

IN THE COURT OF APPEALS OF IOWA

No. 6-726 / 06-1123
Filed September 21, 2006

IN THE INTEREST OF M.J.V., Minor Child,

E.V., Mother,
Appellant.

Appeal from the Iowa District Court for Linn County, William L. Thomas,
Judge.

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

Mona Knoll of Nazette, Marner, Wendt, Knoll & Usher, L.L.P., Cedar
Rapids, for appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Harold L. Denton, County Attorney, and Kelly Kaufman,
Assistant County Attorney, for appellee-State.

Richard Boresi of King, Smith & Boresi, Cedar Rapids, for appellee-
intervenor.

Lorraine Machacek, Cedar Rapids, for father.

Pamela Lewis, Cedar Rapids, guardian ad litem for minor child.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

MILLER, J.

Elizabeth is the mother, and Michael the father, of Mckayla, who was seven years of age at the time of a May 2006 termination of parental rights hearing. Elizabeth appeals from a June 2006 juvenile court order terminating her parental rights to Mckayla. The order also terminated Michael's parental rights, and he has not appealed. We affirm.

Elizabeth claims that Judge William Thomas, the judge who presided at the termination of parental rights hearing, erred by overruling her request that he recuse himself. The party seeking recusal has the burden to show grounds for recusal. *State v. Haskins*, 573 N.W.2d 39, 44 (Iowa Ct. App. 1997). Only personal bias or prejudice is a disqualifying factor. *Id.* at 45. We review a court's recusal decision for an abuse of discretion. *Taylor v. State*, 632 N.W.2d 891, 893 (Iowa 2001).

Elizabeth's ground for seeking Judge Thomas's recusal was her belief that he had at an earlier time agreed that he "would not be involved in this case again." In response to her request for recusal Judge Thomas explained the apparent basis for Elizabeth's misunderstanding. Almost two years earlier Judge Susan Flaherty was scheduled to hold a hearing in the underlying child in need of assistance (CINA) case, a hearing concerning Elizabeth's visitation with Mckayla. Judge Flaherty did not want to hear and rule on a then-pending dispute between Elizabeth and the attorney who represented her at that time, because she felt that doing so might affect her decision concerning the visitation issue. Judge Flaherty asked if Judge Thomas would hear the matter involving the dispute between Elizabeth and her attorney. Judge Thomas did hear that matter, and in

doing so may have agreed or indicated that he would not be involved in the impending visitation hearing. He did not, however, indicate he would not be involved in any other matters in the CINA case or any other case involving Elizabeth or Mckayla.

We conclude Elizabeth has not shown that Judge Thomas had agreed to have no further involvement in the underlying CINA case or any related proceeding. Elizabeth broadly asserts on appeal that Judge Thomas “had a personal bias or prejudice concerning her.” However, when she requested that Judge Thomas recuse himself she neither made such an allegation nor provided any evidence that might support such an allegation. She points out nothing that would support a claim of bias or prejudice, and we find nothing in the record that would support such a claim. We conclude no basis existed for Judge Thomas’s recusal, and that he therefore did not abuse his discretion in declining to recuse himself.

Elizabeth raises two additional claims of juvenile court error.

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).

Elizabeth claims the State did not prove by clear and convincing evidence the statutory grounds for termination relied on by the juvenile court. The petition for termination of Elizabeth’s parental rights relied on the grounds for termination set forth in Iowa Code sections 232.116(1)(a), (d), and (f) (2005). The juvenile

court found the State had proved the grounds set forth in sections 232.116(1)(d) and (f). However, in finding that the State had proved the section 232.116(1)(d) grounds it in fact stated and relied on the elements of section 232.116(1)(e), which the State had not pled or relied on. We therefore focus our discussion on section 232.116(1)(f). See *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996) (noting that when the trial court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the statutory grounds in order to affirm).

