

IN THE COURT OF APPEALS OF IOWA

No. 8-1004 / 08-1819
Filed December 31, 2008

**IN THE INTEREST OF J.J.A.,
Minor Child,**

P.P., Mother,
Appellant.

Appeal from the Iowa District Court for Hamilton County, James A. McGlynn, Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Douglas E. Cook of Cook Law Firm, Jewell, for appellant mother.

Justin T. Deppe of Deppe Law Office, Jewell, for father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Patrick B. Chambers, County Attorney, for appellee State.

Ellen Henry of Henry Law Firm, Jewell, for minor child.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

DOYLE, J.

A mother appeals from the juvenile court order terminating her parental rights to her child. Upon our de novo review, we affirm.

I. Background Facts and Proceedings.

P.P. is the mother and J.A. is the father of five children.¹ At issue here is their child J.J.A., born in September 1997.² J.J.A. is diagnosed with ADHD, acute stress disorder, and a seizure disorder. Due to his conditions, J.J.A.'s medications must be regularly and properly administered.

On July 3, 2001, the State filed petitions alleging three of the parents' children, including J.J.A., were children in need of assistance (CINA) as defined in Iowa Code section 232.2(6)(b) and (g).³ The petitions alleged, among other things, that the parents had separated, that the mother had filed a petition for relief from domestic abuse, and that neither parent by himself or herself was presently able to care for the children. Additionally, the petition asserted the parents' house was very disorganized and posed a health problem for their youngest child.

On July 11, 2001, the juvenile court entered a temporary removal order removing J.J.A. and three of his siblings from their parents' custody and placing the children with their paternal grandparents. The court determined removal was in the children's best interests despite the mother's request that the children

¹ The record reveals that the parents have had a rocky, on-again, off-again, relationship. Although they appear to still be married, they have been separated and have planned to divorce several times.

² J.A. consented to the termination of his parental rights with respect to J.J.A. and has not appealed.

³ A fourth child of the parents had previously been adjudicated a CINA.

remain in her custody, noting that the mother admitted she was unemployed and living with a friend. Additionally the court found the mother's home was not habitable. On August 15, 2001, the children were returned to their parents' custody under the supervision of the Iowa Department of Human Services (Department). At that time, the juvenile court adjudicated the children CINA based upon agreement of the parents and the parents' stipulation to the facts set forth in the State's petition.

On October 17, 2001, the court again entered a temporary removal order removing J.J.A. and four of his siblings from the parents' custody, determining the continuation of the children in the custody of the parents would be contrary to their welfare. On November 5, 2001, the children were placed in the custody of various family members, under Department supervision. The children remained in their family members' care until they were returned to their parents' custody, under Department supervision, on August 1, 2002. At that time, custody was returned to the parents conditioned upon their cooperation with services and their maintenance of a habitable residence, among other things.

Thereafter, review hearings were held approximately every six months, and J.J.A. and several of his siblings continued to be found CINA. The State twice requested the children be removed from the parents' care. However, the court found that continuing custody under Department supervision was in the best interests of the children at that time.

On May 5, 2004, the Department filed a report to the juvenile court advising that J.J.A. had experienced some serious mental health issues and consequently, a referral for a thirty-day evaluation at Beloit Children's Home had

been made. The Department recommended that J.J.A.'s custody remain with his parents until there was an opening at Beloit, at which time custody be placed with the Department for the purposes of the thirty-day evaluation. All parties agreed, and the court entered an order on May 13, 2004, for a mental health evaluation pursuant to the parties' agreement.

On November 15, 2004, the juvenile court entered a hearing order on CINA dispositional review. The court noted that a mental health examination had been conducted on J.J.A. and services were being provided. The court again found the children to be CINA and continued custody in the parents' care under Department supervision.

On February 13, 2006, J.J.A. was placed at Cherokee Mental Health Institute pursuant to Iowa Code chapter 229 due to his mental illness. J.J.A.'s doctor was able to stabilize J.J.A.'s behaviors and requested J.J.A. be placed in a psychiatric medical institution for children (PMIC) for treatment. Because placement in the PMIC was not immediately available, the doctor requested that J.J.A. be placed in foster care while awaiting treatment. On March 22, 2006, the juvenile court entered an order for temporary removal, placing J.J.A. in the Department's custody based upon J.J.A.'s doctor's report and recommendations. J.J.A. was then placed in Beloit for treatment on or about May 31, 2006, and remained there until approximately April 20, 2007. It appears J.J.A.'s mother visited regularly while J.J.A. was hospitalized.

Following J.J.A.'s release from Beloit, the Department filed a report with the juvenile court. The report stated that J.J.A.'s therapist recommended that J.J.A. be placed in a foster home after his release to help J.J.A. transition back

into his mother's home after being out of the home for almost a year. The therapist was concerned about the instability and chaos in the mother's home and the impact this would have on J.J.A.'s progress if he went directly home. Additionally, the report stated the therapist expressed concern about J.J.A.'s relationship with his siblings and his coping skills when he becomes upset with his siblings. J.J.A. was then placed in foster care.

On May 3, 2007, the juvenile court entered its permanency order concerning J.J.A. The court noted J.J.A. has serious treatment needs and that it was generally agreed it was not in J.J.A.'s best interests that he be returned to his parents' custody immediately. The court further noted that the parents were separated and intended to divorce, and that it was hoped if the plan of J.J.A.'s transition was successful, J.J.A. would be back with one of the parents before the start of the school year. Consequently, the court continued placement of J.J.A. in foster care for six months and authorized a plan of transition to a parent. The court further stated that all parties should make best efforts to fulfill the conditions and requirements set forth previously with the expectation that if they do so, the need for the removal of J.J.A. will no longer exist at the end of the additional six-month period.

