

IN THE COURT OF APPEALS OF IOWA

No. 2-1144 / 12-1887
Filed January 9, 2013

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

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

Appeal from the Iowa District Court for Polk County, Colin Witt, District Associate Judge.

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

William E. Sales, III, of Sales Law Firm, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John Sarcone, County Attorney, and Cory McClure, Assistant County Attorney, for appellee.

Nathaniel Tagtow of Pargulski, Hauser, & Clarke, P.L.C., Des Moines, for father.

Paul White of Juvenile Public Defender's Office, Des Moines, attorney and guardian ad litem for minor child.

Considered by Doyle, P.J., and Mullins and Bower, JJ.

MULLINS, J.

A mother appeals a juvenile court order terminating her parental rights. She argues the State failed to make reasonable reunification efforts, and the State failed to prove grounds for termination under Iowa Code section 232.116(1)(f) (2011) by clear and convincing evidence. We affirm.

I. Background Facts & Proceedings

C.C. was born in 2005. The mother is married to, but separated from, C.C.'s legal father, Greg. The mother has little to no contact with C.C.'s putative father, Johnny. Neither Greg nor Johnny participated in reunification services or maintained contact with C.C. throughout these proceedings.

This case first came to the Department of Human Services (DHS)'s attention after a domestic disturbance dispute in March 2011. At the time, the mother was involved in a violent relationship with her boyfriend, Steve. Steve is a convicted felon and served time in prison for methamphetamine related offenses. Although the mother and C.C. lived with Steve, the mother asserts C.C. was not present during the incident of domestic violence. Steve was incarcerated for domestic abuse and remained incarcerated throughout much of the child-in-need-of-assistance and termination-of-parental-rights proceedings.

After the incident of domestic violence, DHS investigated allegations that the mother abused methamphetamine and alcohol while caring for C.C. The mother initially denied drug use. A DHS worker requested the mother provide a hair stat test. The mother indicated she would not pass a hair stat test but might pass a urine screen. She then admitted to using methamphetamine about once

a week for several months starting with her relationship with Steve in September 2010. Prior to her relationship with Steve, the mother admitted to occasional methamphetamine use over a six-year span.

The mother voluntarily placed C.C. with Steve's brother and sister-in-law. Steve's brother indicated Steve had struggled with methamphetamine abuse for the past twenty-five years and was likely using methamphetamine while living with the mother and C.C.

The State filed a child-in-need-of-assistance petition on March 17, 2011. The juvenile court confirmed the removal and adjudicated C.C. a child in need of assistance. The juvenile court entered a disposition order continuing placement with Steve's brother and sister-in-law.

A court-ordered substance abuse evaluation recommended the mother participate in intensive outpatient treatment. In April 2011, the mother provided a urine specimen that was positive for methamphetamine. She denied any methamphetamine use.

Despite a no-contact order, the mother used a pseudonym to accept collect calls from Steve in jail. When confronted with the ongoing relationship, the mother initially reported that her cousin was coming to her home and accepting collect calls from the jail. After the mother discovered the phone calls had been recorded, she admitted to talking with Steve. DHS workers subsequently encouraged the mother to seek individual therapy to address mental health concerns.

In June 2011, Steve's brother and sister-in-law requested to be removed as a placement option for C.C. The mother had called Steve's brother and sister-in-law over thirty-five times in a single evening and was often inappropriate and threatening. At times the mother called pretending to be an ex-girlfriend and offering to sell prescription medication to Steve's brother. The juvenile court subsequently placed C.C. with DHS for purposes of foster family care placement.

At the September 2011 juvenile court review hearing, the mother attempted to introduce a forged document indicating she completed substance abuse treatment. She had not completed substance abuse treatment nor had she been consistent in providing urine specimens for drug screens. The juvenile court found the State had made reasonable efforts towards reunification and ordered continued placement with DHS.

In December 2011, the mother again tested positive for methamphetamine. She denied any recent methamphetamine use and attacked the validity and legality of the hair stat test results. Around the same time, DHS received reports indicating the mother had continued contact with Steve. As recently as March 2012, a DHS worker reported concerns that Steve may be living with the mother in her new residence. A DHS worker was present when the mother's landlord voiced concerns about complaints of a strong smell of ammonia coming from the mother's residence. The mother denied contact with Steve and rebuffed the inference methamphetamine was being manufactured in her home.

