

IN THE COURT OF APPEALS OF IOWA

No. 7-108 / 06-1200
Filed March 28, 2007

**IN THE INTEREST OF S.R.M.V.G.,
Minor Child,**

S.J.V.G., Father,
Petitioner,

H.K.D., Mother,
Appellant.

Appeal from the Iowa District Court for Sioux County, Brian L. Michaelson,
Associate Juvenile Judge.

A mother appeals from the termination of her parental rights. **AFFIRMED.**

Judy Freking of Jacobsma, Clabaugh & Freking P.L.C., Sioux Center, for
appellant mother.

Elizabeth Rosenbaum, Sioux City, for father.

Michele Lauters, LeMars, for minor child.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

ZIMMER, P.J.

A mother seeks reversal of a juvenile court order that terminated her parental rights to her daughter. Upon our de novo review, we affirm.

I. Background Facts and Proceedings

Heather and Steven are the parents of Sabrina, who was born in 1999. Heather and Steven were never married to each other. They lived together briefly in Wisconsin, but separated before Sabrina was born. After Sabrina's birth, Heather decided to move to Colorado with her family. Steven attempted to prevent the move by filing a custody action in Wisconsin. The Wisconsin court awarded Heather and Steven joint custody, awarded Heather primary physical care, and allowed Heather to move to Colorado with Sabrina.

After Heather and Sabrina left Wisconsin, Steven maintained weekly telephone contact with Sabrina and visited her in Colorado at least three times per year. Steven also paid regular child support. Steven's extended family also participated in Sabrina's life. Steven moved back to his home state of Iowa in 2003.

Steven became increasingly concerned about Sabrina's welfare each time he visited his daughter in Colorado. During visits to Heather's home, he observed filthy living conditions, a pit bull in the home, and unidentified strangers with his daughter and other children. The children were sleeping on mattresses on the floor.

Heather married and divorced Jonathan. She and Jonathan had a child together, Teaya. Jonathan began providing information to Steven regarding

Heather and Sabrina. Around Christmas in 2003, Jonathan told Steven that Sabrina was being exposed to drugs in Heather's home.

Steven picked up Sabrina for an extended visit in April 2004. At that time, Heather was living with Donnie, an alleged drug dealer. Sabrina appeared thin and unkempt. Heather's home was in the same deplorable condition Steven had observed during earlier visits. After Steven returned to Iowa with Sabrina, he enlisted the assistance of the Iowa Department of Human Services (the Department) to test Sabrina's hair for drugs. The test results were positive for a high level of methamphetamine exposure. The Department notified Colorado authorities, and Teaya was removed from Heather's home.

Juvenile court proceedings were initiated regarding Heather's children in Colorado.¹ The Colorado juvenile court kept protective supervision of Sabrina and placed physical custody of the child with Steven in Iowa.² An investigation confirmed Heather had failed to properly supervise Sabrina. The Colorado authorities eventually dismissed jurisdiction regarding Sabrina because she was safe in Steven's care.

Steven assumed full care of Sabrina and registered the Wisconsin custody judgment in Iowa. He filed a petition for modification of the judgment in June 2004. Steven requested a change in physical care, a new visitation schedule,

¹ Heather lost custody of Teaya in May 2005, and she is only allowed to exercise supervised visitation with the child. Teaya has significant developmental issues possibly due to drug exposure.

² After Steven assumed physical custody of Sabrina, he noticed she exhibited behaviors that indicated she had lived in a drug house. For example, if someone in a uniform came to Steven's home, she would hide, and she scrounged through the garbage can for food. Sabrina also witnessed domestic abuse, adults having sex, and drug dealers, and she told Steven that Donnie hit her with a belt.

and child support. Heather was personally served with the petition on July 12, 2004, but she did not reply. The court entered a default decree on August 19, 2004, awarding physical care to Steven and ordering Heather to pay child support. Heather was granted monthly visitation and weekly telephone contact.

From April 2004 to April 2006, Heather only visited Sabrina in person two times.³ Heather maintained only sporadic telephone contact with Sabrina. Steven monitored the calls because Heather's conversations with Sabrina were not always appropriate.⁴ Heather provided no financial support to Sabrina from April 2004 to April 2006.

Steven filed a petition to terminate Heather's parental rights on January 20, 2006. The termination hearing was held on April 5 and 6, 2006. On June 15, 2006, the juvenile court filed a detailed and thorough ruling granting Steven's petition. The court concluded clear and convincing evidence supports the termination of Heather's parental rights and termination is in the best interests of Sabrina. Heather filed a motion for new trial and a motion to enlarge, which the juvenile court denied. Heather now appeals.

II. Scope and Standards of Review

We review private termination proceedings de novo. *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998). The grounds to terminate parental rights under Iowa Code chapter 600A must be proven by clear and convincing evidence.

³ She had a third visit with her daughter the night before her termination trial.

⁴ Prior to August 2005, Heather called Sabrina one to two times per month, and at one point, she failed to contact Sabrina for an entire month.

