster County, James A. McGlynn, Associate Juvenile Judge.

A mother appeals from a juvenile court order terminating her parental rights to two children. **AFFIRMED.**

Derek Johnson of Derek Johnson Law Office, Fort Dodge, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Wendy Samuelson, County Attorney, and Sara Smith, Assistant County Attorney, for appellee.

James McCarthy, Fort Dodge, guardian ad litem for minor children.

Considered by Sackett, C.J., and Huitink and Miller, JJ.

MILLER, J.

Johnay is the mother of Ben, born in 1996, and Travis, born in 1997 (the children). Johnay appeals from an April 2006 juvenile court order terminating her parental rights to the children.¹ We affirm.

The children had been removed from Johnay's custody for about twenty-one months in Minnesota, apparently in connection with the proceeding that led to the termination of their father's parental rights. Johnay and the children moved to Iowa in the fall of 1999.

The children first came to the attention of Iowa authorities in the fall of 2004. Johnay called the police because the children were out of control, with Ben threatening Johnay with knife. Mental health treatment and behavioral counseling were arranged for the children, but Johnay terminated the counseling and treatment, including discontinuing medication that had been prescribed for the children.

Johnay and the children again came to the attention of Iowa authorities in early February 2005. Johnay appeared at an Iowa Department of Human Services (DHS) office with the children. The children were entirely out of control, threatening and attempting various forms of physical harm and property damage. The juvenile court ordered that the children be temporarily removed from Johnay's custody and placed in the legal custody of the DHS for appropriate placements. The children have thereafter remained in DHS custody and various out-of-home placements.

¹ The parental rights of the children's father were terminated in Minnesota in 1999.

In late March 2005 the juvenile court adjudicated the children to be in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(c)(2) (2005) (child has suffered or is likely to suffer harm due to parent's failure to supervise), (f) (parent fails to provide needed treatment for a serious mental illness or disorder), and (n) (parent's mental condition results in child not receiving adequate care). Travis has been placed in a psychiatric medical institution for children (PMIC) since early April 2005. Ben has been placed in the same PMIC since late November 2005.

The State filed a petition for termination of parental rights in February 2006. Following a late March hearing the juvenile court filed detailed findings of fact, conclusions of law, and an order terminating Johnay's parental rights to the children in early April 2006. The court terminated parental rights pursuant to both sections 232.116(1)(e) (child adjudicated CINA, child removed from home at least six consecutive months, parent has not maintained significant and meaningful contact with the child during the previous six months and has made no reasonable efforts to renew care of the child despite opportunity to do so) and (f) child four or older, adjudicated CINA, removed from home twelve of last eighteen months, cannot be returned home at present time). Johnay appeals.

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

In re C.B., 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

Johnay claims the State did not prove she (1) failed to maintain significant and meaningful contact with the children during the previous six months, and (2) has made no reasonable efforts to resume care of the children despite being given the opportunity to do so. Both claims relate to the third element of section 232.116(1)(e).

As found by the juvenile court, Johnay has had only sporadic contact of any type with the children since their removal almost fourteen months before the termination hearing. She visited the children only four times in the year preceding the termination hearing, all four visits occurring in a period of about one month ending on December 21, 2005, some three months before the termination hearing. Johnay asserts she avoided contact with the children so that she would not be accused of causing behavioral problems they exhibited following visitation. Although she may well have subjectively held such a concern, the evidence shows she has been unwilling or unable to recognize the children's severe problems and has in almost all ways refused to cooperate with the DHS and service providers. With limited exceptions, Johnay has refused to have even supervised telephone calls and visits and has refused to cooperate with treatment programs for the children.

"Significant and meaningful contact" requires, among other things, that the parent make a genuine effort to maintain communication with the children. Iowa Code § 232.116(1)(e). Johnay has not done so. Further, her wholesale refusal to cooperate with available and offered services designed to address the children's serious mental and behavioral problems constitutes a lack of reasonable efforts to resume care of the children despite being given the

opportunity to do so. We find the State has proved the section 232.116(1)(e) elements for termination.

Johnay does not claim that the State did not prove the essential elements for termination required by section 232.116(1)(f), and upon our de novo review we find those elements have been proved by clear and convincing evidence. The only element that might reasonably be disputed is the fourth, whether the children could be returned to Johnay at the time of the termination hearing. They could not, because they have serious continuing mental and behavioral problems, they require further treatment and counseling, and as found by the juvenile court Johnay has denied and continues to deny “that the children have any problems other than perhaps vitamin deficiency or allergies.”

Johnay finally claims the State did not prove that termination of her parental rights would be in the children’s best interest. Johnay for whatever reason has been and remains unwilling or unable to recognize the serious nature of the children’s problems and treatment needs. We agree with the juvenile court that termination of her parental rights is in the children’s best interest.

Johnay’s petition on appeal may be read as raising a claim that termination is not in the children’s best interest because of a close parent-child relationship. See Iowa Code § 232.116(3)(c). However, that issue was not presented to and passed upon by the juvenile court and thus is not properly before us on appeal. See *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003) (“Even issues implicating constitutional rights must be presented to and ruled on by the district court in order to preserve error for appeal.”).

AFFIRMED.