

IN THE COURT OF APPEALS OF IOWA

No. 8-140 / 08-0140
Filed March 14, 2008

**IN THE INTEREST OF A.J., C.J., C.J., P.J., L.J., and J.J.,
Minor Children,**

**T.L.J., Mother,
Appellant.**

Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Associate Juvenile Judge.

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

Martha M. McMinn, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Patrick Jennings, County Attorney, and Cindy Weber-Blair and Dewey Sloan, Assistant County Attorneys, for appellee.

Chad Thompson, Kinsley, for father.

Lesley Rynell, Juvenile Law Center, Sioux City, guardian ad litem for minor children.

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

MILLER, J.

Tami appeals from a January 2008 juvenile court order terminating her parental rights to an eleven-year-old daughter, seven-year-old twin daughters, five-year-old twin sons, and a two-year-old son (“the children”). The order also terminated the parental rights of the children’s legal father, who is Tami’s husband, and terminated the parental rights of putative biological fathers of the sets of twins and any unknown fathers of the children, and they have not appealed. We affirm the termination of Tami’s parental rights to the children.

The children came to the attention of the Iowa Department of Human Services (DHS) and the juvenile court in July 2006. The children were living with Tami, and their fathers’ whereabouts were unknown. Tami left the children with her mother about 6:30 a.m. on July 13, saying she was going to look for a job. When Tami had not returned or made contact by late afternoon on July 14 her mother contacted authorities as she could not handle the children. The children were removed by a peace officer. Tami did not contact the DHS social worker until late evening on July 15. Tami had been gambling and abusing methamphetamine.

A July 19, 2006 order placed the children in the custody of the DHS, in whose custody they have thereafter remained. The children were initially placed in family foster care, where four of them have thereafter remained placed. One of the twin girls was initially placed in family foster care, but was thereafter in a mental health institute, a psychiatric medical institution for children (PMIC), and shelter care, all because of her behavioral and mental problems. The other twin

girl was briefly in a mental health institute in May-June 2007. The twin boys have also suffered from significant behavioral and emotional problems.

In August 2006 the juvenile court adjudicated the children as children in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(a), (b), (c)(2), and (n) (2005). In doing so it found that interviews of the older children revealed extensive violence between Tami and her husband; the youngest child, eleven months of age at the time, had tested positive for amphetamine and cocaine at an ingestion level; and there had been a founded child abuse report, with Tami and her husband as the persons responsible, for denying the children critical care by failing to provide proper supervision, and with Tami responsible for the presence of illegal drugs in the youngest child. The report noted that Tami had tested positive for amphetamine, methamphetamine, and cocaine.

Between June 2006 and September 2007 over thirty different services were provided or offered to the family. Following a September 2007 permanency modification hearing the juvenile court ordered the State to initiate termination of parental rights proceedings. The State filed its petition, a hearing was held in mid-December, and in early January the juvenile court entered an order terminating Tami's parental rights to the children pursuant to Iowa Code sections 232.116(1)(d), (e), (i), and (l), her rights to the eldest five children pursuant to section 232.116(1)(f), and her rights to the youngest child pursuant to section 232.116(1)(h). Tami appeals.

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).

Tami does not claim the statutory grounds for termination of her parental rights were not proved. She first claims that the placement of the children in a foster home in which they were subject to abuse hindered her ability to cooperate with the DHS and regain custody. We disagree.

Some of the children were apparently subjected to inappropriate physical discipline in the foster family home in which they were initially placed. The discipline included spanking with a hand, spanking with a sock containing a tennis ball, and pinching on one occasion. The result was the removal of the five who were in that foster home, their placement in other foster homes, and a founded report of physical abuse of the twin boys and one of the twin girls (not the twin girl who as above noted was placed in a PMIC) by the foster parents. Tami apparently claims that this abuse was responsible for her inability to secure the return of the children to her.

The record, however, shows that it was Tami's own demons and her refusal or inability to make appropriate progress that prevented reunification. The juvenile court made detailed findings concerning Tami's many problems and her progress, or lack of progress, in this case. Those findings need not be repeated in detail here, but a summary is appropriate.

Tami has a lengthy and serious history of mental illness, substance abuse, and various addictions. Shortly after the children were removed from her legal and physical custody, an evaluation of Tami resulted in a diagnostic impression of "Pathological Gambling, Amphetamine or Like Dependence, [and] Alcohol

Abuse.” The record also contains evidence that Tami has a sex addiction and suffers from bipolar affective disorder, depression, and possible schizophrenia. She has at times throughout these proceedings failed or refused to participate in programs necessary to deal with these problems, and at other times began to participate but then abruptly ended her participation.

The twin girls and the twin boys have suffered from behavioral and emotional problems. Tami appears to claim that abuse in the first foster home caused these problems. However, the record indicates the problems existed at the time of removal and were in all likelihood the result of the children’s exposure to a lengthy history of domestic violence between Tami and her husband, exposure to Tami’s mental problems, exposure to Tami’s substance abuse, and Tami frequently leaving them with her mother for extended periods without returning as promised. In a finding with which we fully agree, the juvenile court found that the children had adjustment disorders and were the victims of Tami’s substance abuse, gambling addiction, co-dependency, and exposure to domestic violence. That the children’s behavioral and emotional problems were caused not by the physical discipline in the first foster home, but instead existed before then is perhaps most tellingly demonstrated by the fact that the child with by far the worst behavioral and mental problems, the twin girl who was placed in a mental health institute, a PMIC, and shelter care, was only briefly in the first foster home.

