

IN THE COURT OF APPEALS OF IOWA

No. 7-513 / 07-0910

Filed July 12, 2007

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

**R.D., Intervenor,
Appellant,**

**K.D., Mother,
Appellant.**

Appeal from the Iowa District Court for Butler County, Peter B. Newell,
District Associate Judge.

A mother and grandmother appeal from the order terminating the mother's
parental rights. **AFFIRMED.**

Patrick G. Vickers of Vickers Law Office, Greene, for appellant mother.

Bruce T. Toenjes of Nelson & Toenjes, Shell Rock, for intervenor.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Gregory M. Lievens, County Attorney, and Martin Petersen,
Assistant County Attorney, for appellee State.

Michael Bandy, Waterloo, for minor child.

Considered by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

VAITHESWARAN, J.

Kellie appeals the termination of her parental rights to her daughter Jaiden, born in 2004. Kellie's mother, who was granted leave to intervene in the proceedings, also appeals.

I. *Background Facts and Proceedings*

Jaiden was temporarily removed from Kellie after the Department of Human Services (Department) learned that Kellie was refusing to take prescribed medication for a mental illness. Following a hearing, an agreement was reached to return Jaiden to Kellie, with the provisos that Kellie and Jaiden live with Kellie's mother, Kellie take all prescribed medication, and Kellie and her mother participate in family-centered services.

Kellie did not consistently comply with her medication regimen. As a result, the district court transferred care, custody, and control of Jaiden to Kellie's mother. Kellie continued to live with her mother.

Kellie and her mother had a tumultuous relationship. On one occasion, Kellie accused her mother of assaulting her, an accusation that was later deemed unfounded. Eventually, Kellie moved out of her mother's home and moved in with a boyfriend. The Department disapproved of this boyfriend.

In light of these developments, the district court expressed "grave concerns" about Jaiden's placement. In February 2006, the court transferred care, custody, and control of Jaiden to the Department. Jaiden was placed in foster care, where she remained through the last of three termination hearings fifteen months later.

II. *Mother*

Kellie contends (1) the State failed to prove the ground for termination cited by the district court and (2) termination was not in the child's best interests. We will address both issues together, reviewing the record de novo. Iowa R. App. P. 6.4.

The district court terminated Kellie's parental rights pursuant to Iowa Code section 232.116(1)(h) (2007) (requiring proof of several elements including proof that child cannot be returned to custody of parent). The court recognized the decision was "a very difficult one," as factors such as physical or sexual abuse or chronic substance abuse were not present. Nonetheless, the court concluded Kellie alternated between "a pattern of stability" and "extreme turmoil" that was inimical to Jaiden's best interests.

The record supports this assessment. By the time of the final termination hearing, Kellie had addressed many of the obstacles to reunification raised by the Department. She was regularly taking her medication with the assistance of an alarmed medicine dispenser, she had secured an apartment where she was living independently, and she had recently begun working full-time at a chain restaurant.

At the same time, just one month before the final termination hearing, she began a new relationship with a man who was facing a charge of sexual abuse with a minor. Kellie took the man to three supervised visits with Jaiden. Although Kellie ended the relationship after learning of the pending charge, even Kellie's mother conceded that Kellie tended to become involved with men who raised "red flags." For example, she moved in with Jaiden's father early in the

proceedings, with the knowledge that he had a history of abusing drugs. While she moved out of his home on discovering that he was continuing to use illegal drugs, she soon moved in with a man who physically abused her. These relationships support the Department's determination that Kellie "continues to associate with very inappropriate peers, who are viewed as a safety risk to both Kellie and Jaiden."

Kellie also did not consistently attend mental health therapy sessions. A local mental health center reported that "[o]f 15 appointments, six were kept, five were cancelled and four were no shows." While Kellie had justifiable reasons for missing some of the appointments, including a lack of transportation and conflicts with her job, the combination of missed medication and missed therapy sessions during much of the removal period contributed to the "extreme turmoil" identified by the district court.

We recognize that Kellie and Jaiden shared a close bond. A social worker who met with them weekly for approximately a year before the first termination hearing acknowledged the existence of this bond and stated Kellie was "a good person" who "love[d] her daughter." However, he reluctantly concluded that, "[i]n terms of her parenting ability, I don't believe that Kellie has the ability at this point to take care of that child."

We affirm the district court's decision to terminate Kellie's parental rights to Jaiden.

III. *Grandmother*

Kellie's mother contends (1) the Department did not make reasonable efforts to reunite Kellie with Jaiden, (2) Jaiden should have been placed with her

as an alternative to termination of Kellie's parental rights, and (3) even if termination was proper, she could have served as guardian.

We agree with the State that the grandmother lacks standing to raise the first issue. *Citizens for Responsible Choice v. City of Shenandoah*, 686 N.W.2d 470, 475 (Iowa 2004) ("Our cases have determined that a complaining party must (1) have a specific personal or legal interest in the litigation and (2) be injuriously affected.").

We examine the second and third issues together. The grandmother correctly states that Iowa Code section 232.117(3)(c) "allows a court to transfer guardianship and custody of a child to a relative."

We are not convinced Jaiden's best interests would be served by ordering a return of Jaiden to her grandmother. Although she "assisted in raising" Jaiden for the first two years of her life, that period was marked by discord. In addition to the physical abuse allegation lodged by Kellie, Kellie and her mother had ongoing conflicts about how appropriately to care for Jaiden. On one occasion, the two disagreed about whether Jaiden's act of clutching her genital area was a sign the child was sexually abused; it turned out Jaiden had a yeast infection. While there is no question Kellie's mother shared a close bond with Jaiden, we cannot discount the district court's "grave concerns" with the early placement of Jaiden in her care.

We conclude the district court acted appropriately in declining again to place Jaiden with her grandmother.

IV. *Disposition*

We affirm the district court's termination of Kellie's parental rights to Jaiden and the court's refusal to place the child with her grandmother.

AFFIRMED.