

IN THE COURT OF APPEALS OF IOWA

No. 8-508 / 08-0790

Filed July 30, 2008

**IN THE INTEREST OF D.J.R. and P.A.A.R.,
Minor Children,**

**J.K.R., Mother,
Appellant.**

Appeal from the Iowa District Court for Jasper County, Thomas W. Mott,
District Associate Judge.

A mother appeals from the order terminating her parental rights to two
daughters. **AFFIRMED.**

Kathryn E. Walker of Walker & Billingsley, Newton, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Steve Johnson, County Attorney, and James W. Cleverley, Jr.,
Assistant County Attorney, for appellee.

Steven Holwerda of Holwerda Law Office, Newton, guardian ad litem for
minor children.

Christopher R. Newton, father pro se.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

SACKETT, C.J.

Janice appeals from the order terminating her parental rights to her two daughters, D.R., born in 2000, and P.R., born in 2002. She contends (1) the children can be returned to her care and (2) termination is not in the children's best interest. We affirm.

I. Background.

The children and their two older sisters, then seven and eight, were removed from their parents' care based on alleged lack of parental supervision in May of 2004. The four children had been observed playing outside without adult supervision. They were running in front of cars and playing with a lighter next to a gas can. Janice was at work and the children's father, who was to be supervising them, was asleep. Janice and the children's father have subsequently divorced.¹ The older girls were placed in one foster home and the younger girls in another foster home where they had resided for over four years at the time of the termination hearing.

Following hearings on permanency in May and July of 2007, the court directed the State to file a petition seeking termination of the parental rights to the younger two girls. Janice appealed from that order. The appeal was dismissed as interlocutory. *In re L.R., J.R., D.R., and P.R.*, No. 07-1606 (Iowa Ct. App. Nov. 15, 2007).

On May 6, 2008, after hearing evidence the court juvenile terminated Janice's parental rights to D.R. and P.R. The juvenile court enlarged its order on June 27, 2008, to specify her parental rights were terminated under Iowa Code

¹ The father supports termination of the parental rights of both parents to both children.

section 232.116(1)(f) (2007) (child four or older, in need of assistance, removed from home at least a year, cannot be returned home at the present time).

II. Scope of Review.

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).

III. Discussion.

The question here is whether there is clear and convincing evidence the children cannot be returned to Janice's care and/or whether it is in the children's best interests that their parents' parental rights be terminated.²

Janice holds a BA degree in Missions and Christian Education from Faith Baptist Bible College and she is employed full-time at Wells Fargo as a project analyst. She bought and is maintaining a family home.

The petition seeking to have the children found in need of assistance children indicates they were removed because of several instances of the children playing unsupervised outside while their father slept and was it difficult to wake him. Also on visiting the home it was cluttered and unkempt and presented a safety hazard to the children. The goals were to have the parents provide proper supervision and provide their home in a clean and safe manner.

² Iowa Code section 232.116(3) gives the district court discretion not to terminate parental rights if it finds "termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." Iowa Code § 232.116(3)(c) (2007).

In the four years following removal Janice took advantage of offered services and made an effort to comply with requirements placed on her. The older children were returned to the home for a time and the younger children had in-home visits. One of the older girls was sexually abused in her foster home and there was inappropriate touching by the girls when they were together at Janice's home. Janice has been criticized for not handling the problem in the proper manner. Janice has cooperated with services but at times she has challenged the need for them. She has had parenting instruction and counseling. Some service providers contend she shuts down when they are working with her and also when she is working with her children. However there also was evidence that she was appropriate with her children and they are bonded to her. The juvenile court recognized the sometimes conflicting evidence but appeared to find the evidence criticizing Janice's parenting skills more credible. We give weight to these findings, recognizing the court has the benefit of seeing the witnesses and being in personal contact with the parent. See *In re L.G.*, 532 N.W.2d 478, 480 (Iowa Ct. App. 1995).

It is difficult to understand from reading the cold record why this case has languished for four years with the children remaining in foster care with the goal of returning the children to their mother,³ yet they have never been returned. There is no evidence that Janice has physically harmed the children or failed to meet their needs for food, clothing, and shelter, nor that she has misused alcohol or drugs. She is educated and has been able to maintain stability in her

³ At one time the goal was to return the children to their parents, although the father apparently is focused on new interests and no longer has an interest in resuming his children's care.

employment. She has purchased a home that apparently is adequate for the family. The criticisms of Janice come by way of opinions as to her abilities from workers who have visited in her home, observed her with her children, and offered her services. The foster home the younger children were placed in provides a more structured and stable and secure environment than Janice can provide in her home.

There are few guidelines to determine what is clear and convincing evidence a parent cannot care for his or her children. The juvenile court here determined there was clear and convincing evidence Janice could not care for her children. Giving the required deference to these findings we affirm this finding. Furthermore we cannot find the juvenile court abused its discretion in not finding it would be detrimental to the children to terminate their parental rights.

AFFIRMED.