

IN THE COURT OF APPEALS OF IOWA

No. 8-049 / 07-2134
Filed February 13, 2008

IN THE INTEREST OF G.T., Minor Child,

K.A.T., Mother,
Appellant.

Appeal from the Iowa District Court for Warren County, Kevin Parker,
District Associate Judge.

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

Jared C. Harmon of Bull Law Office, P.C., Des Moines, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Bryan Tingle, County Attorney, and Alyssa Kenville, Assistant
County Attorney, for appellee.

Christine Milligan-Ciha, Des Moines, guardian ad litem for minor child.

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

MILLER, J.

Kelly is the mother of three-year-old Grace. Kelly appeals from a December 2007 juvenile court order terminating her parental rights to Grace. The order also terminated the parental rights of both a named putative father and any unnamed putative fathers of Grace, and no such putative father has appealed. 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).

The juvenile court terminated Kelly's parental rights pursuant to Iowa Code section 232.116(1)(h) (2007) (child three or younger, adjudicated a child in need of assistance (CINA), removed from physical custody of parents six of last twelve months, cannot be returned to parents without being a CINA).¹ Kelly does not claim the State did not prove this statutory ground for termination. She claims the court erred in terminating her parental rights, asserting termination is not in Grace's best interest.

Even if statutory requirements for termination are met, a decision to terminate must also be in the best interest of the child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). Thus, termination is not mandatory upon finding the

¹ The court also purported to terminate Kelly's parental rights pursuant to section 232.116(1)(l) (child adjudicated CINA and custody transferred from parents; parent has severe, chronic substance abuse problem and presents a danger to self or others; parent's prognosis indicates child cannot be returned to parents within a reasonable period of time), although that provision was not pled either in the written petition or by way of an amendment that was made at the termination hearing.

requisite statutory elements have been proved. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa Ct. App. 1996). The juvenile court is to “give primary consideration to the safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child.” Iowa Code § 232.116(2).

The best interests are to be determined by looking at the child’s long range as well as intermediate interests. The court is to consider what the future likely holds for the child if the child is returned to the parents. Insight for that determination is to be gained from evidence of the parents’ past performance, for that performance may be indicative of the quality of future care the parents are 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) (citations omitted). Temporary or even long-term foster care is not in a child’s best interest, especially when the child is adoptable. *In re T.T.*, 541 N.W.2d 552, 557 (Iowa Ct. App. 1995).

Kelly is twenty-eight years of age. Grace is her third child. Kelly has a lengthy and serious history of substance abuse. Her substance abuse led to the termination of her parental rights to her first child, and later led to the termination of her parental rights to her second child. Kelly’s substance abuse involves cocaine, marijuana, methamphetamine, and alcohol. In addition to her substance abuse, Kelly not only has mental health and co-dependency problems, but also has the related problems of an inability to acquire employment and housing.

Grace, born in October 2004, was first adjudicated a CINA when about one month of age because of Kelly’s past and ongoing substance abuse and other problems. Kelly resided at the House of Mercy and participated in its services for almost one and one-half years, ending about March 2006. She

acknowledged that during the one and one-half years the services and treatment she received included “just about every self-help class imaginable.” At some point the first CINA case involving Grace was closed.

Following her inpatient residence at the House of Mercy, Kelly continued its services on an outpatient basis for a period of time. By late summer of 2006 Kelly was again engaged in substance abuse. In January 2007 Grace was removed from Kelly’s custody and placed in the legal custody of the Iowa Department of Human Services (DHS) and in the care of a foster family, a status which continued through the late October termination of parental rights hearing.

Beginning in January or February 2007 Kelly was offered services. She participated in some, including intensive outpatient programming at the House of Mercy. However, in April 2007 Kelly “walked away” from services and from any contact with Grace. Between April and the termination hearing Kelly had no contact or communication with Grace.

After April 2007 Kelly continued her substance abuse. She was on probation for possession of methamphetamine, and was arrested in mid-September. Kelly testified that her probation officer “violated me” and that she, Kelly, went to jail, all of which we take to mean that the officer charged her with violating probation, Kelly was found to have done so, and she was jailed. At the time of the termination hearing Kelly’s tentative date to leave jail was January 16, 2008, some two and one-half months away.

As asserted by the State, “Kelly is a chronic substance abuser for whom treatment simply has not worked.” In recent years the only times she has been able to avoid substance abuse have been those times when she is closely

supervised, usually in a highly-structured environment. Kelly acknowledges she has demonstrated an inability to maintain a substance free lifestyle when on her own in the community. The DHS case worker assigned to Grace's case since shortly after commencement of the underlying CINA case opines that because of Kelly's history and her degree of serious substance abuse and mental health problems the case worker will be unable to recommend reunification even after Kelly's current treatment and a following additional six months.

Grace has twice been adjudicated a CINA. At the time of the termination hearing her most recent removal had been for over nine months, with no contact for over six months. Grace had been in a pre-adoptive foster home for the nine months, was closely bonded with her foster parents and their children, and was thriving. She needs the safety, security, stability, and permanency that Kelly has been unable to provide and will be unable to provide for at least the foreseeable future. We agree with the juvenile court that termination of Kelly's parental rights is in Grace's best interest.

AFFIRMED.