

IN THE COURT OF APPEALS OF IOWA

No. 7-979 / 07-1827
Filed January 16, 2008

IN THE INTEREST OF A.N., Minor Child,

K.N., Mother,
Appellant.

Appeal from the Iowa District Court for Scott County, John G. Mullen,
District Associate Judge.

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

Timothy Tupper, Davenport, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Michael Walton, County Attorney, and Gerda Lane, Assistant
County Attorney, for appellee.

Jean Capdevila, Davenport, for mother.

Benjamin Yeggy, Davenport, guardian ad litem for minor child.

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

MILLER, J.

Kari is the mother of Amber, who was three years of age at the time of a late September 2007 termination of parental rights hearing. In an October 2007 order the juvenile court terminated Kari's parental rights pursuant to Iowa Code sections 232.116(1)(e) (child adjudicated a child in need of assistance (CINA), child removed from physical custody of parents at least six consecutive months, parents have neither maintained significant and meaningful contact with child nor made reasonable efforts to resume care of child), (h) (child three or younger, adjudicated CINA, removed from physical custody of parents six of last twelve months, cannot be returned to parents at present time without being a CINA), and (l) (child adjudicated CINA and custody transferred for placement; parent has severe, chronic substance abuse problem and presents danger to self or others; parent's prognosis indicates child cannot be returned to parents within reasonable time) (2007). The order also terminated the parental rights of Amber's father, and he has not appealed. Kari appeals. We affirm.

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).

Amber was born in June 2004, the second child born to Kari.¹ In November 2006 the Iowa Department of Human Services (DHS) began a child abuse/neglect investigation. It resulted in a "founded" report, with a finding that

¹ Kari's older child resides with the child's father, who is not Amber's father.

Amber's parents had denied her critical care by using crack cocaine in Amber's presence while solely responsible for her care. Amber was voluntarily placed with Kari's older child's father in late November. Kari was at that time about seven months pregnant. The father was someone other than the father of either Amber or Kari's older child. Services commenced. By late December 2006 no progress had been made and Amber was voluntarily placed in foster care.

The State filed a CINA petition in late December 2006. In February 2007 Amber was adjudicated a CINA pursuant to Iowa Code sections 232.2(6)(c)(2) (child has suffered or is imminently likely to suffer harm as a result of failure of child's parent to properly supervise the child) and (n) (child whose parent's drug or alcohol abuse results in child not receiving adequate care). The adjudication was based on the parents' use of crack cocaine while Amber was present. Somewhat presciently, the juvenile court noted that Kari was not interested in available and offered substance abuse treatment or mental health services and was not committed to parenting. The juvenile court ordered that Amber remain in the custody of the DHS for placement in foster care.

In early March 2007 Amber's placement was changed to a paternal aunt, with whom she has thereafter remained. Amber's legal custody has been with the paternal aunt, subject to supervision by the DHS, since early April 2007. Amber is doing well in the care of her aunt, who wishes and intends to adopt her.

Kari claims the juvenile court erred in concluding the State proved any one or more of the three statutory grounds for termination of her parental rights. We choose to focus on section 232.116(1)(h). The first three of the four elements of

that provision were clearly proved. Based on the following facts we conclude the fourth element was also proved by clear and convincing evidence.

Although Kari's parental skills, her lack of safe and stable housing, and her lack of employment have been concerns throughout the juvenile court proceedings, the primary concerns have been her substance abuse problem and her failure or refusal to participate in ordered and available services.

Kari was initially to have visitation with Amber two times per week, and was given a schedule for visitation. In the period of about ten weeks beginning in late November 2006 she visited Amber about three times. Her visitation was then decreased to one time per week. In the next six weeks Kari attended three of seven scheduled supervised visitations, and in the following month attended only one visitation and did not maintain contact with her service provider. Kari did not attend the April 2007 dispositional hearing or the June 2007 permanency hearing. She had no contact with Amber, the DHS, or her service provider for about ten weeks ending in July. Visits then resumed at two per week, but Kari again failed to attend some and they were again reduced to one per week. Kari claimed she missed the visits and missed appointments with service providers because she forgot, lost the schedule, lacked transportation, or had other excuses. She was at times found sleeping when she missed visitations or appointments, and she failed to use transportation offered through the DHS.

Kari missed most parenting sessions. She did not attend Amber's medical appointments.

Kari has a lengthy and serious history of substance abuse. She was required to provide specimens to be tested for drug use and was required to

participate in substance abuse treatment. Kari nevertheless continued her substance abuse. She was under the influence of crack cocaine and alcohol when she went to the hospital for delivery of her third child in February 2007, and acknowledged drug use at later times. Until very shortly before the termination hearing Kari refused to provide specimens for drug testing and refused to participate in substance abuse treatment. It is clear that she has not addressed her substance abuse problems that led to a “founded” report of Amber’s abuse/neglect by her and led to Amber’s adjudication as a CINA.

In summary, Kari has failed or refused to visit and maintain contact with Amber, address her substance abuse, or take advantage of other ordered and available services. We conclude, as the juvenile court did, that at the time of the termination hearing Amber could not be returned to Kari without being subject to a high risk of harm in the nature of neglect, failure of supervision, and failure to provide physical necessities, any or all of which would cause her to remain a CINA. We conclude the State proved by clear and convincing evidence the grounds for termination of Kari’s parental rights pursuant to section 232.116(1)(h). We need not decide whether it also proved the grounds for termination pursuant to the other statutory provisions it relied upon. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (“When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm.”).

AFFIRMED.