IN THE COURT OF APPEALS OF IOWA

No. 1-005 / 10-1762
Filed February 9, 2011

IN THE INTEREST OF B.M., A.M., A.L., & R.L.,
Minor Children,

M.A.M., Mother,
Appellant.

Appeal from the Iowa District Court for Buena Vista County, Mary L. Timko, Associate Juvenile Judge.

A mother appeals the juvenile court's order terminating her parental rights to two of her children and placing her other two children in another planned permanent living arrangement. **AFFIRMED.**

Andrew J. Smith of Mack, Hansen, Gadd, Armstrong & Brown, P.C., Storm Lake, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Dave Patton, County Attorney, and James M. McHugh, Assistant County Attorney, for appellee State.

John M. Murray of Murray & Murray, P.L.C., Storm Lake, for appellee father.

Ryan A. Mohr of Redenbaugh, P.C., Storm Lake, for appellee father.

Nola M. Jensen of Stern, Diehl, Cornish & Jensen, Albert City, for appellee father.

Lisa K. Mazurek of Mazurek Law Firm, Cherokee, for minor children.

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

POTTERFIELD, J.

I. Background Facts and Proceedings

Though we have considered the entire record de novo and agree with the juvenile court's careful examination and discussion of this family's involvement with the Iowa Department of Human Services (DHS), we decline to chronicle in great detail the family's entire history with DHS. *See In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010) ("[T]he proper standard of review for all termination decisions should be de novo."). A brief recitation of the facts is sufficient to support our conclusion affirming the juvenile court on all grounds raised on appeal.

Mary is the mother of four children. DHS has been involved with this family on multiple occasions over the past fifteen years. DHS was involved primarily with issues relating to lack of cleanliness in the home, failure to adequately supervise the children, and sexual abuse of Mary's daughter by Mary's boyfriend Dylan. Mary married Dylan in spite of his confession to sexually abusing her daughter. Dylan is the father of Mary's youngest two children.[1]

In December 2009, sexual abuse allegations against Dylan were founded, and Dylan was ultimately convicted of second- and third-degree sexual abuse. Mary entered an *Alford* plea to the charge of child endangerment.[2]

On July 15, 2010, the juvenile court adjudicated the children to be in need of assistance pursuant to Iowa Code section 232.2(6)(b), (c)(2), and (d), and (2009).

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[1] Mary's parental rights are the only rights at issue on appeal.

[2] In an *Alford* plea, a person voluntarily consents to the imposition of a sentence, even if the person is unwilling or unable to admit to committing the crime. *See North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 167, 27 L. Ed. 2d 162, 171 (1970).

After a four-day hearing that started on July 20, 2010, the juvenile court terminated Mary's parental rights on October 21, 2010, to her youngest two children pursuant to Iowa Code section 232.116(1)(d), (e), (h), (i), (j), and (m). After considering the age of the oldest two children, their relationship with their mother, and the position of the guardian ad litem, the court found that a termination of parental rights would not be in their best interests and ordered another planned permanent living arrangement for these two children. Mary appeals on multiple grounds.

II. Admission of Evidence

Mary first argues that "[c]ertain evidence was admitted in violation of [her] Due Process and Confrontation Rights under the Iowa and United States Constitutions." Given Mary's failure to make any specific argument on appeal, we find she has not preserved error on this issue, and we decline to address it. *See State v. Philpott*, 702 N.W.2d 500, 504 (Iowa 2005) ("Defendant's arguments on the evidentiary issues are too vague and indefinite to support the granting of relief based on the admission of improper evidence."). Further, in *In re L.K.S.*, 451 N.W.2d 819, 822 (Iowa 1990), the court held that "the confrontation clause applies *only* in criminal cases." "Termination of parental rights cases are civil proceedings." *In re T.P.*, 757 N.W.2d 267 (Iowa Ct. App. 2008). We therefore conclude the confrontation clause is not applicable in this case.

