

IN THE COURT OF APPEALS OF IOWA

No. 9-171 / 09-0201
Filed April 8, 2009

**IN THE INTEREST OF B.A.M.L.K.B.-F.,
Minor Child,**

**J.L.B., Mother,
Appellant.**

Appeal from the Iowa District Court for Pottawattamie County, Kathleen Kilnoski, District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Phil Caniglia, Council Bluffs, for appellant mother.

Kristina Kaeding, Council Bluffs, for father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Matthew Wilber, County Attorney, and Dawn Landon, Assistant County Attorney, for appellee State.

William McGinn, Council Bluffs, for B.G.

Brian Rhoten, Council Bluffs, for minor child.

Considered by Sackett, C.J., and Potterfield and Mansfield, JJ.

MANSFIELD, J.

A mother appeals an order of the district court terminating her parental rights with respect to her daughter Brianna. For the reasons set forth herein, we affirm.

I. Background Facts.

Brianna is seven years old, born in June 2001. In February 2007, the Iowa Department of Human Services (DHS) investigated allegations that Brianna had been physically abused by the boyfriend of her mother, Jamie. The DHS investigator found dark bruises on Brianna's buttocks and fainter bruises on her lower back. Although Jamie and her boyfriend initially claimed that Brianna had received the bruises when she fell on "empty boxes," they eventually admitted that the boyfriend had spanked Brianna repeatedly with her pants down. Jamie witnessed the spanking, but did nothing to stop her boyfriend. At the time of the spanking, Brianna was residing with her maternal grandmother, Carolyn, her mother, two younger half-siblings, and the boyfriend. Carolyn tried to cover up the incident by not sending Brianna to school.

Before the DHS investigation was completed, Jamie gave birth to another daughter in February 2007. Both Jamie and her infant daughter tested positive for methamphetamine. Jamie admitted she had used methamphetamine a few times in the days before her infant daughter's birth. Jamie's parental rights to that daughter were subsequently terminated. That daughter has been adopted.

From February to April 2007, Brianna was in a voluntary placement with Carolyn, her maternal grandmother. On April 19, 2007, Brianna and her three siblings were adjudicated children in need of assistance (CINA) under Iowa Code

sections 232.2(6)(b), (c)(2), and (o) (2007) and removed from Jamie's custody. Since April 2007, Jamie has not had permission for unsupervised contact with Brianna, and exercised her scheduled visits only sporadically.

From February 2007 until May 2008, except for a two-month period in the fall of 2007, Brianna resided with her maternal grandmother, Carolyn. Brianna was removed from Carolyn's custody in May 2008 after Carolyn was evicted from her Section 8 housing. Since then, Brianna has been in a foster home. Brianna has done well in foster care. However, Brianna has a strong bond with Carolyn, who historically assumed the primary responsibility for Brianna's parenting. Brianna has a lesser bond with her mother, Jamie, who was a teenager when Brianna was born.

In May 2008, Jamie gave birth to another child, a baby boy. The baby boy remains in Jamie's custody. Jamie's primary focus appears to be on trying to retain her new son, rather than attempting to build a relationship with Brianna. There are serious questions about her continuing interest in Brianna.

From 2007 to the present, Jamie has never had a residence of her own. Since May 2008, Carolyn, Jamie, Jamie's infant son, and Jamie's current boyfriend have resided in the three-bedroom home of Jamie's sister and her family. There are presently a total of approximately six adults and five children living in this house. Carolyn has made statements to DHS about having obtained her own housing that turned out to be untrue.

Jamie does not have a driver's license. Nonetheless, she occasionally drives with her infant son. Jamie claims she is legally blind. Jamie has had no employment or residence of her own in recent years. Jamie has had negative

drug screens since late 2007 (although she missed a number of tests), and in October 2008 entered a substance abuse program. Jamie is also being treated for depression and states that she has a bipolar disorder.

During the two-month period leading up to the December 10, 2008 termination hearing, Jamie canceled four of her weekly visits with Brianna. Jamie failed to attend the December 10 hearing.

