

IN THE COURT OF APPEALS OF IOWA

No. 7-796 / 07-1554
Filed November 15, 2007

**IN THE INTEREST OF B.E.J.M. and J.M.A.E.,
Minor Children,**

S.E., Mother,
Appellant.

Appeal from the Iowa District Court for Washington County, Lucy J. Gamon, District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Jeffrey Powell of Tindal & Kitchen, P.L.C., Washington, for appellant mother.

Katherine McConnell, Washington, for father of B.E.J.M.

Kathryn Salazar of Day, Meeker, Lamping, Schlegel & Salazar, Washington, for father of J.M.A.E.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, and Barbara A. Edmondson, County Attorney, for appellee State.

Sue Kirk, Iowa City, for minor children.

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

MAHAN, J.

A mother appeals from the termination of her parental rights to two of her children. She claims the State failed to prove by clear and convincing evidence that the children could not be returned to her care and the district court improperly found that termination of her parental rights was in the children's best interests.

I. Background Facts and Proceedings

The mother has two children which are the subjects of these termination proceedings, J.M.A.E. and B.E.J.M. J.M.A.E. was born in September 2003. B.E.J.M. was born in April 2005. J.M.A.E.'s biological father is Anthony, the mother's husband. B.E.J.M.'s biological father is Kevin. Although the mother and Anthony are legally married, they have not resided together or maintained a marital relationship throughout these proceedings. The mother also has a baby daughter who is not a subject of these termination proceedings.

The mother testified she believed J.M.A.E. and B.E.J.M. first came to the Iowa Department of Human Services' (DHS) attention as a result of her charge of possession of marijuana in February 2006. However, DHS records indicate it was a May 2006 report stating that a registered sex offender, Darius, was living with the mother and children that first got the attention of DHS. The mother and Darius have been dating since September 2005. Darius has two sexual abuse convictions, one in 1985 and one in 1992. His criminal record also consists of convictions for possession of a controlled substance, disorderly conduct, operating while intoxicated, and three separate convictions for burglary. The mother was aware of Darius's sexual abuse convictions. Darius is the biological

father of the mother's youngest child who is not a subject of these proceedings. After the report was investigated by DHS, the children were moved to Anthony's home.

On July 6, 2005, a petition was filed alleging the children to be in need of assistance. After an allegation of child abuse was reported against Anthony and his paramour, Melanie, the boys were voluntarily placed in the home of their maternal grandmother. On September 14, 2006, both boys were returned to Anthony's care. On October 4, 2006, the children were adjudicated to be in need of assistance with respect to the mother for not providing adequate supervision pursuant to Iowa Code section 232.2(6)(c)(2) (2005) because the mother placed the children in danger of sexual abuse by exposing them to a known sex offender.

Since that time, DHS has provided the mother with multiple services, including family centered services, visitation, substance abuse testing, psychological evaluation, protective day care, early access AEA evaluation for the children, family team meetings, Title XIX, and Family Investment Program or food stamps. The mother was allowed virtually unlimited unsupervised visitation with the children from July 2006 until May 2007. However, from August until November 2006, the mother had no face-to-face contact with the boys. From November 2006 until May 2007, she had two face-to-face visits with her children. The mother called the children on the phone multiple times every week, but was unable to hold a beneficial conversation due to the children's young ages. The children attended day care near the mother's home where she was permitted to visit them. She made two visits to the day care and claimed she could not afford

transportation. Public transportation to and from the day care costs about \$1.50. The boys had tubes placed in their ears in October 2006. The mother knew this but did not attend the surgery.

The mother had one supervised visit in which the provider was concerned about the mother's ability to supervise the boys and her new baby at the same time. At this visit the boys were playing outside. When the baby got warm the mother took her inside and left her lying on the floor with a propped up bottle. Although the baby was within view of the mother, the provider was concerned the baby might choke on the bottle and the mother would never know. Although there appeared to be a bond between the mother and the boys, the provider observed little interaction between them. The mother did not seem to know how to make appropriate conversation with the boys. She told J.M.A.E. about her night at the casino but failed to ask him about himself or his activities.

On November 29, 2006, the court ordered the mother to complete a psychological evaluation to be paid for by the State. She made an appointment at the designated clinic for January 5, 2007, failed to show up, could not be reached, and never called to reschedule. There is concern that the mother struggles with depression, stress, and possibly an attention deficit disorder preventing her from staying on task. Twenty-four parent skill service appointments were scheduled for the mother before the dispositional hearing. The mother attended twelve.

