

IN THE COURT OF APPEALS OF IOWA

No. 1-650 / 11-1018
Filed September 8, 2011

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

**T.N.R., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Colin J. Witt, District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Tammi M. Blackstone of Gaudineer, Comito & George, L.L.P., West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Michelle Chenoweth, Assistant County Attorney, for appellee.

Alexandra Nelissen of Nelissen & Juckett, P.C., Des Moines, for father.

John Jellineck of Juvenile Public Defender, Des Moines, for minor child.

Considered by Sackett, C.J., and Vaitheswaran and Tabor, JJ.

SACKETT, C.J.

A mother appeals from the juvenile court order terminating her parental rights to one child.¹ She contends the State failed to prove the statutory grounds for termination. She further contends the court erred in determining none of the conditions in Iowa Code section 232.116(3) (2011) were met and in declining to order relative placement pursuant to section 232.117(3). We affirm.

I. Background. This family came to the attention of the Department of Human Services in the summer of 2009, a year before Jy. R. was born, because of several police calls to the home due to serious domestic violence between the parents. The court ordered the removal of two-month old Jt. R. from the home in August and found her in need of assistance in September. The parents received mental health services and participated in visitation. By December of 2009 the department recommended overnight visitation. In January of 2010, the court returned Jt. R. to her parents' custody, noting the court would continue to supervise the case for at least a year.

Ten days later the department received another child abuse referral based on domestic violence with Jt. R. unsupervised and unsecured in her car seat. The department placed Jt. R. in foster care again. In April of 2010 the court issued a no-contact order between the parents. The parents were inconsistent in exercising visitation with Jt. R. during the spring and summer of 2010. In June, Jy. R., the child at issue in this appeal, was born. After the child's birth, her mother attended therapy sessions only sporadically. Jy. R. was removed from

¹ The father's parental rights also were terminated, but he is not a party to this appeal.

her mother's care in July, but the court found the State had not proved the allegations for removal and returned the child to her mother, contingent on the mother's continued residence at the Lighthouse facility. Within a couple of weeks, the mother had left the Lighthouse, lost a placement at another shelter, and been discharged from the House of Mercy shelter for noncompliance with rules. Jy. R was removed again in early August and placed in the same foster home with her older sister. In September, the court found Jy. R. in need of assistance under Iowa Code sections 232.2(6)(b) and 232.2(6)(c)(2) (2009), based on safety concerns regarding the relationship between the mother and father with significant unresolved domestic violence history. The child's placement outside the home was continued due to safety concerns stemming from domestic violence.

In late August, the department petitioned to terminate both parents' parental rights to the older daughter, Jt. R. Because the parents sought placement of Jt. R. with the maternal grandmother in Missouri, the court kept the termination record open to receive a home study of the grandmother's home. By December, the parents had moved to Missouri. The mother lived with her mother, but spent time with the father, in violation of the no-contact order. The home study found the grandmother's home was suitable and the Missouri social worker who prepared the study recommended the grandmother and her husband "be approved for placement of their granddaughters." In her evaluation, however, the worker noted that the grandmother had an extensive personal abuse history, and she was "not sure how [it] will impact her ability to care for her

granddaughters.” She also noted, “They appear to be a ‘closed’ family at times, which can be difficult to work with and hard to read or understand what may be going on in the household.”

In the fall of 2010 the mother moved to Missouri, as did the father. They continued to violate the no-contact order. The mother was charged with felony domestic assault against the father, based on an incident in late December. The father had stopped participating in any services. The mother visited Jy. R. only once in the months preceding the petition to terminate parental rights, but twice in March, and took advantage of only one family safety, risk, and permanency service during that same time period.

In March of 2011 the State petitioned to have the parental rights of both parents of Jy. R. terminated under Iowa Code sections 232.116(1)(b) (abandonment), and (h) (child under four years old cannot be returned to care of parents at the present time), and the mother under section 232.116(1)(e) (failure to maintain significant and meaningful contact) (2011). In mid-April the court held the termination hearing. Neither parent attended the hearing, but both were represented by counsel. The court heard testimony from a department worker and the family safety, risk, and permanency worker.

