

IN THE COURT OF APPEALS OF IOWA

No. 1-176 / 11-0159
Filed March 30, 2011

**IN THE INTEREST OF A.G., A.G., and A.G.,
Minor Children,**

H.A.T., Mother,
Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Gregg R. Rosenblatt, District Associate Judge.

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

David A. Kuehner of Eggert, Erb, Mulcahy & Kuehner, P.L.L.C., Charles City, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Paul L. Martin, County Attorney, and Nichole Benes, Assistant County Attorney, for appellee.

John G. Sorensen of Sorensen Law Office, Clear Lake, for father.

Mark A. Young of Young Law Office, Mason City, attorney and guardian ad litem for minor child.

Considered by Vogel, P.J., and Doyle and Tabor, JJ.

TABOR, J.

A mother appeals the termination of her parental rights to her three children. She contends the State failed to prove the grounds for termination by clear and convincing evidence and that reasonable efforts were not made to reunify her with her children. She also contends termination is not in the children's best interests. Upon our de novo review, we find none of the children can be safely returned their mother's care. Because it is in the children's best interests to terminate the mother's parental rights, we affirm.

I. Background Facts and Proceedings.

This appeal involves three children: seven-year-old twin girls and their two-year-old brother. The children first came to the attention of the Department of Human Services (DHS) as a result of domestic violence occurring between the mother and father, and a founded child abuse assessment was completed on March 18, 2009 as a result of these incidents. The court adjudicated the children in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) (2009) on April 29, 2009, and that same day another founded child abuse assessment was completed against the mother for allowing the twins to play outside unsupervised for extended periods of time.

On May 22, 2009, the children were removed from the mother's care after she allowed contact with the father in violation of a court order. The children were placed in foster care where they have since remained. The twins have been with the same foster family since April 2010. Their younger brother has been in his foster care placement since March 2010.

When the children were removed from the mother's care, all showed significant developmental delays. Although they were five years old, the twins did not know their alphabet or colors and did not know how to eat a meal with utensils while sitting on chairs as a family. At seven months of age, the youngest was unable to sit up or hold a bottle and was described as a "jellyfish" by the Court Appointed Special Advocate (CASA) volunteer. All three children have made tremendous strides while in their foster care placements and with the receipt of services.

Over the course of the case, the mother had made some improvements with regard to her employment and housing situation, but had not progressed to the point where the DHS allowed her unsupervised visitation with the children. She would attend to the children's needs during part of the visit, but would often engage in activities by herself and not notice the children were not participating. The social workers remained concerned about her ability to parent these children.

After visitations with the mother, all three children would suffer negative reactions. The twins engaged in extreme temper tantrums described as "meltdowns." The youngest child would become constipated, which his physician described as one way young children deal with stress.

The State filed a petition to terminate the mother's parental rights in June 2010. Hearings were held in October and November 2010. On January 18, 2011, the juvenile court filed its order terminating the mother's parental rights pursuant to Iowa Code sections 232.116(1)(f) and (h).

II. Standard of Review.

In our de novo review of orders terminating parental rights, we give weight to the juvenile court's factual findings, but are not bound by them. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We will uphold a termination order if the record contains clear and convincing evidence of grounds for termination under Iowa Code section 232.116(1). *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). Evidence is "clear and convincing" when there are no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.*

III. Analysis.

A. The State proved by clear and convincing evidence the mother's parental rights should be terminated.

The mother's parental rights were terminated pursuant to section 232.116(1)(f) with regard to the twins and 232.116(1)(h) with regard to her son. To terminate under these sections, the State must prove by clear and convincing evidence that a child of a certain age has been adjudicated in need of assistance and removed from the home for a requisite period of time, and that the child cannot be returned to the parent as provided in section 232.102. See Iowa Code §§ 232.116(1)(f), (h).

The mother disputes the State's evidence showing the children cannot be returned to her care, specifically the youngest child. We disagree with the mother's position. The evidence shows she is unable to safely parent any of the children and that if returned to her care, the youngest child faces the danger of neglect. At the time of termination, the mother still required supervision during visits and needed to be directed in her behavior. She felt overwhelmed by the

demands of the DHS that she maintain employment, stable housing, and participate in services. She had difficulty meeting her own needs, let alone those of her children. Nor did she have consistent transportation to take the children to the many appointments required to address their special needs attributable to her neglect of them in their early years.

The State proved by clear and convincing evidence the children, including the youngest child, could not be returned to her care at the time of termination without placing them at risk of future neglect.

B. The mother failed to preserve error on the question whether the State made reasonable efforts to reunify her and the children.

The mother next contends the State failed to make reasonable efforts to reunify her with her children. Specifically, she argues the DHS failed to offer separate services based on the needs of each child, which should have included individual visitation between her and the youngest child.

“The State must make reasonable efforts to provide services to a parent before termination proceedings may be instituted.” Iowa Code §§ 232.102(7), 10(a); *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002). To preserve error for purposes of appellate review, the parent must request different or additional services prior to the termination proceeding. See *C.H.*, 652 N.W.2d at 148 (stating the parent must request services at the proper time or the parent “waives the issue and may not later challenge it at the termination proceeding”); *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994) (indicating a parent must demand services if he or she feels they are inadequate before termination). If a parent wishes to challenge the DHS efforts, alleging the agency failed to

discharge its statutory duty to make reasonable efforts to provide the parent with services, the parent must do so at the removal hearing, review hearings, when the case permanency plan is entered, or when the services are offered or denied—it is too late to launch the challenge at the termination hearing. *C.H.*, 652 N.W.2d at 148; *L.M.W.*, 518 N.W.2d at 807. Moreover, “[a] parent must inform the juvenile court of such a challenge” and “voicing complaints regarding the adequacy of services to a social worker is not sufficient.” *C.H.*, 652 N.W.2d at 148.

The mother states she preserved error on this issue by contesting the factual basis for the finding at trial and filing a timely notice of appeal. She does not cite any place in the record where she requested individual or increased visitation with the youngest child.¹ We conclude she has not adequately preserved error on this issue.

C. Termination is in the children’s best interests.

Finally, the mother contends termination is not in the children’s best interests. She argues the twins, as children with special needs, are not adoptable and that long-term foster care is preferable to termination.

In determining best interests, we must consider the children’s safety, the best placement for furthering their long-term nurturing and growth, and their physical, mental, and emotional condition and needs. *P.L.*, 778 N.W.2d at 37. In considering these factors, we agree with the juvenile court that termination is in the twins’ best interests. The girls faced severe developmental delays at the

¹ The mother did receive some one-on-one visitation with the child.

start of this case and made great strides while in foster care. They do not appear to be bonded with their mother, rarely talking about her or saying they miss her. Both girls would act out after seeing their mother, having emotional “meltdowns” that sometimes lasted three or four hours. The harm generated by continued contact with the mother outweighs the mother’s interest in maintaining her parental rights. See *In re C.S.*, 776 N.W.2d 297, 300 (Iowa Ct. App. 2009) (recognizing that at some point, the rights and needs of the children rise above the rights and needs of the parent). Likewise, termination is in the best interests of the youngest child, who has progressed in family foster care and is in a good position to achieve a permanent placement.

Because the grounds for termination have been proved by clear and convincing evidence and termination is in the children’s best interest, we affirm.

AFFIRMED.