

IN THE COURT OF APPEALS OF IOWA

No. 8-748 / 08-1276
Filed October 1, 2008

**IN THE INTEREST OF X.S. and S.S.,
Minor Children,**

**J.E.W., Mother,
Applicant.**

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

A mother appeals the district court's termination of her parental rights.

AFFIRMED.

Marilyn Dettmer of Dettmer Law Office, Charles City, for appellant mother.

Michael Cross, Hampton, for appellee father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Brent Symens, County Attorney, and Daniel F. Wiechmann,
Jr., Assistant County Attorney, for appellee State.

Larry Johnson, Iowa Falls, for minor children.

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

POTTERFIELD, J.**I. Background Facts and Proceedings**

J.W. is the mother of two children, X.S. and S.S., ages two years and nine months at trial, respectively.¹ X.S. was adjudicated to be a child in need of assistance under Iowa Code section 232.2(6)(c)(2) (2005) on July 27, 2006, and S.S. was adjudicated to be a child in need of assistance on January 29, 2008. X.S. was removed from his parents' home on December 12, 2006, when he was eight months old, and has not lived with his parents since. S.S. was removed on November 8, 2007, when she was two weeks old, and has not lived with her parents since.

Petitions were filed to terminate the parental rights of J.W. regarding both X.S. and S.S. on June 5, 2008. After a hearing on the matter on July 17, 2008, the district court issued an order on July 29, 2008, terminating the parental rights of J.W. to both children pursuant to Iowa Code section 232.116(1)(g) (2007) and 232.116(1)(h). J.W. sought to continue the trial the morning it was scheduled to begin saying she was unable to attend due to a back injury incurred the night before trial. Her motion for continuance was denied, but she was allowed to participate in the trial telephonically.

J.W. appeals the termination of her parental rights arguing that: (1) the district court abused its discretion in denying her motion to continue the trial, and (2) the district court erred in finding that returning her children to her home was not in the children's best interests.

¹ The children's father, A.S., agreed that his parental rights be terminated.

II. Standard of Review

We review the district court's ruling on a motion for continuance under an abuse of discretion standard. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996). We must find that the denial was unreasonable under the circumstances before we will reverse. *Id.*

We review the termination de novo. *Id.* We give weight to the findings of the juvenile court, especially when considering the credibility of witnesses, but are not bound by them. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990). "The primary concern in termination proceedings is the best interest of the child." *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa Ct. App. 1995).

III. Motion to Continue

We find that the district court's denial of the motion to continue was reasonable under the circumstances. J.W. was still allowed to present her testimony, was present by speakerphone for the presentation of her evidence, and was allowed to consult privately with her attorney on several occasions. The district court noted that J.W. was located only four blocks from the courthouse at the time of the trial. Under the circumstances, it was not in the children's best interests to delay termination proceedings and continue to deprive them of much needed stability. In addition, J.W. agreed to waive her presence for a portion of the hearing. She has not alleged or shown prejudice resulting from the denial of the continuance. We find that because J.W. was allowed to participate in the proceedings, no injustice resulted from the district court's denial of the motion to continue.

IV. Termination of Parental Rights

After a thorough review of the record, we agree with the district court that the termination of J.W.'s parental rights is in the best interests of X.S. and S.S. J.W. suffers from mental health conditions, and has been hospitalized several times for suicidal behaviors. She continues a relationship with A.S., the father of the children at issue, despite his clear negative effect on the children. At the time of trial, X.S. had been out of the parental home for 19 of his 27 months, and S.S. had been out of the home for eight months, all but two weeks of her life. J.W. is currently living on a friend's couch, which would not provide a stable home environment for young children.

Service providers have noted significant difficulty in working with J.W. She refuses to let providers into her home, exhibits hostile and uncooperative behavior, and refuses to take drug tests. She has a history of being dishonest with service providers. Hair stat tests on X.S. returned positive for the presence of methamphetamine, and service providers suspect that J.W. and A.S. shaved S.S.'s head in order to prevent a hair stat test. A social worker with the Iowa Department of Human Services (DHS) testified that she did not believe these children could be returned safely to the care, custody, and control of their parents and that it would be in the best interests of the children to terminate parental rights. Though DHS has worked with J.W. for several years, DHS workers note that she has not internalized or acknowledged her problems.

For all of these reasons, we find that the district court correctly determined

that termination of J.W.'s parental rights was in the best interests of X.S. and S.S.

AFFIRMED.