

IN THE COURT OF APPEALS OF IOWA

No. 7-810 / 07-1607
Filed November 15, 2007

**IN THE INTEREST OF A.A.T. and J.T. Jr.,
Minor Children,**

**K.N.T., Mother,
Appellant.**

Appeal from the Iowa District Court for Sioux County, Robert J. Dull,
District Associate Judge.

K.N.T. appeals from the juvenile court's order terminating her parental
rights to her children, A.A.T. and J.T. Jr. **AFFIRMED.**

Melinda Roman of E. H. Philip Law Firm, Sibley, for appellant mother.

Judy Freking, Sioux Center, for father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, and Coleman J. McAllister, County Attorney, for appellee
State.

Patricia Vogel of Rensink, Pluim, & Vogel, Orange City, for minor children.

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

HUITINK, P.J.

K.N.T. appeals from the juvenile court's order terminating her parental rights to her children, A.A.T. and J.T. Jr. We affirm.

I. Background Facts and Proceedings

This family's juvenile court experiences began on April 8, 2003, when J.T. Jr. was hospitalized because he was suffering from multiple injuries. He was ultimately diagnosed with healing fractures of three right ribs, a skull fracture, hemorrhages of the femurs and tibiae, trauma-related seizure activity, multiple old bruises, and retinal hemorrhages—all indicative of non-accidental injuries. After J.T. Jr.'s injuries were reported to the Iowa Department of Human Services (DHS), his parents voluntarily relinquished custody to DHS, and he was placed in foster care. On May 15, 2003, the State filed a child in need of assistance (CINA) petition under Iowa Code section 232.6(c)(2) (2003). On May 22, 2003, DHS issued a founded child abuse report, listing the parents as the responsible parties. On July 11, 2003, J.T. Jr. was adjudicated CINA based on the allegations of the State's petition. After implementation of services and cooperation by the parents, J.T. Jr. was returned to parental custody on February 23, 2004.

On February 27, 2004, J.T. Jr.'s daycare provider reported J.T. Jr. had bruising. He was later diagnosed with a bruise on the left side of his forehead of unknown etiology but consistent with accidental trauma and left face linear discoloration consistent with inflicted injury. As a result, J.T. Jr. was removed from parental custody and placed in foster care. On March 11, 2004, DHS issued a founded child abuse report listing the parents as the responsible parties.

Services were continued, and J.T. Jr. was eventually returned to parental custody on February 25, 2005. Juvenile court supervision terminated on March 2, 2006.

On May 3, 2006, A.A.T.'s physician observed bruising, fussiness, and an apparent sore left arm. A.A.T. was accordingly admitted to the hospital, and x-rays revealed healing fractures of at least three left ribs. As a result, A.A.T. and J.T. Jr. were removed from parental custody and placed in foster care. On May 4, 2006, the State filed a CINA petition under Iowa Code sections 232.6(b) and (c)(2) (2005). On May 26, 2006, DHS issued a founded child abuse report, listing the parents as the responsible parties. On July 20, 2006, the juvenile court adjudicated A.A.T. and J.T. Jr. CINA under the sections listed in the petition. On February 1, 2007, the juvenile court issued an order waiving the provision of reasonable services to the parents under Iowa Code sections 232.102(12) and 232.116(1)(i) (2007). The juvenile court also ordered the State to file a termination petition. On May 17, 2007, the State filed the termination petition under sections 232.116(1)(a), (b), (d), (e), (f), (h), and (i). At the August 8, 2007 hearing on the termination petition, K.N.T. denied she abused or neglected A.A.T. and J.T. Jr. On August 30, 2007, the juvenile court entered an order terminating K.N.T.'s parental rights to A.A.T. and J.T. Jr. under sections 232.116(1)(d), (e), (f), (h), and (i).

On appeal, K.N.T. claims (1) insufficient evidence exists to terminate her parental rights under sections 232.116(1)(d), (e), (f), (h), and (i) and (2) terminating her parental rights was not in A.A.T.'s and J.T. Jr.'s best interests.

II. Standard of Review

We review a juvenile court's decision to terminate a parent's rights de novo. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). Although we are not bound by the juvenile court's factual findings, we give them weight. Iowa R. App. P. 6.14(6)(g). Our primary concern is the best interests of the children. *In re R.C.*, 523 N.W.2d 757, 760 (Iowa Ct. App. 1994). The State must prove the statutory grounds for termination by clear and convincing evidence. *In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1989).