In part because the termination order concerning the older child was on appeal, the court did not issue its order in this case until mid-June—the day after this court ruled on the appeal concerning the older child. In its ruling, the court noted:

Just yesterday, the Undersigned notes, the Iowa Court of Appeals issued its ruling in another case involving the same

parents and termination of rights as to a sibling. *In re J.R.*, 1-384 and 11-0454 (Iowa Ct. App. June 15, 2011). The Court believes that ruling is in large measure controlling of this case as well as the issues are substantially similar if not identical, and thus much of this ruling will mirror much of the Undersigned's previous ruling in the sibling case.

Citing section 232.116(1)(b), the court found both parents had moved to Missouri in October of 2010 and had "given up on actively taking efforts on their own to reunify." Concerning section 232.116(1)(e) the court found, "Both have failed to have significant and meaningful contact with [the child], but the State only requested termination of [the mother's] parental rights on this ground." As to section 232.116(1)(h), the court recited facts satisfying the first three elements, then stated "nothing on this record indicates [the child] can be returned home at this time."

Applying the statutory factors in section 232.116(2), the court determined:

[The father] has done next to nothing to step up and learn what he needs to learn to care for this child. [The mother] has chosen to continue her volatile relationship with [the father] and move out of state with him instead of working towards reunification. Neither of these biological parents can provide for the safety and long-term nurturing and growth of this Child who is so deserving.

Then the court carefully considered whether to place the child with the maternal grandmother. After scrutinizing the Missouri home study, the report of two Iowa therapists, the family tree, and the records from the older child's case, the court concluded "this is a case where it cannot order relative placement pursuant to Iowa Code section 232.117(3)(c)" even though it recognized a preference for relative placements. The court also noted the State and the guardian ad litem resisted placement with the grandmother. The court stated:

It is clear the maternal grandmother has suffered a parade of horrors in her life. She has been the victim of many egregious wrongs since she was a child. She is also a survivor to be admired in many ways.

But the maternal grandmother helps perpetuate a “closed” family, per the [Missouri home study]. The [home study] writer commented that it would likely be difficult to work with the family and difficult for state workers to understand what is going on with the family. The need for transparency in the family unit is especially important in this case. The reason the case opened in Iowa at all, extreme levels of domestic [violence] between [mother] and [father], is a real and ineffectively-treated threat that has merely gravitated from Iowa to Missouri. The toxic relationship between these two parents has only appeared to continue its downward spiral on the record before the undersigned. The maternal grandmother appears not to have appropriately understood and addressed this situation. The Court is unconvinced the maternal grandmother would be able to protect [the child] from [the mother and father].

The court terminated the mother’s parental rights on all three statutory grounds pled and placed the child with the department for purposes of placement in a pre-adoptive foster care family.²

II. Scope and Standards of Review. Our review of termination-of-parental-rights proceedings is de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We review the facts and the law and adjudicate rights anew. *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999). We give weight to the juvenile court’s factual findings but are not bound by them. *In re E.H., III*, 578 N.W.2d 243, 248 (Iowa 1998).

The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978); *Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35

² The record suggests the current foster care family, where both girls have been placed, is a pre-adoptive placement.

(1972). When the juvenile court terminates a parent's rights, we affirm if clear and convincing evidence supports the termination under the cited statutory provision. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The State has the burden of proving the allegations by clear and convincing evidence. "Clear and convincing evidence" is evidence leaving "no serious or substantial doubt about the correctness of the conclusion drawn from it." *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002) (quoting *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa Ct. App. 1983)). If the juvenile court terminates parental rights on multiple statutory grounds, we may affirm if any ground is supported by clear and convincing evidence. See *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

In determining whether to terminate, our primary considerations are the child's safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child. Iowa Code § 232.116(2); *In re P.L.*, 778 N.W.2d 33, 37, 39 (Iowa 2010). We also consider whether any of the enumerated circumstances in section 232.116(3) allow the court not to terminate. Iowa Code § 232.116(3); *P.L.*, 778 N.W.2d at 37-39.

III. Merits. The mother contends the court erred (1) in finding clear and convincing evidence to support termination under sections 232.116(1)(b), (e), and (h); and (2) in determining none of the conditions in section 232.116(3) applied and in declining to order relative placement under section 232.117(3)(c).

A. Statutory Grounds for Termination. The court terminated the mother's parental rights on all three statutory grounds pled by the State.

