IN THE COURT OF APPEALS OF IOWA

No. 1-320 / 11-0128
Filed May 25, 2011

IN THE INTEREST OF A.G. and D.C.,
Minor Children,

T.M.C., Mother,
Appellant,

C.G., Father,
Appellant.

Appeal from the Iowa District Court for Linn County, Susan Flaherty, Associate Juvenile Judge.

A mother and father appeal separately from the order terminating their parental rights. **AFFIRMED ON BOTH APPEALS.**

Angela M. Railsback of Railsback Law Office, Cedar Rapids, for appellant mother.

Sharon D. Hallstoos of Hallstoos Law Office, Cedar Rapids, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Jerry Vander Sanden, County Attorney, and Kelly J. Kaufman, Assistant County Attorney, for appellee State.

Deborah Skelton, Walford, for minor children.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

DOYLE, J.

A father and mother appeal separately from the order terminating their parental rights. Each parent argues the State failed to prove the grounds for termination by clear and convincing evidence and that termination of his or her parental rights was not in the children's best interests. The mother also contends the State failed to make reasonable efforts for reunification and that she should have been given additional time for reunification. Upon our de novo review, we affirm on both appeals.

***I. Background Facts and Proceedings*.**

T.C. is the mother and C.G. is the father of two children at issue in this case: A.G., born in May 2008, and D.C., born in November 2009. The parents are unmarried and have a history of substance abuse. The father also has a long history of criminal involvement, as well as a history of inflicting domestic violence on the mother.

The mother first came to the attention of the Iowa Department of Human Services (Department) in November 2003, after the mother's firstborn child, A.V., tested positive for marijuana at birth. The mother agreed to participate in voluntary services and to abstain from any further drug use. No further action was taken at that time.

In 2005 the Department learned of allegations that the mother's then boyfriend was manufacturing methamphetamine in their home. Drug testing was performed on A.V., and the child tested positive for methamphetamine. The mother then agreed to enter a residential substance abuse treatment facility for

women with children. The mother also participated with services through the Department. The Department's case was then closed in 2006.

In May 2008, A.G. was born and tested positive for cocaine. The Department began a child abuse assessment, and the mother again agreed to enter a residential substance abuse treatment facility. Thereafter, the children were adjudicated children in need of assistance (CINA).

Since the CINA case began, the mother and father have been offered numerous services to reunite them with their children, including drug testing, substance abuse evaluations, drug treatment, parenting instruction, supervised visitation, drop-in supervision, family support worker assistance, domestic violence counseling, and mental health services. The parents were also admitted to participate in family drug court. There were no requests made for additional services by either parent that were not addressed by the Department or the juvenile court.

Both parents initially made progress. The mother successfully completed her outpatient treatment and regularly submitted to drug testing. Both parents participated in services. However, the parents had a dispute in September 2008 that ended with the father entering the mother's home and destroying some of her property. Because of the parents' volatile relationship and the domestic violence incidents between them, the juvenile court ordered that each parent have no contact with the other.

By February 2009, the father was no longer compliant with drug testing. He was not regularly attending visitation with the children, and his living situation was no longer stable. The parents also admitted to violations of the no-contact

order between them. In April, the mother acknowledged she was pregnant, though she denied C.G. was the father.

The mother continued progressing, and she celebrated one year of sobriety in June 2009. Thereafter, her progress declined. Although she continued to participate in family drug court, she became noncompliant with its expectations for consistent drug testing and attendance at AA meetings. Additionally, the mother continued her relationship with the father despite the no-contact order between them and the father's continued refusal of drug testing and his inconsistent visitation with the children. She was discharged from family drug court in September 2009.

In November 2009, D.C. was born free from drug exposure. Paternity testing later established C.G. is the child's father.

In January 2010, the mother reported she had been assaulted by the father, and fresh bruising on her face was observed. The mother explained that the father had struck her in the face and had broken a coffee table over her back. The mother reported that the children were present when the assault occurred. The mother admitted that she and the father had been having frequent contact, despite the court's no-contact order between them. Additionally, she admitted she had been using marijuana and methamphetamine for several months. The father was charged with domestic assault causing bodily injury, and he later pled guilty to the charge.

The children were then removed from the mother's care on January 28, 2010. The children were placed in family foster care, where they have since remained. Following removal, the children were tested for drugs, and A.V. tested

positive for exposure to cocaine. A.G. tested positive for exposure to cocaine and methamphetamine. D.C., then two months old, tested positive for ingestion of methamphetamine. Thereafter, the juvenile court adjudicated D.C. a CINA.

In February 2010, the parents were arrested after the vehicle in which they were passengers was stopped. Officers searched the vehicle, and a crack pipe, a razor, a spoon with crack cocaine residue, and a plastic bag containing crack cocaine were found in the vehicle. A prescription pill was found in the mother's pocket. The mother was charged with possession of drug paraphernalia and possession of prescription drugs. The father was charged with interference with official acts, violation of a criminal no-contact order, and possession of a controlled substance with intent to deliver.

