

IN THE COURT OF APPEALS OF IOWA

No. 7-532 / 07-1125
Filed September 6, 2007

**IN THE INTEREST OF D.R., S.L. and R.L.,
Minor Children,**

H.L., Mother,
Appellant.

Appeal from the Iowa District Court for Fayette County, Alan D. Allbee,
Associate Juvenile Judge.

A mother appeals following her consent to termination of her parental
rights. **AFFIRMED.**

Robert J. Pattee, Independence, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, W. Wayne Saur, County Attorney, and Nathan James Lein,
Assistant County Attorney, for appellee State.

T. David Katsumes, Katsumes Law Office, Elgin, for father of D.R.

John Sullivan, Oelwein, for father of S.L.

Shawn Harden, Independence, for father of R.L.

Richard Buffington, Oelwein, guardian ad litem for minor children.

Considered by Sackett, C.J., and Eisenhauer, J., and Schechtman, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

SCHECHTMAN, S.J.**I. Background Facts & Proceedings**

Heidi is the mother of Domanick, Shyann, and Riley, ages five, three, and one respectively. Each had been adjudicated a child in need of assistance (CINA) and resided with common foster parents. Patrick is the father of Domanick. Joshua is the father of Shyann. Steve is the father of Riley. On May 18, 2007, Heidi signed a separate consent to terminate her parental rights for each of the children. Patrick and Steve had also signed consents to terminate their parental rights. At the subsequent termination hearing, the juvenile court advised Heidi that her signature on the consent form terminated her right to custody, visitation, and further contact with her children. Heidi stated she understood. The following exchange occurred between the court and Heidi:

Q. And you discussed that with your attorney. A. Yes, Your Honor.

Q. Has anyone forced you or threatened you to do this? A. No, Your Honor.

Q. Have they promised you anything in return for giving up your parental rights? A. No, Your Honor.

The record was left open to allow Joshua to file a consent to terminate his parental rights, which followed on June 11, 2007. On that day, the juvenile court entered an order terminating the parental rights of Heidi, Patrick, Joshua, and Steve under Iowa Code section 232.116(1)(a) (2007) (parent consents to termination). The court found the parents had voluntarily and intelligently consented to termination of their parental rights and for good cause desired the termination. The court concluded termination was in the best interests of the children.

In a pro se letter to the juvenile court judge, postmarked June 22, 2007, Heidi stated she wanted to appeal the decision. She further stated that a worker from the Department of Human Services had told her that her unborn child could be removed at birth if the juvenile proceeding was not closed. Heidi was not sure this was a threat. She stated the consents were signed because she “was tired of putting my children through the state of confusion.” The juvenile court did not address the substance of Heidi’s statements. Rather, on June 25, 2007, the court directed that a copy of the letter be given to all the parties. The court noted that the letter did not constitute an appropriate appeal of the termination order. Heidi filed a notice of appeal on June 26, 2007.

II. Standard of Review

The scope of review in termination cases is de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). Grounds for termination must be proven by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Our primary concern is the best interests of the children. *In re C.V.*, 611 N.W.2d 489, 492 (Iowa 2000).

III. Merits

Heidi contends there should be a remand back to the juvenile court for an evidentiary hearing on whether she voluntarily and knowingly gave her consent to termination of her parental rights. She does not affirmatively assert that her consent was given due to threats, but questions whether this was the fact.

As urged by the appellee, Heidi has failed to preserve her claims for our review on appeal. The issues of the lack of voluntariness and the presence of a

threat were raised for the first time on appeal. The proper method to have preserved error is to file a motion for new trial under Iowa Rule of Civil Procedure 1.1004(7), to reopen the record to receive “material evidence, newly discovered.” This would have allowed the court to consider the merits and contents of the letter. The letter did not constitute such a motion, but was merely an effort to appeal.¹

Even if the issue were preserved, however, we find it is without merit. Section 232.116(1)(a) provides for termination of parental rights if “[t]he parents voluntarily and intelligently consent to the termination of parental rights and parent-child relationship and for good cause desire the termination.” A court should consider whether a consent to terminate meets fair play, disclosure, and due process requirements. *In re T.N.M.*, 542 N.W.2d 574, 576 (Iowa Ct. App. 1995). A written, signed consent to terminate parental rights is not automatically revoked if the parent changes his or her mind. See *id.* at 577 (“The fact [a mother] sought to revoke [the consent] at the termination hearing is not dispositive; rather, the question is whether it was voluntarily and intelligently made when given and there was good cause for her to desire the termination.”)

But the letter itself indicates that Heidi signed the consents to stabilize the children’s lives (to avoid confusion). That comment corroborates its voluntariness and the belief that her consents were in the children’s best interests. Nowhere does she contend that the alleged threat was the reason for

¹ The letter had other latent defects: it was filed late under Iowa Rule of Civil Procedure 1.1007 (motion must be filed within ten days after filing of the decision with the clerk); and, subjectively, the alleged threat was not “newly discovered” as obviously occurring prior to her written consents and termination hearing if, as alleged, the consents were the result of those threats.

her consents. At the termination hearing, the juvenile court questioned Heidi on whether she was voluntarily and intelligently giving up her parental rights. The court concluded her consents were made voluntarily and intelligently, and Heidi had good cause to desire the terminations. We determine the consents were voluntary and intelligent when made. A remand would not be appropriate.

We affirm the terminations by the juvenile court.

AFFIRMED.