

IN THE COURT OF APPEALS OF IOWA

No. 9-727 / 09-1118
Filed September 17, 2009

**IN THE INTEREST OF H.R. and A.B.,
Minor Children,**

J.A.B., Mother,
Appellant.

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A mother appeals the termination of her parental rights. **AFFIRMED.**

Steven J. Drahozal of Drahozal & Schilling, Dubuque, for appellant mother.

John Kies of Kies Law Firm, Bellevue, for appellee father.

Thomas J. Miller, Attorney General, Janet L. Hoffman and Kathrine Miller-Todd, Assistant Attorneys General, Ralph Potter, County Attorney, and Jean Becker, Assistant County Attorney, for appellee State.

Mary Kelley, Dubuque Public Defender, Dubuque, for minor children.

Considered by Vogel, P.J., and Vaitheswaran and Potterfield, JJ.

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

Julie is the mother of Holly and Amber, who were one and two years old at the time of the trial. Todd is Holly and Amber's biological father, though Julie was married to Jeff at all times relevant to this case.¹ Amber and Holly came to the attention of the Iowa Department of Human Services (DHS) on November 19, 2008, because of allegations that Todd used drugs in front of the children.² A domestic altercation between Julie and Todd on that date resulted in Julie's arrest, leaving the two children in Todd's care overnight. During a home visit by DHS the next day, Todd admitted he could not care for the children, and consented to their removal. The children were temporarily placed with their maternal grandmother.

On November 25, 2008, drug testing results for Julie, Amber, and Holly were positive for cocaine. The juvenile court entered an ex parte removal order, placing the children in foster care. Following a hearing on December 3, 2008, the juvenile court continued the out-of-home placement of the children.

At the time of removal, the children were in poor physical condition. Both girls were behind in their immunizations and had lice, scabies, and rashes and scratches on their bodies. Holly had a large sore on her neck, and her navel was infected. She suffered from hypotonia in her neck, and as a result, her head was tilted to one side. Amber's teeth were rotting to the extent surgery was required to remove her four front teeth. Both children also appeared to have

¹ Julie's parental rights to Holly and Amber are the only rights at issue on appeal.

² Throughout this opinion, references to "the children" refer to Holly and Amber.

developmental delays. On January 28, 2009, the children were adjudicated children in need of assistance.

At the onset of this case, Julie was referred for domestic violence counseling, a substance abuse evaluation, and a mental health evaluation. Julie was also to submit to random drug testing and find employment. DHS caseworker Angi Becker informed Julie she needed to find alternative housing. At the time, Julie was living at her mother's home, which Becker determined was not a safe environment for the children because of the number of individuals living there and remodeling being done to the house.

Julie did not follow through on finding domestic violence counseling. She obtained a mental health evaluation after roughly two months, but she disputed the diagnosis and failed to follow through with any treatment. She was slow in finding substance abuse help, but began receiving support from Genevieve Balajadia, a substance abuse counselor at Substance Abuse Services Center, roughly three months after DHS suggested she do so. Balajadia reported seeing minimal progress in Julie throughout the case.

Julie was unable to find employment during the pendency of this case. She testified that she interviewed with two employers, but was denied work because of her schedule. Julie was injured and wore a leg cast for a few months, but Becker testified that she was unaware of any efforts Julie had made to find employment since the removal of her cast. Becker also testified that Julie was dishonest about actions she had taken.

Julie did not obtain alternate housing despite DHS's repeated insistence that her mother's home was not appropriate for the children. She applied for a

housing voucher so she could find an apartment of her own, but she was denied because of her criminal history. She made some attempts to seek housing at the Maria House, but failed to attend necessary appointments because she had decided to stay at her mother's house. At the time of trial, Julie still lived at her mother's house.

Julie submitted to random drug testing in the form of sweat patches. Of her seven sweat patches, two fell off and were therefore considered positive because the chain of custody had been broken. The other five were negative.