Concerning abandonment, she argues she was financially limited in her ability to visit her daughter after moving to Missouri, and the department denied her request for financial assistance. She also argues she maintained regular contact with the foster family by e-mail and continued to request visits through the department. The department offered a “good bye visit” with the child before May 5, but refused her request to schedule it for May 20 or 21 when she would be in Des Moines.

The mother contends the State did not prove she failed to maintain significant and meaningful contact with her daughter or that she did not make reasonable efforts to resume her care despite being given the opportunity to do so. See Iowa Code § 232.116(1)(e). She argues the State prevented her from having the opportunity to resume her daughter’s care.

The mother’s choice to move to Missouri eliminated her participation in services aimed at reunifying her with her daughter. She had only a couple of visits, and those did not occur until around the time the State filed the petition to terminate her parental rights in March, when she was in Des Moines for a church function. The record shows that she chose her tumultuous and toxic relationship with the father over reunification with her daughter. We conclude the State proved the ground for termination under section 232.116(1)(e).

The mother admits the first three elements of section 232.116(1)(h) are true. She challenges the last element, that the child cannot be returned to her care “at the present time.” See *id.* § 232.116(1)(h)(4). She argues she is able to keep her child safe from domestic abuse and that, because she has moved to

Missouri where she has family support, she is able to provide a safe and stable home for her daughter. The evidence in the record is otherwise.

The mother, herself, does not appear to have a stable home. She may be living with her mother; she may be living with the father. The grandmother's home has room for the mother and child—if they actually would be living there. The continued contact between the mother and father, even in disobedience of a no-contact order, and the resulting serious domestic violence, which has involved the mother biting the father, cutting him with a knife, and trying to set him on fire, do not support the mother's claim she is able to provide a safe and stable home. We agree with the juvenile court that the child could not be returned to the mother's care at the time of the termination. *See id.*

B. Section 232.116(3) Conditions and Relative Placement Under Section 232.117(3)(c). The mother contends the court erred “when it determined that none of the conditions under Iowa Code section 232.116(3) were met, and further erred in declining to order relative placement” after termination under section 232.117(3)(c).

In her argument, the mother does not mention any of the conditions in section 232.116(3), which allow a court not to terminate even though statutory grounds exist. The only paragraph that could argued under the facts before us is (c), concerning a parent-child bond. The evidence does not show a strong parent-child bond such that it would be detrimental to Jy. R. to sever it. In fact, the stronger evidence of a parent-child bond is between the child and the foster parents. We conclude section 232.116(3) does not apply here.

The mother's primary argument is that the court, after terminating her parental rights, should have placed the child with the maternal grandmother. The same request was made during the older sibling's case. The court ordered a home-study through the interstate compact and "the placement issue was fully made of record on December 16, 2010," in the older sibling's case. Having that full record, the juvenile court declined to place the older child with the grandmother after terminating the parents' rights. In the record before us we have the home study as well as the "therapeutic assessment" made by two social workers at the request of the State. As noted above, the home study recommended placement of the two children with the grandmother in Missouri, but expressed some reservations. The social workers' assessment was based on a review of the home study (not a visit to the grandmother's home), court records, and contact with the children. Their recommendation differed from the home study:

The bond between the children and the [foster family] is crucial for further development and it's in the best interest of the children to remain in their foster home. With understanding that the home study was approved, there were outlined concerns that were not consistent with what may be in the best interests of these children. From reviewing the concerns outlined in the home study, along with [the mother] living in the [home], placing the children with the [grandmother and her husband] will most likely provide the children with instability and possible re-exposure to trauma.

At the time of the home study and the therapeutic assessment, the parents' parental rights had not been terminated as to either sibling. The circumstances before us are different. The parents' rights to the older child have been terminated and the child placed in the current pre-adoptive foster home. The younger child, at issue here, is in the same foster home. If we were to

modify the juvenile court's order and place the younger child with her maternal grandmother, as the mother asks, it would separate the siblings, remove her from the family with whom she is bonded, force another change in caretakers on the child, place her in a home where she likely would be exposed to the domestic violence of her biological parents, and place her with a guardian with whom she has no bond. Based on the circumstances before us, we agree with the decision of the juvenile court to continue the child in the guardianship and custody of the department, under section 232.117(3)(a), rather than transferring her guardianship to the maternal grandmother under section 232.117(3)(c).

For the foregoing reasons, we affirm the termination of the mother's parental rights and the juvenile court's determination of the proper placement for the child.

AFFIRMED.