III. Waiver

Initially, we address the State's waiver argument. According to the State, K.N.T. has waived error because she failed to make argument in support of the issues on appeal. See Iowa R. App. P. 6.14(1)(c) ("Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue."). We reject the State's waiver argument because K.N.T. argues she did not abuse A.A.T. and J.T. Jr.

IV. Sufficiency of Evidence

K.N.T. argues insufficient evidence exists to support termination of her parental rights under sections 232.116(1)(d), (e), (f), (h), and (i). When the juvenile court terminates a parent's rights on more than one statutory ground, we need find termination was proper under only one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Under section 232.116(1)(i), the juvenile court may terminate a parent's rights if all of the following have occurred:

(1) The child[ren] meet[] the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.

(2) There is clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child[ren] or constituted imminent danger to the child[ren].

(3) There is clear and convincing evidence that the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child[ren] within a reasonable period of time.

“A parent’s failure to address his or her role in the abuse may hurt the parent[’s] chances of regaining custody and care of [his or her] children.” *In re C.H.*, 652 N.W.2d 144, 150 (Iowa 2002). It is essential in meeting the children’s needs the parent recognize and acknowledge the abuse. *In re L.B.*, 530 N.W.2d 465, 468 (Iowa Ct. App. 1995). Meaningful change cannot occur without this recognition. *In re H.R.K.*, 433 N.W.2d 46, 50 (Iowa Ct. App. 1988). Furthermore, without this acknowledgement, any services are not likely to be effective. *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999).

The juvenile court’s findings of fact include the following:

[J.T. Jr.] and [A.A.T.] have been adjudicated Children In Need of Assistance pursuant to Iowa Code Sections 232.2(6)(b) and (6)(c), which include a finding of physical abuse or neglect. . . .

. . . .
 . . . The facts surrounding two infants severely injured while in the care of . . . [K.N.T.] and in both cases without obtaining medical care at the time a trauma was initially sustained constitute clear and convincing evidence that, at worst, abuse or, at best, neglect, posed a significant risk to the life of the child ([J.T. Jr.]) and constitute an imminent danger to the child ([A.A.T.]). Finally, the newest incident of abuse or neglect occurred after years of reasonable efforts specifically addressing the elimination of the possibility of a recurrence of infant neglect/abuse, regrettably without success. [K.N.T. has] never shown any comprehension of the risk [her] children were subjected to which caused their injuries. To even consider allowing the children to be returned to the care of [K.N.T.] is not possible.

The record includes abundant evidence supporting these findings of fact, and we adopt them as our own. Therefore, we conclude sufficient evidence exists to

terminate K.N.T.'s parental rights to A.A.T. and J.T. Jr. under section 232.116(1)(i).

V. Best Interests

In addition to meeting the statutory requirements, termination must be in the best interests of the children. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). Therefore, termination is not mandatory upon finding the requisite statutory elements. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa Ct. App. 1996). Section 232.116(2) provides the juvenile court must “give primary consideration to the child[ren’s] safety, to the best placement for furthering the long-term nurturing and growth of the child[ren], and to the physical, mental, and emotional condition and needs of the child[ren].” According to our supreme court,

[t]he best interests are to be determined by looking at the child[ren’s] long range as well as immediate interests. The court is to consider what the future likely holds for the child[ren] if the child[ren] [are] returned to the parent[.]. Insight for that determination is to be gained from evidence of the parent[’s] past performance, for that performance may be indicative of the quality of future care the parent[] [is] capable of providing. Case history records are entitled to much probative force when a parent’s record is being examined.

In re S.N., 500 N.W.2d 32, 34 (Iowa 1993). Finally, temporary or long-term foster care is not in the children’s best interests when the children are adoptable. *In re T.T.*, 541 N.W.2d 552, 557 (Iowa Ct. App. 1995).

The juvenile court concluded termination of K.N.T.’s parental rights “is in the children’s best interest because the children cannot be considered safe in [her] custody,” considering three years of “multiple services have been supplied, apparently without success, based upon the injuries to [J.T. Jr.]” The juvenile court also found “[t]he children are adoptable, are developmentally on target and,

in the case of [J.T. Jr.], more emotionally stable than in the past.” The record includes abundant evidence supporting these findings of fact, and we adopt them as our own. Therefore, we conclude termination of K.N.T.’s parental rights to A.A.T. and J.T. Jr. is in the children’s best interests.

We accordingly affirm the juvenile court’s decision terminating K.N.T.’s parental rights to A.A.T. and J.T. Jr.

AFFIRMED.