

IN THE COURT OF APPEALS OF IOWA

No. 6-1048 / 06-1755
Filed January 18, 2007

**IN THE INTEREST OF B.K., A.K., and A.D.,
Minor Children,**

D.K., Grandmother,
Appellant,

J.K., Mother,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Daniel L. Block, Associate Juvenile Judge.

A mother appeals from the termination of her parental rights to her three children, and the children's grandmother appeals from the juvenile court's decision to deny her request to assume guardianship and custody of the children.

AFFIRMED.

Sheila O'Laughlin of Snow, Knock, Sevcik & Hinze, Cedar Falls, and Clovis Bowles, Waterloo, for appellant grandmother.

James Wilson, Dysart, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Steven Halbach, Assistant County Attorney, for appellee State.

Michael Bandy, Waterloo, for minor children.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

ZIMMER, J.

Jennifer appeals from the termination of her parental rights to her three children. Diane, Jennifer's mother, also appeals from the juvenile court's decision to deny her request to assume guardianship and custody of the children. Upon our de novo review, we affirm.

I. Background Facts and Proceedings

Jennifer is the mother of Brienna, born in June 1998; Ashlyne, born in February 2001; and Anthony, born in November 2003. Shane is the father of Brienna, Dontaye is the father of Ashlyne, and Eugene is the father of Anthony.¹ Jennifer gave birth to another child shortly before her parental rights were terminated regarding Brienna, Ashlyne, and Anthony. The infant, Shawn, tested positive for marijuana.²

Brienna, Ashlyne, and Anthony were removed from the mother's home in May 2005 because of Jennifer's drug abuse and her failure to supervise the children. After the children were removed from their mother's care, the Iowa Department of Human Services (the Department) placed them with their maternal grandmother, Diane. The grandmother agreed to a safety contract, which provided that she would prevent any contact between her grandchildren and her son, a sex offender.

The juvenile court adjudicated Brienna, Ashlyne, and Anthony as children in need of assistance (CINA) on September 13, 2005. The children were

¹ None of the children's fathers have appealed from the juvenile court's order terminating their parental rights. Their parental rights are not at issue in this appeal.

² Jennifer's parental rights to Shawn are not at issue in this appeal.

removed from Diane's care following the adjudication hearing after she allowed contact between the children and her son. Brienna was placed with a maternal aunt; however, when her aunt was unable to care for her, the child was returned to her grandmother's home on an emergency basis. In December 2005 the juvenile court ordered Brienna placed in foster care.

The record reveals Jennifer did not consistently participate in services after the children were removed from her care. She was also without a suitable home much of the time. Because of the mother's lack of progress, the State filed a petition to terminate Jennifer and the fathers' parental rights.

A termination hearing was held in August 2006. A provider with Families First testified she supervised visits between Jennifer and the children. When the provider visited Jennifer's apartment, it looked like nobody was staying there because there were no beds or bedding. Another employee of Families First who provides parenting counseling and therapy testified Jennifer was supposed to meet with her once a week. Jennifer failed to attend fifteen of the thirty-seven counseling sessions that were scheduled, and the counselor testified Jennifer felt she did not need family-centered services. Jennifer met with her counselor one time in the month and a half prior to the termination hearing. The court heard evidence Jennifer had regressed "back to square one" at the time of the termination hearing. Jennifer also refused to submit to drug testing at times. When Brienna was in first grade, she gave a child protection worker a detailed description of how her mother rolled and smoked marijuana cigarettes. In an order filed October 18, 2006, the juvenile court terminated Jennifer's parental

rights and denied Diane's request for guardianship and custody of the children. Jennifer and Diane have appealed.

II. Scope and Standards of Review

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). The grounds for termination must be supported by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). We are primarily concerned with the best interests of the children in termination proceedings. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997).

III. Discussion

On appeal, Jennifer contends the juvenile court "erred in finding that placement of the children in the home of the mother, J.K., either immediately or within an additional short period of time, would not be in the best interests of the child[ren]."

The juvenile court terminated Jennifer's parental rights to Brienna and Ashlyne pursuant to Iowa Code sections 232.116(1)(e) (child CINA, child removed for six months, parent has not maintained significant and meaningful contact with the child), 232.116(1) (f) (child four or older, child CINA, removed from home for twelve of last eighteen months, and child cannot be returned home), and 232.116(1)(l) (child CINA, parent has substance abuse problem, child cannot be returned within a reasonable time) (2005). The court terminated the mother's parental rights to Anthony pursuant to sections 232.116(1)(e), (h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home), and (l).

Jennifer does not seriously contend the State failed to prove the statutory grounds for termination, and we find all the grounds for termination relied on by the State are supported by clear and convincing evidence. We next consider Jennifer's contention that termination is not in the best interests of the children.

The decision to terminate parental rights must reflect the children's best interests even when the statutory grounds for termination are met. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). When we consider the children's best interests, we look to their long-range as well as immediate best interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). We agree with the juvenile court's conclusion that Jennifer has not adequately dealt with her substance abuse problem. During the termination hearing, Jennifer admitted she used marijuana while she was pregnant with Shawn. As a result, Shawn tested positive for marijuana when he was born. Jennifer has failed to provide drug screens, and she has not consistently participated in services. Jennifer was without a suitable home for the children throughout much of the proceedings in juvenile court. Serious concerns still exist regarding Jennifer's continued sobriety and ability to provide adequate care for the children.

Jennifer's older children already have significant behavioral issues. Brienna currently resides in a residential treatment program due to her aggressive and assaultive behaviors. Ashlyne has begun to exhibit aggressive behavior as well. Clearly, Jennifer's children are in need of permanency, and they should not have to wait any longer for their mother to become a responsible parent. *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). We agree with the juvenile

court's finding that termination of Jennifer's parental rights is in the children's best interests.

The maternal grandmother seeks reversal of the juvenile court's decision "denying her request for placement, custody and/or guardianship, and visitation" with the children. In her brief on appeal, she takes issue with several of the factual findings made by the juvenile court in its termination order. She also expresses displeasure with other orders entered by the court prior to the termination hearing.

Upon careful review of the record, we agree with the juvenile court's conclusion that Diane is not a suitable option for permanent placement of the children. The record reveals Diane allowed the children to have contact with her son, a known sex offender, on several occasions. The juvenile court found Diane would not be able to protect the children from their mother if the children were placed in their grandmother's care. The court further found Diane did not appreciate how Jennifer's behaviors placed the children at risk. We also note the children's attorney recommended against placing the children with their maternal grandmother. We affirm the juvenile court's decision to deny Diane's request to assume guardianship and custody of the children.³

Diane has filed motion to amend her petition on appeal to include an additional claim. We deny her application.

³ Diane argues she should have been allowed additional visitation with the children. In an order entered several months before the termination hearing was held, the court determined any visitation between the grandmother and the children could occur during supervised visitation with the mother. This order was not appealed, and we conclude the issue of visitation is now moot and cannot be remedied.

IV. Conclusion

We affirm the juvenile court's decision to terminate Jennifer's parental rights. We also affirm the court's decision to deny Diane's request to assume guardianship and custody of the children.

AFFIRMED.