Mckayla is seven years of age. She was adjudicated a CINA in this case in March 2002. As of the termination hearing she had been removed from the physical custody of her parents for approximately forty-one of the immediately preceding fifty-one months, including the last nineteen months. The State clearly proved the first three of the four essential elements of section 232.116(1)(f), which requires proof that: (1) the child is four years of age or older; (2) the child has been adjudicated a CINA; (3) the child has been removed from the physical custody of the child's parents twelve of the last eighteen months, or for the last twelve months and any trial period at home has been less than thirty days; and (4) at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102. Only the fourth element is at issue in Elizabeth's appeal. This element is proved when the evidence shows the child cannot be returned to the parents because the child remains in need of assistance as defined by section 232.2(6). See *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa Ct. App. 1995). The threat of probable harm will justify termination of parental rights, and the perceived harm need not be the one that supported the

child's initial removal from the home. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992).

Elizabeth began living with a man named Richard in about May 2001. Their household first came to the attention of the Iowa Department of Human Services (DHS) in October 2001 following several incidents of domestic abuse between the two. There was concern that Mckayla was at high risk of abuse because of the ongoing violence between them. The DHS strongly recommended that Elizabeth not allow Richard to be Mckayla's caretaker.

In January 2002 Elizabeth allowed Richard to be Mckayla's caretaker while Elizabeth went to work at night. During the night Richard admittedly noticed that Mckayla was not breathing, noticed she had no pulse, performed "CPR" on her, and yet did not secure medical care for her, leaving that for Elizabeth to do when some hours later she returned home from her overnight work.

Mckayla was hospitalized for injuries. A physician believed she had either been suffocated by Richard or had a seizure. An initial finding that Richard had physically abused Mckayla was ultimately reversed on appeal. However, a determination he had engaged in child abuse, denying critical care by failing to provide adequate health care, was ultimately affirmed. Elizabeth was found to have engaged in child abuse, denying critical care by failing to provide appropriate supervision through allowing Richard to be Mckayla's caretaker.

The January 2002 incident led to Mckayla being adjudicated a CINA in March 2002. Other concerns arose during the CINA case. Ongoing domestic violence between Richard and Elizabeth occurred, with various and changing

stories as to which party was the instigator in certain incidents. Richard's son was the subject of a juvenile court proceeding, in which Richard apparently violated court orders. The DHS had concerns that Richard and Elizabeth were involved in illegal drugs.

Services were offered to Elizabeth since about March 2002, and case plans listed certain requirements to be met by her if reunification with Mckayla were to occur. Although Elizabeth did to some extent participate in some services and make some progress, she has to a large extent failed or refused to avail herself of available services, and she has violated court orders. She absconded with Mckayla for a period of several weeks, during which she apparently married Richard. She has refused to let the juvenile court, the DHS, or service providers know where she is or how to contact her. She refused to answer questions at a hearing in Mckayla's CINA case, was found in contempt of court, and was jailed for several weeks.

Elizabeth has not met case plan requirements. She was to provide an environment free from illegal drugs, but has not provided specimens for urinalysis as required. Elizabeth was to ensure proper supervision for Mckayla, but has provided no information regarding child care arrangements. She was to obtain employment, but has provided no evidence she has employment. Elizabeth was to provide an environment free of domestic violence, but is apparently with Richard, and they have an ongoing history of domestic abuse. She was to be honest with the court, DHS, and service providers, but has repeatedly lied. Since March 2005 Elizabeth has not been involved in any required services and has

not visited with Mckayla. She did not attend the termination of parental rights hearing.

We agree with the juvenile court that clear and convincing evidence shows that Mckayla cannot be returned to Elizabeth because Mckayla remains a CINA, subject to the imminent likelihood of abuse or neglect if returned.

Elizabeth further claims that termination of her parental rights is not in Mckayla's best interest. As of the termination hearing seven-year-old Mckayla had been removed from Elizabeth for the very great majority of the immediately preceding fifty-one months, and had been in the care of her maternal grandparents all but about one year of that time period. She has a bond with her mother, but not a healthy bond. She is bonded to her maternal grandparents, who are willing to and wish to adopt her. Mckayla is afraid Elizabeth will take her away again. Mckayla has a strong fear of Richard, whom Elizabeth has apparently chosen over Mckayla. Mckayla desperately needs permanency. Although Elizabeth has at times argued that Mckayla should be placed in the guardianship of Elizabeth's parents, guardianship would not provide the permanency of termination and adoption.

We conclude termination of parental rights is necessary to give Mckayla the stability, security, and permanency she needs and deserves. We fully agree with the juvenile court that termination of Elizabeth's parental rights is in Mckayla's best interest.

AFFIRMED.