

IN THE COURT OF APPEALS OF IOWA

No. 7-984 / 07-1966
Filed March 26, 2008

**IN THE INTEREST OF A.P. II,
Minor Child,**

F.H., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Joe E. Smith, District Associate Judge.

A mother appeals from the juvenile court's order terminating the parental rights to her child. **AFFIRMED.**

John C. Heinicke of Kragnes & Associates, P.C., Des Moines, for appellant mother.

Jennifer Oetker, Des Moines, for father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Michelle Chenoweth, Assistant County Attorney, for appellee State.

Steve Clarke, Des Moines, for minor child.

Heard by Huitink, P.J., and Zimmer and Miller, JJ.

HUITINK, P.J.

F.H., a mother, appeals from the juvenile court's order terminating the parental rights to her child, A.P. II. We affirm.

I. Background Facts and Proceedings

On September 26, 2006, the Iowa Department of Human Services (DHS) received a report that F.H. was using methamphetamines. On September 28, F.H. tested positive for methamphetamines. On September 29, A.P. II was removed from F.H.'s custody pursuant to a temporary ex parte removal order, and custody was placed with his paternal grandparents and later his father. On October 2, 2006, the State filed a child in need of assistance (CINA) petition under Iowa Code sections 232.2(6)(b), (c)(2), and (n) (2005). On October 5, DHS issued a founded child abuse report listing F.H. as the responsible party. On December 19, 2006, the juvenile court adjudicated A.P. II as CINA on all of the grounds listed in the State's CINA petition and ordered F.H.'s compliance with services, including drug treatment and testing.

At the permanency hearing on July 12, 2007, the juvenile court ordered the State to file a termination of parental rights petition because F.H. had failed to enter into two drug treatment programs and was unsuccessfully discharged from a third drug treatment program. On August 10, 2007, the State filed a petition under sections 232.116(1)(d), (h), and (l) (2007). On August 17, 2007, F.H. entered her fourth drug treatment program. On November 7, 2007, the juvenile court terminated F.H.'s parental rights to A.P. II on all of the grounds alleged in the State's termination petition.

On appeal, F.H. claims: (1) Insufficient evidence exists to terminate her parental rights under sections 232.116(1)(d), (h), and (l), and (2) termination was not in A.P. II's best interests because a close relationship exists between herself and A.P. II and a relative has legal custody of A.P. II.

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 child. *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. Sufficiency of Evidence

F.H. argues insufficient evidence exists to support termination of her parental rights under sections 232.116(1)(d), (h), and (l). 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)(h), the juvenile court may terminate a parent's rights if:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 292.96.
- (3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

- (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

F.H. only challenges the sufficiency of the evidence supporting the fourth element.

We have long recognized parents with chronic, unresolved substance abuse problems present a danger to their children. *In re J.K.*, 495 N.W.2d 108, 113 (Iowa 1993). When the issue is parental drug addiction, we “consider the treatment history of the parent to [determine] the likelihood the parent will be in a position to parent the child in the foreseeable future.” *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). “Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting.” *Id.*

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

At the TPR hearing all the professional witnesses agreed that [A.P. II] could not be returned to his mother at that time. [F.H.] had less than six weeks treatment experience. It is open to conjecture whether the level of treatment she received was adequate to address her poly-substance abuse. [F.H.] was not completely honest with the evaluator who set the level of treatment. As recently as July [F.H.] gave false testimony in an effort to cover up alcohol centered socializing. The evidence that [F.H.] was seeking a different social life depended on the credibility of [F.H.'s] testimony. That credibility is open to serious doubt. [F.H.'s] past self reports exhibited notorious unreliability. At the TPR hearing, [F.H.] couched her responses in terms that seemed determined to tell her questioners what they wanted to hear. For all these reasons I do not feel [F.H.'s] belief that she could resume custody of [A.P. II] warrants consideration. In addition, [F.H.] resided in the home where, by her own report, felonies occurred. There is simply no way that I could allow a return to her custody based upon the evidence adduced at the TPR hearing.

Our de novo review of the record discloses abundant evidence supporting the juvenile court's findings of fact, and we adopt them as our own. Like the juvenile court, we conclude F.H.'s unresolved substance abuse issues continue to pose a risk of adjudicatory harm to A.P. II and he cannot be returned to her custody at this time. We affirm on this issue.

IV. Best Interests

F.H. also argues termination was not in A.P. II's best interests because a close relationship exists between herself and A.P. II¹ and a relative, A.P. II's father, has legal custody of A.P. II. In addition to meeting the statutory requirements, termination must be in the best interests of the child. *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).

Indeed, sections 232.116(3)(a) and (c) provide termination need not occur if "[a] relative has legal custody of the child" or "[t]here is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." We have stated these sections are permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). "It is within the sound discretion of the juvenile court, based upon the unique circumstances before it and the best interests of the child, whether to apply [these] section[s]." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997).

¹ The State argues this issue has not been preserved. We, however, disagree and reach the merits of this issue.

Regarding the closeness of the parent-child relationship issue, the juvenile court found the bond between F.H. and A.P. II is not enough to overcome the danger posed by F.H.'s chronic, unresolved substance abuse issues:

The history of this case amply demonstrates that, in terms of [F.H.'s] priorities, parenting [A.P. II] falls way down on the list. [F.H.'s] ability to function as [A.P. II's] mother during relatively short periods of family time improved while under the court's supervision, but she continued to pursue a social life that fostered her addiction. She only developed a willingness to address her demons when termination became a distinct possibility.

We agree. Even if the bond between mother and child is as strong as F.H. claims, the benefit of preserving the parent-child relationship between F.H. and A.P. II is clearly outweighed by the continuing risk of harm posed by F.H.'s unresolved substance abuse issues.

We also reject F.H.'s best interests argument based on A.P. II's placement with his father. The record indicates the relationship between F.H. and A.P. II's father has been contentious, particularly in relation to A.P. II's custody and visitation. There is also a history of domestic violence. We, like the juvenile court, find the resulting risk of A.P. II's exposure to continuing parental conflict would frustrate our statutorily mandated permanency objectives. See *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially) (stating "[a] child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests"). Termination of F.H.'s parental rights is in A.P. II's best interests.

We accordingly affirm.

AFFIRMED.