IN THE COURT OF APPEALS OF IOWA

No. 0-658 / 10-1281
Filed September 22, 2010

IN THE INTEREST OF C.C. and L.C.,
Minor Children,

J.M.C., Mother,
Appellant.

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

A mother appeals from the district court's order terminating her parental rights. **AFFIRMED.**

C. Morgan Lasley of Dunakey & Klatt, P.C., Waterloo, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Steven J. Halbach and Kathleen A. Hahn, Assistant County Attorneys, for appellee State.

Kelly Smith, Waterloo, for intervenors.

Theodore Stone, Cedar Falls, for father.

Timothy Baldwin, Waterloo, for minor children.

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

POTTERFIELD, J.

The mother of two children, both under the age of three, appeals following termination of her parental rights.[1]

This family came to the attention of the Department of Human Services (DHS) in April 2008 due to concerns related to proper supervision of C.C., the father's use of illegal drugs, and the mother's use of prescription medication. This was a voluntary case until February 2009 when C.C. was formally removed from the parents' care due to drug paraphernalia being found in the home and the parents' subsequent arrests. C.C. was adjudicated a child in need of assistance (CINA) by order dated May 1, 2009. The mother has a history of dependence on narcotic pain relievers and has gone to desperate measures to obtain medications, including stealing money from her in-laws and forging prescriptions. A permanency hearing was held for C.C. on September 15, 2009, and permanency was deferred for six months. L.C. was born in October 2009 and was removed immediately from the mother's care because both mother and child tested positive for cocaine at the time of L.C.'s birth. Both children have been placed in the care of their paternal grandparents/intervenors since being removed from their parents' care.

The mother was ordered to reside in a correctional facility for probation violations in November 2009 and began residential treatment on December 21, 2009. On February 12, 2010, while on furlough from the facility, she relapsed taking Oxycontin. She resumed her treatment, however, and was successfully discharged from the facility in April 2010. She remained on probation.

[1]The father of the children does not appeal the termination of his parental rights.

A termination hearing was held on May 25, 2010. At the time of the termination hearing, C.C. had been out of the mother's custody for more than fifteen months, L.C. for ten months. At the termination hearing, the mother testified she had been "clean" since February 13, about three months earlier, which was her longest period of sobriety "in years." The mother was working full-time, attending Narcotics Anonymous, and was receiving semi-supervised visitation. DHS case management worker, Tina Sells, testified that if the mother "continues to do the things that she's expected with no relapses and continue[s] to follow through [with] all expectations of DHS," a thirty-day home visit "could start as—I mean even as soon as July 1." However, Ms. Sells also testified that "[n]ot up until recently" had the mother done what was expected of her when permanency was deferred. Nor could Ms. Sells recommend the return of the children to the mother's care at that time in light of her history of substance abuse, the short duration of her sobriety, and the uncertainty of her ability to parent her children adequately. The grandparents expressed a willingness and desire to adopt the children and noted the children needed permanency.

Following the termination trial, DHS did not follow through with the implication in Ms. Sells' testimony that additional visitation and a trial home placement were possible. The mother requested the court to order the additional reunification efforts.

On June 7, 2010, after the termination trial but before the juvenile court filed its ruling, the mother filed a motion to reopen the record. The court granted that motion and considered the facts contained in the mother's affidavit and two supporting exhibits in its ruling.

On July 8, 2010, after the termination trial but before the juvenile court's ruling was filed, the mother filed a motion for reasonable efforts, contending DHS "has wrongly discontinued reasonable efforts to reunite the children with their parent." She asked that the juvenile court order DHS to continue reasonable efforts, including a progression to unsupervised visitation and trial home placement that had been implied in the testimony of the DHS case worker at the termination trial.

On July 23, 2010, the juvenile court filed an order terminating parental rights pursuant to Iowa Code section 232.116(1)(h) and (*l*) (2009). The court denied the mother's motion for reasonable efforts as untimely and not supported by the evidence.