The mother again entered a residential treatment program following her arrest in February 2010, but her efforts were short-lived; she left the facility the same evening she entered. She re-entered the program in April 2010, but again left after admission. She then entered an inpatient substance abuse treatment center on April 21, 2010, after she had been hospitalized for a week for substance abuse and mental health issues. Thereafter, she entered the center's halfway program. She left the program on May 19, but returned on May 22. She admitted she relapsed during this time. She also admitted that she had continued to have contact with the father, and she reported he had again assaulted her during the time she left the treatment center.

Throughout 2010, the father had sporadic involvement in the case, and he continued to decline participation in services. He did not have any visitation with the children from January to May 2010. In May, he told the Department's

caseworker he wanted to start working with the Department again, including providing samples for urinalysis testing. He then had one supervised visit with A.G. on May 7, 2010. Thereafter, the father was arrested for possession of crack cocaine on May 11, 2010. He was also arrested in May 2010 for assaulting the mother. He was incarcerated in jail for approximately sixty days. He did not set up any further visits with the children, and he did not have any further contact with the children. On June 22, 2010, the State filed a petition seeking termination of the parents' parental rights.

The mother continued her treatment in the center's halfway house, which does not allow children to reside at the center with their recovering parent. She had two visits per week with her children and was consistent with visitation. At the time of the termination hearing in September 2010, the mother had been clean for three months. The mother was looking for housing outside the halfway house. The mother requested additional time for reunification.

On January 11, 2011, the juvenile court entered its order terminating the mother's parental rights pursuant to Iowa Code section 232.116(1)(h) (2009), and the father's parental rights pursuant to sections 232.116(1)(b), (e), (h), and (*l*). The mother and father now appeal.

***II. Scope and Standards of Review*.**

We review the juvenile court's decision to terminate parental rights de novo. *See In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). The State must prove grounds for termination by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). In considering whether to terminate, our primary considerations are the children's safety; the physical, mental, and emotional

condition and needs of the children; and the placement that best provides for the long-term nurturing and growth of the children. Iowa Code § 232.116(2); *P.L.*, 778 N.W.2d at 37.

***III. Discussion*.**

***A. Reasonable Efforts*.**

We first address the mother's challenge that the juvenile court erred in finding the State made reasonable efforts to reunite the children with the mother. "Reasonable efforts" are defined as

> the efforts made to preserve and unify a family prior to the out-of-home placement of a child in foster care or to eliminate the need for removal of the child or make it possible for the child to safely return to the family's home. . . . If returning the child to the family's home is not appropriate or not possible, reasonable efforts shall include the efforts made in a timely manner to finalize a permanency plan for the child.

Iowa Code § 232.102(10)(a). A child's health and safety shall be the paramount concern in making reasonable efforts. *Id*.

The State, through the Department, is required to "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." *Id*. § 232.102(7). Nevertheless, "[w]hile the State has the obligation to provide reasonable reunification services, the [parent] ha[s] the obligation to demand other, different, or additional services prior to the termination hearing." *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999) (emphasis added). When a parent alleging inadequate services fails to demand services other than those provided, the issue of whether services were adequate is not preserved for appellate review. *Id*.; *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994). Here, there is no evidence the mother ever requested

additional services other than those provided. We therefore find the mother has not preserved error on this issue.

However, even assuming, arguendo, that the mother had properly preserved this issue for our review, we would still find the mother was provided more than adequate services to promote reunification with her children. The record here shows that since 2003 the Department has offered or provided the mother numerous services to reunify her with the children. We conclude the State has met its burden.

***B. Grounds for Termination*.**

We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).[1] Termination is appropriate under section 232.116(1)(h) where there is clear and convincing evidence:

> (1) The child is three years of age or younger.
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
> (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

There is no dispute the first three elements of this section have been proved. However, the parents each contend there is insufficient evidence to show the

[1] We note the father challenges only three of the four grounds under which his parental rights were terminated: sections 232.116(1)(b), (h), and (*l*). We could affirm the termination based on the unchallenged ground as urged by the State. *See* Iowa R. App. P. 6.903(2)(*g*)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue."). Nevertheless, we elect to proceed to the merits of one of the challenged grounds, section 232.116(1)(h).

children cannot be returned to the mother's care at the present time. Upon our de novo review, we find the State has met its burden as to both parents.

While the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," this patience has been built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). The legislature incorporated a six-month limitation for children adjudicated a CINA aged three and younger. Iowa Code § 232.116(1)(h)(3). Our supreme court has stated that "the legislature, in cases meeting the conditions of [the Iowa Code], has made a categorical determination that the needs of a child are promoted by termination of parental rights." *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990) (discussing Iowa Code § 232.116(1)(e)). The public policy of the state having been legislatively set, we are obligated to heed the statutory time periods for reunification.

