

IN THE COURT OF APPEALS OF IOWA

No. 1-913 / 11-1600
Filed November 23, 2011

**IN THE INTEREST OF T.C. II,
Minor Child,**

**M.C., Mother,
Appellant.**

Appeal from the Iowa District Court for Scott County, John G. Mullen,
District Associate Judge.

A mother appeals a juvenile court order terminating her parental rights to a
child. **AFFIRMED.**

Patricia Zamora of Zamora, Taylor & Frederick, Davenport, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Michael Walton, County Attorney, and Julie Walton, Assistant
County Attorney, for appellee.

Timothy Tupper, Davenport, for father.

Stephen W. Newport of Newport & Newport, P.L.C., Davenport, guardian
ad litem for minor child.

Considered by Danilson, P.J., and Tabor and Mullins, JJ.

TABOR, J.

A mother appeals the termination of parental rights to her now one-year-old son, T.C. She contends on appeal the Department of Human Services (DHS) did not offer her enough help with transportation and housing needs. Because the mother did not raise a reasonable-efforts argument either before or during the termination hearing, we find error was not preserved. In addition, we find the State's exhibits satisfied the statutory grounds for termination.

I. Background Facts and Proceedings

At the time of his birth in November 2010, the DHS sought to remove T.C. from his parents' custody. The family had been receiving services from the DHS since May 2009, and the mother's six other children had been adjudicated as children in need of assistance (CINA) and removed from her care. When a DHS representative asked the mother to voluntarily place T.C. in foster care, she became "extremely hostile" saying she wanted to give up her other six children and "keep this one." The mother told the worker that no one "will get their hands" on this child. The mother was diagnosed with major depressive disorder, psychosis, general anxiety disorder, and cannabis dependence.

In seeking T.C.'s removal, the DHS expressed "ongoing concerns regarding housing, stability, significant parenting deficits, domestic violence, substance abuse, and mental health." The juvenile court ordered removal, noting the parents denied any issues or need for change.

The juvenile court adjudicated T.C. as a CINA on January 28, 2011. In that order, the court noted the mother had started attending mental health

appointments and was reported to be taking prescribed medications. She had arranged transportation for outpatient treatment through the Center for Alcohol and Drug Services (CADS). The court found: “Neither parent is requesting services from the Department that aren’t already being provided.”

In a March 2011 dispositional order, the juvenile court expressed its satisfaction that the DHS was providing “reasonable and appropriate services to resolve the adjudicatory harm in support of the permanency goal of family reunification.” The court noted the mother’s progress with finding housing, but also detailed her failure to take advantage of other services offered, including missing mental health and therapist appointments and not participating in domestic violence or substance abuse programming. The court also noted the mother missed “most visits with the child.” Little had changed by the time of the May 2011 permanency order. The mother was receiving federal disability benefits, but had still not followed through with substance abuse or mental health treatment.

The mother’s visits with T.C. were few and sporadic. She attended only a “small fraction” of the scheduled visits from the time of removal until March 2011, when she stopped communicating with the DHS worker for one month. The mother attended three visits in spring 2011, but then had no more contact until July 25, 2011. She also did not attend scheduled parenting sessions.

On May 27, 2011, the State filed a petition to terminate the parental rights of T.C.'s mother and father.¹ Despite receiving notice of the September 15, 2011 termination hearing the mother did not appear. The mother's attorney offered a statement on her behalf, pointing out that it was "only the second time" that she had missed a hearing:

I fear that she may have given up. But I would like to point out some of the good things she's done in this matter. She has finally obtained a regular income that is stable, and obtained a home where she's lived for a number of months. And I think the Court could notice that she is not a person who somebody would have hired previous to her getting disability, so therefore her homelessness and lack of income was a big contributor to the fact that she was unable to perform the tasks needed to have these children returned to her.

Counsel went on to say that her client ended her relationship with T.C.'s father, which had been marred by violence. The mother completed inpatient treatment, but was unable to complete domestic violence programming due to transportation problems. Counsel recognized her client had not taken advantage of the opportunity to visit T.C. since the last court hearing. Counsel concluded her argument with the following sentiments:

[I]t's unfortunate that [the mother] hasn't been able to complete everything. I believe that she's tried hard as she can and that she's done an awful lot, considering her homeless, penniless condition throughout this process, and I urge this Court to give her some more time to prove that she can parent [T.C.] because we're only here for [T.C.].