Julie received support from Mari Lea Riley at Lutheran Services in Iowa, who provided individual parenting skill and therapy services. Julie was supposed to have weekly visits with Riley, but was inconsistent in her attendance, making only six sessions from January to May of 2009. Riley reported that Julie was uncooperative and did not accept responsibility for her situation.

Julie was scheduled to have weekly supervised visits with her children, but was inconsistent in attending those visits, missing two visits in February, two visits in March, three visits in April, and one visit in May of 2009. She also missed visits with her children for just over one month between December of 2008 and January of 2009 because she failed to show proof that she had been tested for scabies, as required by DHS to protect the children's health. However, when Julie did attend visits, workers reported that she was very interactive and nurturing with the children and that she provided appropriate attention and affection.

On May 18, 2009, the State filed a petition to terminate Julie's parental rights. After trial, the juvenile court terminated Julie's rights to both children

pursuant to Iowa Code section 232.116(1)(h) (2009). Julie appeals, arguing: (1) the State failed to prove the statutory grounds for termination by clear and convincing evidence, and (2) termination of her parental rights is not in the children's best interests.

II. Standard of Review

We review a termination of parental rights de novo. *In re Z.H.*, 740 N.W.2d 648, 650-51 (Iowa Ct. App. 2007). Grounds for termination must be proved by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Our primary concern is the best interests of the children. *Id.*

III. Termination of Parental Rights

We agree with the juvenile court that clear and convincing evidence supported termination of Julie's parental rights pursuant to section 232.116(1)(h). This section provides that termination is appropriate when: (1) the child is three years of age or younger; (2) the child has been adjudicated a child in need of assistance; (3) the child has been removed from the physical custody of the child's parents for the last six consecutive months; and (4) there is clear and convincing evidence that the child cannot be returned to the custody of the child's parents. Iowa Code § 232.116(1)(h). The first three elements are not disputed.

As to the fourth element, the State presented clear and convincing evidence that the children cannot be returned to Julie's custody at this time. Julie has failed to take the steps necessary to provide her children with a safe and stable home. She has made little effort to find employment or proper housing. She testified that she was comfortable at her mother's house, and while she planned to move out "eventually," she failed to understand why her children could

not live there. She did not follow up with her mental health evaluation or domestic violence treatment, as recommended by DHS. More importantly, Julie attended the weekly visits with her children only sporadically, canceling visits for various reasons, including being sick, having court appearances, and transportation problems. “The future can be gleaned from evidence of the parents’ past performance and motivations.” *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000). Julie has shown little motivation to make the changes necessary to regain custody of her children.

Further, multiple care providers testified that Julie failed to accept responsibility for her actions, including the physical condition the children were in when they were removed. Becker testified that she did not believe the children could safely be returned to their mother because Julie had failed to make any sustainable progress in areas that would keep the children safe. Riley reported, “Julie is only minimally able to provide for her own needs and could not care for her children at this time.” “A child’s safety and the need for a permanent home are now the primary concerns when determining a child’s best interests.” *J.E.*, 723 N.W.2d at 801 (Cady, J., concurring specially). Julie cannot provide for her children’s safety at this time or in the foreseeable future.

Julie and the children previously were involved with DHS from February of 2007 to April of 2008 because of Julie’s issues with substance abuse, domestic violence, self-sufficiency, and stability. Those issues were all still present at the time of trial, after another seven months of services. Given Julie’s refusal to accept responsibility and make positive changes, it is unlikely that the children could be safely returned to Julie in the near future. Riley testified that Julie has

been unwilling to “make any plans or change her life in any way to prevent” the children’s prior medical problems and similar developmental delays from reoccurring. We agree with the children’s guardian ad litem that Julie’s “meager efforts toward reunification do not give anyone confidence that she will be able to completely raise these girls to adulthood.”

For the above-listed reasons, we also believe it is in the children’s best interests that Julie’s parental rights be terminated. Allowing the children to return to their mother’s care would deprive them of the safety and stability they need and deserve. “[P]atience with parents can soon translate into intolerable hardship for their children.” *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). A review of the record shows that termination of Julie’s parental rights is in Holly and Amber’s best interests.

AFFIRMED.