***1. The Father*.**

Here, the father did not participate in services throughout much of these proceedings. He had only a few visits with the children during the pendency of the case. The father has not established in any way that he can refrain from violence; he continued his violent relationship with the mother despite all recommendations and orders that he stay away, and received several charges for domestic abuse during the case, one charge as late as May 2010. He has had numerous drug-related charges throughout the case and, although he maintains he is not abusing substances, he refuses to participate in urinalysis testing to verify his assertion. There is no evidence in the record that the children could have been returned to his care at time of the termination hearing.

Accordingly, we find the State has proved by clear and convincing evidence the children could not be safely returned to the father's care at the time of the hearing.

***2. The Mother*.**

We also agree with the juvenile court that the State proved by clear and convincing evidence the children could not be safely returned to the mother's care at the time of the hearing. A.G. was adjudicated CINA in 2008, and services have been offered to the mother since before that time. Instead of progressing towards reunification, the children were removed from the mother's care in January 2010, when all three of her children tested positive for either exposure to or ingestion of illegal substances.

While we recognize and commend the recent progress the mother has made in attempting to address her long-standing issues with substance abuse and domestic violence, such efforts are simply too little, too late.

> We have repeatedly followed the principle that the statutory time line must be followed and children should not be forced to wait for their parent to grow up. We have also indicated that a good prediction of the future conduct of a parent is to look at the past conduct. Thus, in considering the impact of [an] addiction, we must consider the treatment history of the parent to gauge the likelihood the parent will be in a position to parent the child in the foreseeable future. Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting.

In re N.F., 579 N.W.2d 338, 341 (Iowa Ct. App. 1998) (citations omitted).

Here, the mother has relapsed numerous times. It is far too early to have any confidence that the mother will be able to maintain sobriety and her commitment to change, as well as abstain from unhealthy, violent relationships.

See In re C.B., 611 N.W.2d 489, 495 (Iowa 2000) ("A parent cannot wait until the eve of termination, after the statutory time periods for reunification have passed, to begin to express an interest in parenting."). Under the circumstances presented, we find the State has proved by clear and convincing evidence the children could not be safely returned to the mother's care at the time of the hearing.

***C. Best Interests*.**

Each parent contends termination was not in the children's best interests. We disagree on both counts.

If a statutory ground for termination is determined to exist, the court may terminate a parent's parental rights. *P.L.*, 788 N.W.2d at 37. In considering whether to terminate, the court must then apply the best-interest framework established in section 232.116(2). *Id.* The legislature highlighted as primary considerations: the child's safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the children. *Id*.

***1. The Mother*.**

Taking these factors into account, we agree with the juvenile court that the children's best interests require termination of the mother's parental rights. While we do not doubt the mother's love for the children and the children's for her,

> [i]t is well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child.

Id. at 41. The record reveals that the children cannot be returned to the mother's care at this time, and the children should not be forced to wait for permanency. Life has no pause button. "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). "At some point, the rights and needs of the child rise above the rights and needs of the parents." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997), *overruled on other grounds by P.L.*, 778 N.W.2d at 39-40. The children should not be forced to endlessly suffer the parentless limbo of foster care. *In re J.P.*, 499 N.W.2d 334, 339 (Iowa Ct. App. 1993). The children are now three and one years old and in need of protection and permanency. We are not unsympathetic to the mother's struggle to maintain sobriety, yet the interests in permanency for the children must prevail over the mother's long and uncertain battle with drugs. *N.F.*, 579 N.W.2d at 341. Given the mother's most recent attempt at sobriety after numerous relapses and the children's need for permanency, we agree with the juvenile court that termination of the mother's parental rights was in the children's best interests.

***2. The Father*.**

We also agree with the juvenile court that termination of the father's parental rights was in the children's best interests. Here, the father has had minimal participation at best with services in this case, and he has had almost no involvement in the children's lives. The record here shows the father and children share no bond. Under the facts and circumstances in this case, and considering the children's long-term and immediate best interests, we decline to

apply section 232.116(3). Accordingly, we find termination of the father's parental rights was in the children's best interests.

***D. Additional Time*.**

The mother also argues the juvenile court abused its discretion in not delaying permanency for an additional six months to allow her to be reunited with her children. A juvenile court has the discretion to continue a child's placement out of the home for an additional six months if it determines the need for removal will no longer exist at the end of the additional period. *See* Iowa Code § 232.104(2)(b). The evidence in the record does not allow such a determination. We find no abuse of discretion under the circumstances of this case.

***IV. Conclusion*.**

For the foregoing reasons, we affirm the termination of each parent's parental rights to A.G. and D.C.

AFFIRMED ON BOTH APPEALS.