The court also ordered that Darius have no contact with the boys unless he completed a new sex offender evaluation and followed all recommendations for treatment, as well as consented to regular polygraph examinations and

develop a relapse prevention plan. He made no attempt to complete any of these tasks. As a result, the mother was unable to have visits with her children in her own home. During the course of these proceedings Darius's baby was also the subject of a DHS child abuse investigation. The child protective worker assigned to that case found that Darius was not an imminent risk to the baby, but did state that if Darius had not been the father of the child he would have been legally required to found the report.

The mother is consistent at maintaining a full-time job. She does not have a vehicle, and her driver's license is suspended due to unpaid fines. However, she lives in Coralville where many stores and services are accessible by foot and public transportation. The mother has income from her job, Darius has social security disability income, and the couple benefits from food stamps, Title XIX and subsidized housing.

On May 24, 2007, the court ordered that a petition for termination of parental rights be filed. It also ordered B.E.J.M. to be placed in the home of his biological father, Kevin. The record reflects that, although the boys missed their mother at first, they have now adjusted well into their new living situations with their fathers. J.M.A.E. rarely talks about his mother and is no longer excited to go on visits. He has a memory of who his mother is, but is no longer bonded with her. B.E.J.M. no longer wants to go on visits at all. He has adjusted well into the home of his biological father and step-mother and has bonded with his younger half-sister. After B.E.J.M. was placed with Kevin, Kevin requested the visits with the mother be supervised because of the length of time that had elapsed since the last visit. The court granted the request. There were five scheduled visits

between the dispositional review hearing and the termination of parental rights hearing. The mother attended three. From August 2006 until August 2007, the mother saw J.M.A.E. six times and B.E.J.M. five times. Between the dispositional review hearing and the termination of parental rights hearing there were ten parent skills sessions scheduled. The mother attended eight.

The district court ordered termination of the mother's parental rights to J.M.A.E. pursuant to Iowa Code sections 232.116(1)(b) and (e) (2007) and her rights to B.E.J.M. pursuant to sections 232.116(1)(b), (e), and (h).

II. Standard of Review

We review termination proceedings de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Although we give weight to the juvenile court's factual findings we are not bound by them. *Id.* The grounds for termination must be proven by clear and convincing evidence. *Id.* Our primary concern is the best interests of the children. *Id.*

III. Merits

The mother's parental rights to J.M.A.E. were terminated by the district court pursuant to Iowa Code sections 232.116(1)(b) and (e). Her parental rights to B.E.J.M. were terminated pursuant to sections 232.116(1)(b), (e), and (h). The mother claims there was no clear and convincing evidence that the children could not be returned to her home and the district court improperly found that termination of her parental rights was in the best interests of the children.

When the juvenile court terminates parental rights on more than one statutory ground, we are only required to find termination proper under one ground to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The

mother does not contest termination of her parental rights under section 232.116(1)(e). In any event, we find termination to be proper under that section. We note that the mother herself admitted she had a long way to go to become an adequate parent for her children. She continues to live with a sex offender who is unwilling to fulfill the requirements to prove that he is a suitable person to be involved in the boys' lives. Caseworkers have not been able to evaluate her apartment to determine if it would be an appropriate place for a child, and the mother has failed to take the steps required to attend psychological testing and parenting classes. There is no doubt that these children could not be returned to her care at this time or anytime in the near future.

The mother also claims it is not in the best interests of the children to terminate her parental rights because of the bond she and the children share. Even a strong bond between a child and a parent, however, is not enough by itself to negate termination of a parent's rights. *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). The existence of a parent-child bond must be weighed against other factors. *Id.* In this case, there does not appear to be any strong bond with the boys. Her lack of effort to visit them shows that she does not feel a strong need to spend time with them, and the boys' disinterest in attending visits shows they do not feel a strong bond in return. Any bond felt between the mother and her boys quickly diminished at their young ages when the mother did not maintain regular contact with them over the past year. She cannot right this wrong at this late stage upon the realization that her parental rights might be extinguished. The lack of strong bonding, along with the fact that the mother has made little effort to comply with the permanency plan in order to be able to have

the boys returned to her home, shows that it is in the best interests of the children for the mother's rights to be terminated. The boys have settled into their new lives with their fathers and are doing well. The occasional presence of their mother in their lives will only confuse them. It is therefore in the children's best interests that the mother's parental rights be terminated.

AFFIRMED.