III. Reasonable Services

Mary next argues there "was a lack of reasonable services provided to prevent or eliminate the need for removal of the children." On July 6, 2010, at a hearing regarding a motion in limine filed by the guardian ad litem, Mary argued

that DHS had not provided reasonable services. She requested a psychosocial evaluation. On July 13, 2010, the court ordered a mental health evaluation. Mary received services from homemakers, court appointed special advocates, licensed practitioners of the healing arts, and teacher involvement. In addition, counseling was offered and provided to Mary. The guardian ad litem stated that fourteen individuals had provided services in this case. Upon our de novo review of the record, we conclude the State provided reasonable services; Mary simply failed to take advantage of the services offered.

IV. Statutory Grounds

Mary argues there is not sufficient evidence to support termination of her parental rights to her two youngest children on any of the statutory grounds relied upon by the juvenile court. We disagree. Iowa Code section 232.116(1)(d) provides for termination when:

> (1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.
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> (2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

Mary does not contest that the first prong was met.[3] In regards to the second prong, we find that Mary received numerous services over a lengthy period of time and failed to take advantage of the services or to correct the circumstances that led to the adjudication of her children. Despite DHS's continued involvement

[3] The children were adjudicated children in need of assistance pursuant to Iowa Code section 232.2(6)(b), (c)(2), and (d). This meets the requirement of section 232.116(1)(d).

with this family, Mary failed to show progress that would suggest she could cure the neglect and abuse that led to her children's adjudication. Clear and convincing evidence exists to terminate Mary's parental rights under section 232.116(1)(d).

"We only need to find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm its ruling." *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2002). Accordingly, we decline to address Mary's arguments that relate to other statutory grounds.[4]

V. Best Interests of the Children

Mary contends it is not in the best interests of her youngest two children that her parental rights to them be terminated. We agree with the juvenile court's conclusion, "These children do not need to be subjected to the same environment and living conditions to which their older siblings were exposed for years." Mary continued a relationship with and later married a man who had admitted to sexually abusing her daughter. Mary repeatedly failed to supervise her children. Mary failed to maintain the family home, which was consistently so unclean that it became unsafe. We agree with the juvenile court's finding that Mary "has allowed chronic neglect of her children in terms of uninhabitable living conditions; lack of proper supervision; and failure to provide for basic needs, either directly or by omission." Mary has failed to provide for the best interests of her youngest two children. Using the framework provided in section 232.116(2),

[4] We also decline to address Mary's argument of ineffective assistance of counsel because we determine that trial counsel did not fail to preserve any of Mary's arguments addressed on appeal.

we conclude a termination of Mary's parental rights best provides for the children's safety, long-term growth, and physical, mental, and emotional needs.

VI. Additional Time

Mary asserts she presented evidence sufficient to justify granting her an additional six months to work toward reunification with her children. Mary has been involved with DHS for nearly fifteen years and still is unable safely to parent her children. In spite of her consistent need for services and her maintenance of a relationship with a man who sexually abused one of her children, Mary informed the guardian ad litem she did not believe she had done anything wrong. When a parent is incapable of changing, termination is necessary. *In re T.T.*, 541 N.W.2d 552, 557 (Iowa Ct. App. 1995).

We note that Mary showed improvement in her mental well-being after counseling. We also note the improvement in the cleanliness of the house toward the end of these proceedings. However, we determine that these improvements are too little, too late. "[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). We are unable to find that the children could be returned to Mary's home within six months without further jeopardizing their physical and emotional well-being. The juvenile court properly denied Mary's request for additional time.

VII. Waiver of Reasonable Efforts

Mary asserts the State presented insufficient evidence to support a waiver of reasonable efforts for reunification between her and her oldest two children. We agree with the juvenile court's finding that reasonable efforts should not be required in these aggravated circumstances including physical and/or sexual

abuse constituting imminent danger to the children, with clear and convincing evidence that services would not correct the conditions within a reasonable period of time. *See* Iowa Code § 232.102(12)(b).

VIII. Another Planned Permanent Living Arrangement

Mary also asserts the State presented insufficient evidence to support the court's order for custody and guardianship of her two oldest children to be with DHS for another planned permanent living arrangement. We disagree. Because Mary has failed to correct the conditions in her home that led to the risk to the children, they cannot be returned home. However, given the ages and desires of her oldest two children, we agree that a termination of the parent-child relationship would not be in their best interests. We find the permanency order entered by the juvenile court under Iowa Code section 232.104(2)(d)(4) was most appropriate and was supported by convincing evidence.

AFFIRMED.