

IN THE COURT OF APPEALS OF IOWA

No. 3-812 / 13-1047
Filed September 5, 2013

**IN THE INTEREST OF K.B.S. AND T.J.S.,
Minor Children,**

**A.S., Mother,
Appellant.**

Appeal from the Iowa District Court for Pottawattamie County, Charles D. Fagan, District Associate Judge.

A mother appeals the termination of her parental rights to her two children.

AFFIRMED.

J. Joseph Narmi, Council Bluffs, for appellant mother.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, Matthew Wilbur, County Attorney, and Eric Strovers, Assistant County Attorney, for appellee State.

Phil Caniglia, Council Bluffs, attorney and guardian ad litem for minor children.

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

VAITHESWARAN, J.

A mother appeals the termination of her parental rights to her two children, born in 2008 and 2011. She contends (1) the State failed to prove the grounds for termination cited by the district court, (2) the Department of Human Services did not make reasonable efforts to reunify her with her children, (3) termination was not in the children's best interests, and (4) the district court should have considered an exception to termination for placement with a relative.

I. The district court terminated the mother's parental rights to the older child pursuant to Iowa Code section 232.116(1)(d), (e), and (f) (2013) and to the younger child pursuant to section 232.116(1)(i) and (j).¹ We may affirm if we find clear and convincing evidence to support any of the grounds cited by the district court. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

The record reflects that the children were initially removed from the parents' custody in the fall of 2011 based on allegations of illegal drug use in the home, lack of appropriate shelter, and mental health concerns. The children were reunited for approximately two months but were again removed based on allegations of domestic violence between the parents. Meanwhile, the father died of a possible drug overdose.

The department afforded the mother one two-hour supervised visit with her children per week. The mother regularly attended those visits in the months

¹ Iowa Code section 232.116(1)(h) is comparable to section 232.116(1)(f), requiring proof of several elements, including that a child three years of age or younger cannot be returned to the parent's custody. The State did not plead this ground for termination with respect to the younger child.

preceding the termination hearing but did not always cooperate with the service providers who were there to assist her.

A family consultant characterized the mother's progress towards reunification as "[m]inimal." He testified that, overall, the mother was not open to suggestions and help from him and from other providers. While he acknowledged that the mother interacted well with the younger child, he described the dynamic with the older child as "kind of rough." In a report to the court, he stated the mother displayed "very erratic behaviors during supervised visits at times."

Another service provider expressed similar concerns, citing an incident towards the end of a visit when the mother ignored instructions to place the children in the service provider's car and instead placed them in her father's car, precipitating a call to police. The service provider noted that the older child, in particular, would not receive the same level of care as she was currently receiving in the care of her paternal grandmother.

A mental health therapist stated that the mother had not made "permanent progress" towards her goals. When asked whether the children could be returned to the mother today, she testified the children "would still be at risk." In a report to the court summarizing the last visit before the termination hearing, the provider stated the mother "was very withdrawn from the session and did not want to participate with services." She noted that the mother was "going back to her old ways, where she does not listen or [want] to do what this provider is asking of her." She expressed concern "that [the mother] is only able to have so many good weeks before she starts to not care about the session again." She

opined that the mother “has not been able to show this provider a consistent time that she works with the skills that have been provided to her.”

A service provider reiterated that the mother’s “participation has . . . been marginal at best.” The provider stated, “[The mother] has been able to demonstrate some basic parenting skills but overall has been unwilling to follow through consistently and without prompting on any suggestions provided.”

A case manager with the department testified that “there have been episodes of high drama and crisis intervention during [the mother’s] visits that have required more and more personnel and more and more structure.” In a report to the court, she stated, “[T]he past few [visits] have been extremely challenging with [the mother] being either blatantly disrespectful or ignoring this writer and [the service provider].” She recommended the termination of the mother’s parental rights to the children.

On our de novo review, we conclude the State presented clear and convincing evidence to support termination of the mother’s parental rights to the older child pursuant to Iowa Code section 232.116(1)(f), requiring proof of several elements, including proof that a child four years of age or older cannot be returned to the parent’s custody. See *S.R.*, 600 N.W.2d at 64 (setting forth the standard of review). The mother had yet to reach a point where she could safely parent her older daughter without assistance.

We turn to the grounds on which the State relied to support termination of the mother’s parental rights to the younger child. The department case manager essentially conceded that the second of those grounds, requiring proof of “a severe substance-related disorder” and proof that the mother presented “a

danger to self or others as evidenced by prior acts” was not satisfied. See Iowa Code § 232.116(1)(f). She acknowledged the mother had never been diagnosed with a severe substance related disorder. She also acknowledged the mother had been compliant with drug screens for several months.

This brings us to the first of the cited grounds, section 232.116(1)(i), which requires proof of all the following elements:

(1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.

(2) There is clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child.

(3) There is clear and convincing evidence that the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.

When the child-in-need-of-assistance petition was filed, the mother was in violation of a protective order that required no contact with the father, was without utilities, and was found to be “dazed” and “out of it.” The mother was charged with several crimes arising from the incident, pled guilty to assault causing bodily injury and assault on a peace officer, and was placed on supervised probation.

On appeal, the mother essentially argues that services would correct the conditions that led to the neglect of her children because “as part of her probation she must comply with the DHS case permanency plan and court orders, and over the past year was never revoked one time.” While the mother’s probation was not revoked, she sometimes exhibited less than exemplary conduct during visits. The mother flaunted authority and showed an unwillingness to internalize the professional advice she was given. While there were times when she did a “great job” in parenting children, she did not sustain that level of commitment.

We conclude the State proved that termination of the mother's parental rights to the younger child was warranted under Iowa Code section 232.116(1)(i).

II. The mother contends the department did not make reasonable efforts toward reunification. See *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). She focuses on the limited number and duration of visits. The district court addressed this issue as follows:

[The mother] and her counsel argued that if she was allowed more visits she would have been able to progress to the point of reunification with the children. Sadly, she thwarted those efforts throughout the course of this case. The court specifically set a path for reunification which included certain domestic violence, mental health and substance abuse issues be addressed. [The mother] not only failed to address them but actively sought to delay, deny and disregard the court orders. Her failure to follow through with the opportunities given her by the court warrants termination of her parental rights.

We concur in this assessment.

III. The mother contends termination was not in the children's best interests, given the bond she shared with the children. See *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). The professionals who worked with the family acknowledged the existence of a bond. Nonetheless, those who felt comfortable opining about the future stated the children would be at risk with their mother. Because the children's health and safety was the paramount consideration, we conclude reunification was not in the children's best interests.

IV. Finally, the mother asserts that the district court should have declined to terminate her parental rights because the children were placed with a relative. See Iowa Code § 232.116(3)(a). Given the mother's lack of progress during

visits and the absence of evidence that reunification was imminent, this exception to termination was appropriately not invoked.

We affirm the termination of the mother's parental rights to her children.

AFFIRMED.