IN THE COURT OF APPEALS OF IOWA

No. 0-479 / 10-0874
Filed July 14, 2010

IN THE INTEREST OF J.S.,
Minor Child,

C.M.G., Mother,
Appellant.

Appeal from the Iowa District Court for Jackson County, Phillip J. Tabor and John G. Mullen, District Associate Judges.

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

John L. Kies of Kies Law Firm, Bellevue, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Christopher Raker, County Attorney, for appellee State.

Mark R. Lawson of Mark R. Lawson, P.C., Maquoketa, guardian ad litem for minor child.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ. Tabor, J., takes no part.

POTTERFIELD, J.

A mother appeals the termination of her parental rights. We affirm.

I. Background Facts.

J.S. was born in August 2008 to the mother, C.G. J.S. was removed from C.G.'s care in June 2009 after the mother and her boyfriend, E.S.,[1] were arrested for domestic assault following a fight in a parking lot. Both C.G. and E.S. spent the night in jail. J.S. was placed in a foster home, where he has remained.

On September 18, 2009, J.S. was adjudicated a CINA by a stipulated adjudication order based on safety concerns due to domestic violence between C.G. and E.S.

In the November 23, 2009 dispositional order, the court wrote: "The mother continues to reside with men who physically abuse her. There are confirmed reports of child abuse, as the child is involved in these matters. The mother also has not had stable housing." J.S. was ordered to remain in foster care. The court adopted the case plan outlined by the Department of Human Services. The case plan directed C.G. to participate in substance abuse treatment, domestic violence education/crisis intervention services, mental health counseling to address her individual needs and to address relationship issues with E.S., and permanency services. She was also to obtain stable housing and employment.

The State offered C.G. family support services, domestic abuse counseling, and substance abuse counseling.

[1] E.S. was the putative father; however, subsequent paternity testing ruled him out.

It was not until March 2010, upon the filing of the petition to terminate her parental rights, that C.G. began to participate in the case plan. Prior to that time, C.G. tested positive for marijuana on a number of occasions, was sporadic in her mental health treatment, and was not able to maintain a permanent residence or employment. At a February 11, 2010 family team meeting she admitted using marijuana on a daily basis. Between July 28, 2009, and March 31, 2010, she missed seventy-five to eighty percent of her visits with J.S.

In April 2010, after the filing of the termination petition and the beginning of C.G.'s participation in reunification services, an incident of domestic abuse occurred between C.G. and E.S. and a protective order was entered. C.G. had completed an eight-week domestic violence program that same month. Shortly thereafter, C.G. was arrested for violating the protective order when she was discovered driving a van and E.S. was in the back seat underneath some clothes.

At the time of trial on May 20, 2010, C.G. was residing at the YWCA domestic violence shelter, where she had moved on May 3, 2010. At the termination hearing, the family permanency worker, Christy McDonald, testified the C.G. had been "clean" since March 2010, when she began intensive outpatient treatment. McDonald also testified C.G. had attended three sessions with a mental health therapist since March 2010; had applied for employment; and had attended most of her visits with J.S. in April and May. McDonald testified J.S. was thriving in his pre-adoptive foster care placement.

Anne McDermott, the case worker since the child's removal in June 2009, testified that C.G.'s participation in reunification efforts had been minimal prior to

March 2010.[2] McDermott testified J.S. could not be returned to C.G. at present, and "based on [C.G.'s] history," she did not "hold out any hope" for success. She recommended termination of parental rights.

C.G. testified about her recent efforts to comply with the case plan, and conceded her past performance had been poor. She also acknowledged she had chosen her abusive relationship with E.S. over her child as recently as February 2010. She testified, "I still love him [E.S.], but I have to move on with my life."

The court terminated C.G.'s parental rights pursuant to Iowa Code section 232.116(1)(h) (2009) (providing court may order termination if it finds the child (1) is three years of age or younger; (2) has been adjudicated a child in need of assistance (CINA); (3) has been removed from the physical custody of the child's parents for at least six months of the last twelve months; and (4) cannot be returned to the custody of the parent at the present time). The court noted: C.G. had "constantly made choices in favor of" E.S.'s needs or her own needs to be in a relationship with E.S., to the detriment of the child; C.G.'s history of lack of participation with services; her continued unemployment; her history of marijuana usage, and despite recent treatment, "[t]here has been no mention by anyone whether she is committed to sobriety. It remains to be seen whether she actively participates in a relapse program or commits to recovery." The court concluded "additional services would not likely resolve the adjudicatory harm given the failure, refusal, or inability of the parents to participate in services offered in the

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[2] McDermott testified that E.S. had not been involved in any services, had taken no responsibility for the violence in the relationship, and had told McDermott as recently as the permanency hearing that the only way he could make money was to sell drugs.

past." The court found that J.S. was doing well in his placement and that termination of parental rights was in his best interests.

The mother now appeals, contending additional time would likely resolve the risk of adjudicatory harm and termination is not in the best interests of the child.

II. Scope and Standard of Review.

We review termination proceedings de novo. *In re Z.H.*, 740 N.W.2d 648, 650 (Iowa Ct. App. 2007). The grounds for termination must be proved by clear and convincing evidence. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997), *overruled on other grounds by In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010).

III. Discussion.

C.G. does not argue that the statutory grounds have not been met, rather she argues she should be allowed additional time to show she is capable of parenting her child.

The mother's recent efforts, though commendable, do not persuade us that additional time would result in C.G. being able to parent J.S. Our supreme court has stated, "Time is a critical element. A parent cannot wait until the eve of termination, after the statutory time periods for reunification have expired, to begin to express an interest in parenting." *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000). As was the case in *C.B.*, the mother "waited too long to respond, and the underlying problems which adversely affected her ability to effectively parent were too serious to be overcome in the short period of time prior to the termination hearing." *Id.* "While we recognize the law requires a 'full measure of patience with troubled parents who attempt to remedy a lack of parenting skills,'

Iowa has built this patience into the statutory scheme of Iowa Code chapter 232." *Id.* at 494 (citation omitted). "Once the limitation period lapses, termination proceedings must be viewed with a sense of urgency." *Id.* at 495.

At the time of the termination hearing, there was clear and convincing evidence J.S. could not be returned to C.G.'s care. C.G. was without employment and housing, had only two months of sobriety, and despite services addressing domestic abuse, she had just recently resumed her violent relationship with E.S. and violated a protective order to spend time with him.

Insight for the determination of the child's long-range best interests can be gleaned from "evidence of the parent's past performance for that performance may be indicative of the quality of the future care that parent is capable of providing." *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). Based on C.G.'s past performance, we are not hopeful that her recent efforts would allow J.S. to be returned to her care, even if additional time were granted.

Children should not be forced to await the maturity of a natural parent endlessly. *C.B.*, 611 N.W.2d at 495. At some point, the rights and needs of the child rise above the rights and needs of the parent. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). J.S. needs and deserves permanency. *In re J.E.*, 723 N.W.2d 793, 802 (Iowa 2006) (Cady, J., concurring specially). J.S. is in a stable, pre-adoptive foster home, where he is thriving.

Upon our de novo review, we find clear and convincing evidence supports termination pursuant to Iowa Code section 232.116(1)(h). We do not find that

any bond between C.G. and J.S. is strong enough to weigh against termination under section 232.116(3)(c). We therefore affirm.

AFFIRMED.