Carolyn did testify at the termination hearing. She confirmed that Brianna has bonded more with her than with Jamie. Carolyn stated that she receives \$659 per month in Social Security and SSI benefits. She testified that since May 2008, she has been looking for suitable housing for herself, Jamie, and Jamie's children. Carolyn testified that Jamie knew about the termination hearing and was planning to attend; she could not explain why she was not present.

Jamie's older sister, Rhonda, also testified at the hearing. She lives in a one-bedroom apartment in Lincoln, Nebraska. Rhonda testified that Jamie "doesn't begin to really have the tools to be a mom," although she added that Jamie had made some improvements. After the petition for termination of parental rights was filed, Rhonda requested in November 2008 to be considered through a home study. However, no home study had been performed at the time of the December 2008 hearing.

Additionally, Brianna's biological father Mark testified at the termination hearing. He testified that he consented to termination and expressed the view that adoption would be in Brianna's best interests.

Numerous services have been offered or provided to Jamie since April 2007 to assist in potential reunification.

Following the hearing, the district court entered an order terminating parental rights with respect to Brianna pursuant to Iowa Code sections 232.116(1)(d), (e), (f), (g), (i), and (l). Jamie appeals.

II. Legal Analysis.

The scope of review in termination cases is de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). We give weight to the district court's factual findings, but are not bound by them. Iowa R. App. P. 6.14(6)(g); *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). The grounds for termination must be proved by clear and convincing evidence. *In re T.P.*, 757 N.W.2d 267, 269 (Iowa Ct. App. 2008). Our primary concern is the best interests of the child. Iowa R. App. P. 6.14(6)(o); *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007).

In this case, we agree at a minimum that the grounds for termination in sections 232.116(1)(e), (f), and (g) have been met by clear and convincing evidence.

Section 232.116(1)(e). There is no dispute that Brianna has been adjudicated a child in need of assistance and has been removed from the physical custody of her parents for at least six months, indeed since April 2007. See Iowa Code § 232.116(1)(e)(1) and (2).

With respect to the third and final prong, i.e., section 232.116(1)(e)(3), the record shows that Jamie has not maintained significant and meaningful contact with Brianna during the previous six consecutive months and has made no reasonable efforts to resume care of her child despite being given the opportunity to do so. Jamie canceled a number of her weekly visits with Brianna. She failed

to attend the termination hearing. She has made no real efforts to obtain suitable housing for herself and her children, including Brianna.

Section 232.116(1)(f). There is no dispute that Brianna is four years or older (she is seven), that she has been adjudicated a child in need of assistance, and that she has been removed from the physical custody of her parents for at least twelve of the last eighteen consecutive months. See Iowa Code § 232.116(1)(f)(1), (2), and (3).

There is also clear and convincing evidence that Brianna cannot be returned to her mother's custody. Her mother has no home, no job, and little interest in parenting Brianna. Although Jamie lacks a driver's license and indicates she is legally blind, she occasionally drives herself and her infant son.

In fact, at the termination hearing, Jamie's counsel appeared to be advocating largely for a return to the custodial arrangement with the grandmother, Carolyn. However, Carolyn had made no progress toward obtaining housing herself since May 2008.

Section 232.116(1)(g). No dispute exists that Brianna has been adjudicated a child in need of assistance, and that parental rights already have been terminated with respect to another child in the family. Although Jamie's counsel explains that the other termination was voluntary due to the strong ties between that child and her foster mother, the statute does not distinguish between voluntary and involuntary terminations. See Iowa Code § 232.116(1)(g)(1) and (2).

Additionally, the record shows that Jamie lacks the ability or willingness to respond to services and that an additional period of rehabilitation would not

correct the situation. Jamie has repeatedly missed appointments relating to substance abuse treatment, vocational services, and parenting services – even during the time period immediately prior to the termination hearing.

III. Conclusion.

Given her age, we agree that Brianna needs permanency. Termination of parental rights is in her best interests.

AFFIRMED.