At the end of July 2007, the mother and J.J.A.'s siblings moved to a different residence. In approximately August or September 2007, the mother allowed a registered sex offender to live in her home. Additionally, the mother testified that in September the electricity was shut off and she was evicted. For these reasons, the parents' other children were removed from the mother's care on September 28, 2007, and placed in foster care. The mother was charged with

and pled guilty to child endangerment for allowing the sex offender to live in her home with the children and was placed on probation. The mother testified that based upon the criminal charge, she lost her job.

On December 20, 2007, the juvenile court entered a stipulated permanency review order concerning J.J.A. The court noted that on May 3, 2007, it entered a permanency order giving the parents six months to regain unification. The court further noted that although part of J.J.A.'s out-of-home placement was due to J.J.A.'s placement into a PMIC facility, it was uncertain as to whether J.J.A. could ever be returned to the custody of either parent. Additionally, the court stated: "Under the circumstances, all parties either agreed with or acquiesced with modifying the permanency order in this case to now direct the State to proceed towards termination of parental rights." The court then directed the county attorney to institute termination of the parents' parental rights, determining it was in J.J.A.'s best interests.

On March 3, 2008, the Stated filed its petition for the termination of the parents' paternal rights to J.J.A. The Department reported that both parents were in agreement with the termination of their parental rights. However, the mother refused her consent thereafter.

A contested termination hearing was held August 22, 2008. At that time, the mother was in jail for a probation violation. She testified that she had continued to visit J.J.A. and her other children in foster care, but to do so required her to leave her county of residence, violating her probation agreement. Additionally, she testified that after being evicted in September 2007, she had lived with various friends and family, in approximately five different places. She

testified that she stayed with one of her son's friends, who had a founded child abuse charge against him. Additionally, J.J.A.'s mother testified that she was not in a position to take J.J.A. back at that time, but argued termination was not in J.J.A.'s best interests.

All parties were in agreement that J.J.A. had improved in his foster family's care. The Department's caseworker testified that J.J.A. was bonded with both his foster family and his mother and siblings. She testified that although termination was in J.J.A.'s best interests, it was also in J.J.A.'s best interests that his relationship with his mother and siblings not end. J.J.A.'s foster father testified that he would be willing to adopt J.J.A. and allow J.J.A. to maintain a relationship with his mother and siblings as long as J.J.A. wanted. J.J.A.'s foster father further testified that it was not in J.J.A.'s best interests to be left in foster care until turning eighteen.

Following the hearing, the juvenile court entered an order on October 7, 2008, terminating the mother's parental rights to J.J.A. pursuant to Iowa Code section 232.116(1)(f) (child four or older, child CINA, removed from home for twelve of last eighteen months, and child cannot be returned home) (2007). The mother appeals.

II. Scope and Standards of Review.

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). The grounds for termination must be supported by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). If the juvenile court terminates parental rights on more than one statutory ground, we need only to find the evidence supports termination on one of the grounds cited

by the juvenile court to affirm. *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2000). Our primary concern in termination proceedings is the best interests of the child. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). Even when the statutory grounds for termination are met, the decision to terminate parental rights must reflect the child's best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). When we consider the child's best interests, we look to the child's long-range as well as immediate best interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997).

III. Discussion.

The mother does not dispute any of the elements of any of the grounds for termination of her parental rights. Rather, she contends termination was not in J.J.A.'s best interests. Specifically, the mother asserts that until the removal of her other children in September of 2007, the State had not requested anything of her other than maintaining her stability. She further asserts that she maintained employment, housing, and stability sufficient to maintain custody of three other children, and that prior to September 2007 there was no evidence that she was unfit as a mother to care for the children. Because she asserts it was in J.J.A.'s best interests that his relationship with his mother and siblings continue, the mother contends termination of her parental rights was not in J.J.A.'s best interests.

Upon our de novo review, we disagree. In assessing the child's best interests, we must consider what the future holds for the child if the child is returned to the parent's care. *In re J.K.*, 495 N.W.2d 108, 110 (Iowa 1993). To determine what is in the best interests of the child, evidence of the parent's past

performance is the best indicator of the quality of future care for the child. *Id.* (citing *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992)).

Despite the mother's assertions, the record reveals she has a long history of involvement with the Department. As early as 2001, the juvenile court identified stability and habitable housing as issues concerning the mother and the children, in direct contradiction of the mother's claims. Those same issues continue to exist seven years later. Following J.J.A.'s latest release from treatment, the juvenile court in May 2007 put into place a permanency plan to reunite J.J.A. and his mother. Thereafter, the mother allowed a sexual offender to live at her home, leading to a conviction and removal of her other children from her home. Since then, she has not worked on resolving her issues to reunify her family and provide her family stability.

It is clear the mother loves J.J.A. and would like continue her relationship with J.J.A. However, upon our review of the record, it is apparent serious concerns still exist regarding the mother's stability and her ability to provide adequate care for J.J.A., especially given J.J.A.'s special needs. J.J.A. is doing very well in the foster home, and the foster parents are willing to adopt J.J.A. J.J.A. deserves stability and permanency, which the mother has not and cannot provide. See *In re C.D.*, 509 N.W.2d 509, 513 (Iowa Ct. App. 1993). Consequently, we agree with the juvenile court's finding that termination of the mother's parental rights is in J.J.A.'s best interests and accordingly affirm the juvenile court's decision to terminate the mother's parental rights.

IV. Conclusion.

Because we agree with the juvenile court's finding that termination of the mother's parental rights is in J.J.A.'s best interests, we accordingly affirm the juvenile court's decision to terminate the mother's parental rights.

AFFIRMED.