The mother now appeals. She does not challenge that statutory grounds exist for termination of her parental rights. *See In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010) (noting first question of analytical framework is whether statutory grounds under Iowa Code section 232.116(1) exist). Nor does she contend termination is not in the children's best interest, *see* Iowa Code § 232.116(2), or that any of the factors weighing against termination in section 232.116(3) are pertinent. But she contends the juvenile court erred in denying her post-trial motion for reasonable efforts.

Pursuant to Iowa Code section 232.102(7), if the court orders the transfer of the custody of children to DHS, DHS "shall submit a case permanency plan to the court and shall make every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interests of the child." In the

case of *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000), our supreme court explained that the reasonable efforts

> concept covers both the efforts to prevent and eliminate the need for removal. The focus is on services to improve parenting. However, it also includes visitation designed to facilitate reunification while providing adequate protection for the child.
>
> Recently, the reasonable efforts requirement has undergone some transformation. This is because the family preservation concept which guided our general national policy for the last two decades was found to be detrimental to children in some cases. Consequently, the Adoption and Safe Families Act of 1997, Public Law 105-89, 111 Statutes 2115 (codified as amended in scattered sections of 42 U.S.C.), now broadens the focus of reunification to place greater emphasis on the health and safety of the child, and mandates a permanent home for a child as early as possible. . . .
>
> At the same time, the reasonable efforts requirement is not viewed as a strict substantive requirement of termination. *Instead, the scope of the efforts by the DHS to reunify parent and child after removal impacts the burden of proving those elements of termination which require reunification efforts. The State must show reasonable efforts as a part of its ultimate proof the child cannot be safely returned to the care of a parent.*

(Internal citations omitted. Emphasis added.)

The mother has a lengthy history of abuse of and dependence on narcotic pain relievers and an inability to parent and care for her children properly. She has a two-plus-year history of involvement with DHS and has received numerous services during that time. In March 2010, the juvenile court summarized DHS's "reasonable efforts in their attempts to achieve permanency for the children." The court stated that the efforts included "suitable relative placement, offering of child welfare services, outpatient substance abuse programming, random drug testing, supervised visitation, individual mental health counseling, cooperative supervision with the Iowa Department of Corrections and other community-based programming." The offered services were designed to reunite the mother with

the children. The record demonstrates that the fact the mother could not be reunited with the children is not the result of any failure by the State to offer necessary services, but instead is the result of the delay in accepting the services that have been made available to her. She has received a prior extension of reunification efforts. She undoubtedly hoped for a second extension based on the trial testimony of the DHS case management worker that a trial home visit looked promising.

We view the mother's motion following the termination trial as a motion for an additional extension of time for reunification. The juvenile court found the motion untimely and unsupported by the evidence. We agree that further extension of time for reunification was not supported by evidence.

The mother's efforts to attain sobriety, while commendable, came too late—just three months before trial. A parent does not have an unlimited amount of time to correct deficiencies. *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997). Patience with parents can soon translate into intolerable hardship for a child. *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). "Once the limitation period lapses, termination proceedings must be viewed with a sense of urgency." *C.B.*, 611 N.W.2d at 495. The failure of DHS to continue to move toward reunification following the termination hearing did not affect the outcome of the case. *See id.* (stating "the failure of the DHS to provide visitation in the last months before the termination hearing did not impact the outcome of the case").

Upon our de novo review, we conclude that reasonable efforts were made and reasonable services provided before termination proceedings were instituted. At the time of the termination hearing, there was clear and convincing

evidence to support termination under Iowa Code section 232.116(1)(h) (child three or younger, adjudicated CINA, removed from physical custody of parent at least six of last twelve months, cannot be returned to parent at present time). These children are in need of and deserve permanency. They are doing well in their pre-adoptive placement. We therefore affirm the decision of the juvenile court.

AFFIRMED.