We find no merit to Tami’s claim that abuse in the first foster home hindered her ability to cooperate with the DHS and regain custody.

Tami claims she was making substantial progress toward reunification, and the DHS made an inappropriate, sudden decision to seek termination of her parental rights. Based on the events and circumstances hereafter described, we find no merit to this claim.

Beginning in July 2006 Tami was repeatedly admonished that permanent removal of the children could result in termination of her parental rights. She only minimally cooperated with services until January 2007. Then she entered inpatient chemical dependency treatment, which she completed in early February 2007. After a hiatus of almost a month she entered a women's halfway house for further substance abuse and related treatment. There were early concerns over whether she was internalizing her treatment, with her focus appearing to be on her husband who had by then returned to the area. In a September 20, 2007 order following a September 18 permanency modification hearing the juvenile court made the following findings of fact, with which we fully agree and which we adopt as our own:

Due to Tami's inability/unwillingness to cooperate and meet expectations of this half-way house program, she was discharged on July 19, 2007. Tami struggled the entire time in the half-way house program. She made minimal progress in completing recovery-based assignments and had difficulty taking responsibility for her own behaviors. She struggled with her anger throughout her stay and had difficulty accepting direction. She appeared to be suffering from a bipolar disorder for which she had previously been diagnosed, but refused to return to the provider to take medication for this mental illness.

Upon her discharge from the half-way house program Tami failed to follow through with recommendations that she participate in outpatient treatment for her alcohol/drug addiction as well as her gambling addiction.

Following her discharge from the halfway house, Tami did participate in visitations with the children that were unsupervised except for “drop-ins” by service providers, she obtained a house large enough for her and the children, and she paid existing fines in order to be able to acquire a driver’s license. Tami was supposed to arrange for and take medications; attend NA/AA meetings, provide verification, and obtain a sponsor; remain free of drug and alcohol use; attend outpatient mental health services and outpatient gambling services; and otherwise cooperate with services. She did attend some group therapy sessions, but otherwise largely failed to cooperate.

On August 13 Tami went to the DHS office to discuss a voucher for her newly-acquired housing and to request overnight visitation. The DHS had recently received a long-awaited psychosocial evaluation. It noted, among other things:

Tami has a significant and varied addictive pattern. Given the continued conflict with providers and her history of not completing programs and using right after discharge, I would give her a very poor prognosis for long-term recovery.

In his recommendations the evaluator concluded that in over a year there had been little change in Tami’s behavior, and she would probably not benefit from therapy. He would not recommend placement of the children with her unless and until she could show at least a full year of stability, and opined that because of her failure to comply with numerous recommendations there was a low probability of any success. The DHS case worker attempted to discuss the evaluation with Tami, and noted that in view of the case history and the evaluation the DHS and service providers would likely be recommending termination of parental rights. Tami began screaming and swearing, and ran out.

We fully agree with and adopt the following additional findings made by the juvenile court in its September 20 order:

On August 13, 2007, Tami attempted suicide by overdosing on medication.

On August 16, 2007, Tami was arrested for operating a motor vehicle while intoxicated. . . . Charges are pending.

On August 20, 2007, Tami was discharged from the Jackson Recovery Centers treatment program against medical advice after Tami had called the provider stating that she would not be attending any treatment services Her discharge diagnosis was pathological gambling, amphetamine or like dependence, alcohol abuse, and bipolar disorder NOS.

In her testimony [on September 18] Tami acknowledged that she has used the illegal drug “ice” a week and a half ago.

Between August 13 and the mid-December termination hearing Tami had minimal contact with the DHS case manager, had no visitation with the children as visitations were suspended because of her suicide attempt and relapses, and did not seek or secure substance abuse treatment. As of the termination hearing she had recently begun to take medications to deal with her mental problems, but remained unemployed and without a driver’s license.

We find the record of Tami’s acts and omissions, both before and after the DHS considered and discussed termination of her parental rights, fully supports its decision to seek termination.

Tami also claims: “There was not clear and convincing evidence produced at the termination hearing that it is in [the eleven-year-old child’s] best interest for her mother’s parental rights to be terminated.”

The children’s guardian ad litem pointed out to the juvenile court that the eldest daughter had loyalty to her mother and to keeping the family together, and

did not want Tami's parental rights terminated. The DHS case worker testified that the daughter was accustomed to being in a parental role for the other children and had been struggling with issues of loyalty to her mother and a desire to keep the family together. The case worker opined that the daughter had been struggling with permanency issues and needed an answer, closure, and permanency. The juvenile court noted that under Iowa Code section 232.116(3)(b) the court need not terminate the relationship between the parent and a child if the child is over ten years of age and objects to termination, and noted that the statute is permissive and calls for the exercise of discretion. The court noted the daughter's desire, but found it clear that her best opportunity for stability and permanency would be in an adoptive home rather than long-term foster care. It further noted its concern about sibling relationships if, as suggested by the DHS and others, the children continued to have contact with each other while Tami's parental rights to the eldest daughter were not terminated and that daughter continued to have contact with Tami.

We fully agree with the juvenile court's findings, reasoning, and conclusions on this issue, and conclude it did not abuse its discretion in deciding to terminate Tami's parental rights to the eldest daughter despite the daughter's objection.

AFFIRMED.