Iowa Code § 600A.8. Appellate review of constitutional claims is de novo. *In re C.M.*, 652 N.W.2d 204, 209 (Iowa 2002).

III. Discussion

The juvenile court terminated Heather's parental rights pursuant to Iowa Code sections 600A.8(3)(b) and 600A.8(3)(c) (2005) (abandonment), and 600A.8(4) (parent has been ordered to contribute to the support of the child and has failed to do so without good cause). Heather contends the court erred in finding clear and convincing evidence supports the termination of her parental rights and termination is not in the child's best interests. She also claims the court erred in denying her application for an expert witness. We will address each of her appellate claims in turn.

Upon our de novo review of the record, we conclude there is clear and convincing evidence that Heather abandoned Sabrina. For all practical purposes, Heather disappeared from her daughter's life in 2004. She made only two visits to Iowa to see her daughter in the two years prior to the termination hearing. Her phone calls were sporadic and not focused on Sabrina. While Sabrina was still in her mother's care, Heather chose drugs instead of affirmative parenting. It is clear Heather emotionally abandoned her daughter many years ago. The record also supports the juvenile court's conclusion that Heather failed to provide support for her daughter either voluntarily or by court order without good cause after Steven became Sabrina's caretaker. We conclude each of the statutory grounds for termination alleged by Steven in support of his petition has been shown by clear and convincing evidence.

We next consider Heather's claim that termination of her parental rights is not in Sabrina's best interests. For many years, Heather has engaged in a pattern of behavior that is plainly inconsistent with responsible parenting. She has exposed Sabrina to domestic abuse and drug dealers. Heather is a recovering methamphetamine addict, a domestic abuser, and a convicted felon. Sabrina was physically abused by one of her mother's boyfriends. The child lived through a house fire and has witnessed adults having sex. After Sabrina came to live in Iowa, she exhibited behaviors indicating she had lived in a drug house. When Heather has contact with Sabrina, the child's behavior regresses, and she becomes clingy. It is clear there is not a healthy attachment between Sabrina and her mother. Sabrina deserves the opportunity to establish permanency and stability in her life. We conclude termination of Heather's parental rights is in Sabrina's best interests.

Heather also claims the trial court violated her constitutional rights in denying her application for authorization to hire an expert witness at public expense to help her defend against Steven's application to terminate her parental rights. Section 600A.6A (Supp. 2005) provides for the appointment of counsel for an indigent parent in a termination proceeding if certain circumstances are met. In an order filed February 27, 2006, the juvenile court found Heather was indigent and appointed a lawyer to represent her.⁵

On March 8, 2006, Heather filed an application to hire an expert. Chapter 600A (Supp. 2005) does not address the issue of the appointment of an expert

⁵ One week later, another order was entered reaching the same conclusion. Neither party has appealed from the juvenile court's order requiring Steven to pay the sum of \$2502.05 to Heather's attorney.

witness for an indigent party. The record reveals the motion was heard by the court on April 4 along with some other matters. The court advised the parties it would rule on the application for authorization to hire an expert after the presentation of the petitioner's case. Trial was held on April 5 and 6. On June 15, 2006, the court filed an order terminating Heather's parental rights.

Following the court's ruling, Heather filed a combined motion for a new trial and motion to enlarge. Among other things, her motion stated that the juvenile court denied her application to hire an expert on April 6, 2006. Heather claimed the ruling violated her constitutional rights and requested a new trial. The juvenile court denied the motion for new trial after concluding it was "without merit/statutory authority." The appendix designated by the parties for appeal does not include any record concerning the circumstances surrounding the ruling made by the court on April 6, and the record does not make clear the precise basis for the court's ruling.

Upon our review of the record, we find it unnecessary to determine whether the denial of an indigent person's application for appointment of an expert at public expense in a private termination proceeding results in a violation of the Equal Protection Clause of the Iowa and United States Constitutions. We reach this conclusion for the following reason: After carefully considering the evidence presented at trial, the court concluded Heather was not indigent under

section 600A.6A (Supp 2005).⁶ We agree with this conclusion. Section 600A.2(11) (Supp. 2005) defines indigent:

“Indigent” means a person has an income level at or below one hundred percent of the United States poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services, unless the court determines that the person is able to pay for the cost of an attorney in the pending case.

At the time of the termination hearing, the court found the poverty level for a single person equaled \$797 per month, and Heather was making a gross income of \$1500 per month. Because the record demonstrates Heather was not really indigent during the pendency of this case and at the time of trial, we need not resolve her equal protection claim.

Heather’s application for appellate attorney fees is denied.

IV. Conclusion

We affirm the juvenile court’s decision to terminate Heather’s parental rights to Sabrina.

AFFIRMED.

⁶ The court made this determination in addressing the appropriate fee limitation, if any, and the appropriate hourly rate to be charged for counsel appointed to represent Heather in this termination of parental rights proceeding.