The juvenile court concluded that additional services were not likely to resolve the risk of harm to the child because the mother had failed to participate in

¹ The juvenile court terminated the father's rights following an August 30, 2011 hearing. He is not a party to this appeal.

services since the child's birth. The court determined that returning T.C. to the mother's home would not be in his best interests. The court granted termination based on Iowa Code sections 232.116(1)(d), (e), (g) and (h) (2011). The mother now appeals. The State and the guardian-ad-litem filed petitions on appeal supporting the termination decision.

II. Standard of Review

We review orders terminating parental rights orders de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). The juvenile court's findings of fact do not bind our decision, but should be accorded weight, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). Our court will uphold an order terminating parental rights if there is clear and convincing evidence of grounds for termination under Iowa Code section 232.116. *Id.* 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. Discussion

The mother's petition on appeal raises one issue, articulated as follows:

WHETHER THE COURT ERRED IN ORDERING A
TERMINATION OF PARENTAL RIGHTS WHEN THE
ADJUDICATORY HARM HAD BEEN ALLEVIATED AND THERE
IS NOT CLEAR AND CONVINCING EVIDENCE THAT THE CHILD
CANNOT BE RETURNED HOME.

Despite that heading, the body of the mother's argument does not allege a lack of clear and convincing proof as to any of the elements comprising the statutory grounds for termination. Rather she contends the DHS "instead of helping this family, only harmed them." She continues her critique of the DHS workers:

“Instead of helping to resolve the two problems that led to all of the difficulties, a lack of a home and a lack of transportation, they merely continued to fault [the mother] for not getting things done.” The mother disputes that substance abuse and domestic violence were the primary issues standing in the way of reunification. Instead, she attributes her inability to regain custody of her son to homelessness and transportation difficulties.

We view the mother’s argument as a claim that the DHS has not made “reasonable efforts” to return the child home. See Iowa Code § 232.102(10)(a).

The DHS 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). But parents also have their own obligation to demand different or additional services before the termination hearing. *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005). When a parent alleging inadequate services failed to demand services other than those provided, the question whether services were adequate is not preserved for appellate review. *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999); *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994). Because the mother did not request additional services before the termination hearing, her reasonable efforts argument is not preserved for our review. The record in this case shows that the mother did not take advantage of the services that were offered. We further note the mother did not appear at the termination hearing, and the only argument advanced on her behalf was a request for additional time, not for additional services.

The mother's allusion in her issue statement to the standard for proving statutory grounds for termination does not properly raise that claim for our review. See *State v. Mann*, 602 N.W.2d 785, 788 n.1 (Iowa 1999) (explaining that random mention of an issue, without elaboration or supporting authority, is insufficient to prompt an appellate court's consideration). But even if that issue were squarely presented in this appeal, it would not be successful.

In our de novo review, we conclude—as did the juvenile court—that termination was proper under section 232.116(1)(h).² That provision authorizes termination where the State proves by clear and convincing evidence the following: (1) the child is three years of age or younger; (2) the child has been adjudicated CINA pursuant to section 232.96; (3) the child has been removed from the physical custody of the 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; and (4) the State presented clear and convincing evidence the child cannot be returned to the parent's custody as provided in section 232.102 at the present time. Iowa Code § 232.116 (h).

The mother rarely visited the child and did not appear at the termination hearing—leading her attorney to conclude that the mother may have “given up.” The mother's attorney did not argue T.C. could presently return to her client's care; the attorney only asked for additional time for reunification. Delaying termination was not in T.C.'s best interests. See Iowa Code § 232.116(2)

² To affirm, we need only find termination appropriate under one subsection. See *S.R.*, 600 N.W.2d at 64 (“When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm.”).

(considering child's safety; long-term nurturing and growth; and physical, mental and emotional condition and needs). The mother has been unable to correct the deficiencies that led to T.C.'s adjudication as a CINA. The evidence satisfied section 232.116(1)(h).

Because the mother does not raise a claim under section 232.116(3), we will not analyze that code section here. Termination was the proper course.

AFFIRMED.