On February 17, 2012, the State filed a petition to terminate the mother's parental rights. On May 21, 2012, the juvenile court held a hearing on that petition. At the termination hearing, the mother presented a new gentleman, Randy, as her fiancé despite being legally married to Greg. Randy had no previous contact with service providers in this case. The mother testified she intended to live with Randy and requested the court to place C.C. in their care. The State, DHS, and the child's guardian ad litem recommended the court terminate the mother's parental rights. The juvenile court terminated the mother's parental rights under Iowa Code section 232.116(1)(f). The mother appeals.

II. Preservation of Error

The mother argues termination is improper because the State failed to make reasonable reunification efforts. While “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 A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005). As a general rule, “if a parent fails to request other services at the proper time, the parent waives the issue and may not later challenge it at the termination proceeding.” *In re C.H.*, 652 N.W.2d 144, 148 (Iowa 2002). We find the mother did not request services other than those provided prior to the termination hearing. Thus, we find this issue not properly preserved for appellate review. *See id; In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994).

III. Standard of Review

Our review of termination of parental rights is de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We give deference to the juvenile court's finding of fact, especially to its determination of witness credibility, but are not bound by those findings. *Id.* The State presents "clear and convincing" evidence "when there are no 'serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.'" *Id.* (internal citations omitted). Our paramount concern is the best interest of the child. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

IV. Analysis

The mother contends the State failed to present clear and convincing evidence of grounds for termination under Iowa Code section 232.116(1)(f). To terminate parental rights under section 232.116(1)(f), the State must show the child is older than four years old, has been adjudicated in need of assistance, has been removed from the home for a requisite period of time, and the juvenile court could not return the child to the parent's custody at the present time pursuant to section 232.102. See Iowa Code § 232.116(1)(f) (setting forth the statutory requirements for termination). The child is of the requisite age, has been adjudicated a child in need of assistance, and has been removed from the home for over a year. At issue is whether the State presented clear and convincing evidence the child could not be returned to the mother's care pursuant to section 232.102. See *id.* § 232.116(f)(4).

The State meets its burden to show the child cannot be returned to the mother's care if it presents clear and convincing evidence the child has suffered or is imminently likely to suffer an adjudicatory harm upon return. See *id.* §§ 232.116(1)(f), .102(5)(a)(2), .2(6)(c); *In re A.M.S.*, 419 N.W.2d 723, 725 (Iowa 1988). The State need only show the child is likely to suffer an adjudicatory harm; it need not show that the circumstances leading to the original adjudication exist at the time of termination. *A.M.S.*, 419 N.W.2d at 725.

The mother asserts she is no longer abusing methamphetamine and alcohol, nor is she involved in a relationship with Steve. However, the mother's credibility is suspect. At a review hearing in September 2011, the mother attempted to submit a forged document to the court showing she had successfully completed substance abuse treatment. The mother admits to prior felony convictions for forgery. Under oath, the mother testified she prepared a thirty-two page document citing legal authority from jurisdictions all across the country in support of her case. Neither court appointed attorney assisted in preparing the document. The court found that it "had the opportunity to review the reports and observe the [m]other's conduct and abilities in the [c]ourtroom, and concludes that she did not prepare this document (Exhibit 18) on her own despite her assertions under oath otherwise." We give appropriate deference to the juvenile court's credibility determination and find the mother is not a credible witness on her own behalf. See *D.W.*, 791 N.W.2d at 706.

The mother's lack of candor and cooperation with service providers undermine her assertions of sobriety and the ability to provide a safe and stable

environment for C.C. We find the mother's unresolved substance abuse issues, mental health issues, and the instability of her personal relationships and housing situation create an imminent risk that C.C. will suffer an adjudicatory harm upon return to the mother's care. The child has been out of her mother's care for well over a year. The child needs and deserves a safe, nurturing home. We find the State presented clear and convincing evidence of grounds for termination under Iowa Code section 232.116(1)(f). Accordingly, we affirm.

AFFIRMED.