IN THE COURT OF APPEALS OF IOWA

No. 2-483 / 12-0807
Filed June 27, 2012

IN THE INTEREST OF B.B.,
Minor Child,

E.B., Mother,
Appellant.

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

A mother appeals from the order terminating her parental rights. **AFFIRMED.**

Katie F. Morgan of Stern, Diehl, Cornish & Jensen, Storm Lake, for appellant.

John M. Loughlin of Loughlin Law Firm, Cherokee, for father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Ryan Kolpin, County Attorney, and Kristal Phillips, Assistant County Attorney, for appellee State.

David A. Dawson, Sioux City, attorney and guardian ad litem for minor child.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

EISENHAUER, C.J.

A mother appeals from the order terminating her parental rights to her child. She contends the State failed to make reasonable efforts to reunify her with the child, the statutory grounds for termination were not proved by clear and convincing evidence, the court abused its discretion in denying her request for six additional months, and termination was not in the child's best interests. On de novo review, *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010), we affirm.

I. Background Facts and Proceedings

The child, born in January 2011, was removed from her mother's care in April 2011 following domestic violence between her parents. The court adjudicated the child in need of assistance in June. After two failed relative placements, including one where the child was physically injured, the child was voluntarily placed in family foster care in September, where she has remained. The mother, who was still a minor when the child was removed, took advantage of many services offered or court-ordered and participated regularly in supervised visitation. However, while the case was pending the mother did not maintain a stable lifestyle. She lived with various relatives, friends, acquaintances, and a boyfriend. She was unemployed at times. She struggled with anger and was involved in altercations. A psychologist who examined the mother described her as "immature and self-centered." The mother appeared "to have issues with narcissism, passive aggressiveness, and avoidance." The psychologist opined "being a parent to her daughter will be a challenge for her" and "it is doubtful that any of her personality traits will change."

For several months after turning eighteen years old, the mother did not have Title XIX coverage for some court-ordered services and, consequently, did not participate in those services. She told the worker who supervised visitation she did not want to "apply for Title XIX" because she did not want to "rely on aid." She also expressed frustration with the "system" to the worker, following a family team meeting in December, because "they" kept adding more hoops for her to jump through and her requests for increased and semi-supervised visitation had been unsuccessful. By the time of the permanency hearing in January 2012, the mother was covered by Title XIX and sought to complete some of the remaining requirements in the case permanency plan. She was employed and had a two-bedroom apartment, with one bedroom set up as the child's bedroom.

In January, the foster care review board recommended "that DHS, Attorney/GAL look into the possibility of increasing supervised visitation between [mother] and [child] to get a clearer picture if [the mother] is able to demonstrate an ability to parent [the child]." The board also suggested a concurrent goal of termination if reunification were not possible. The day before the permanency hearing in January, the guardian ad litem filed a petition to terminate the parental rights of both parents under Iowa Code section 232.116(1)(h) and (i) (2011).

The petition came on for hearing in February and March. The father voluntarily consented to termination of his parental rights. The mother asked for additional time to work toward reunification, citing her recent involvement with services, the improved stability in her life, and her demonstrated success in parenting during supervised visitation. The court found the mother's case "is a case of too little, too late." It noted the mother had not voiced dissatisfaction with

services at the adjudication or disposition and she "has actually been offered all the services available." The court further found:

> Even with all these services, [the child] cannot safely be returned to [the mother's or father's] care. Two months in the life of [the mother] does not constitute stability when weighed against the lifetime of dysfunction, failure to follow rules, failure to accept directions, assaultive behavior, violent and aggressive behavior, nomadicity, and instability. Even if one were to argue that she has had five to six months of stability, it is still too little given the age and needs of [the child].

The court found reasonable efforts had been made to reunite the child with the parents and the mother had not requested additional services when given the opportunity at various times. "She cannot now ask and complain that the services she was provided, almost all the services that are available in this area, were insufficient. On the contrary, everything was tried." The court also found termination was in the child's best interests and "there are no mitigating circumstances weighing against a termination." The court terminated the mother's parental rights under section 232.116(1)(h) and (i). It terminated the father's parental rights under section 232.116(1)(a), (h), and (i). The father does not challenge the termination of his parental rights.

II. Merits

A. Statutory Grounds for Termination. The mother contends the statutory grounds for termination were not proved by clear and convincing evidence. While the district court terminated the parental rights on more than one statutory ground, we will affirm if at least one ground has been proved by clear and convincing evidence. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Because we affirm if at least one ground was proved by clear and convincing

evidence, we find it necessary to address only the mother's contention regarding 232.116(1)(h), that is, whether the child could have been returned to her custody. *See id.* The mother challenges the court's finding she had not made progress or demonstrated stability over a sufficient period of time to allow her daughter's return to her custody. She notes she had been employed and had a suitable apartment for the three months preceding the termination hearings. She points to her recent willingness to accept direction from service providers and make safety-related changes to her apartment. Reports from supervised visits routinely note no safety or supervision concerns in the months just prior to the termination hearings.

The mother has problems with anger and violent behavior. She finally began addressing those issues the month after the termination petition was filed, but had not met her anger management goals by the time of the termination hearings. The mother testified she had not taken advantage of the services offered or ordered for several months because she did not think she needed the services. She testified she did not think she would have problems parenting and she believed her daughter could be returned to her care at the time of the termination hearing in March.

The mother has not yet addressed her serious issues with anger and violent behavior. She resisted ending her relationship and cohabitation with a man with substance abuse and criminal problems, including child endangerment, even though she knew it could affect her ability to reunite with her daughter. We agree clear and convincing evidence supports a finding the child could not be

returned to her care at the time of the termination. We affirm the termination of her parental rights under Iowa Code section 232.116(1)(h).

B. Reasonable Efforts. The mother contends the State did not make reasonable efforts to reunite her with her daughter. The guardian ad litem responds the mother did not preserve error on this issue because she did not request different or additional services before the termination hearing. We conclude the mother raised issues concerning services before the termination hearing, so the issue is properly before us.

The mother contends the State did not help her find another service provider for parenting classes after she became ineligible to resume services with the initial provider. Although the mother could not resume services with the initial provider because her daughter was no longer in her custody, the services were stopped because of the mother's failure to attend sessions and desire not to work with the provider. The mother had difficulty making an appointment for a substance abuse evaluation. She argues the State "made no reasonable effort" to help her schedule an evaluation. The mother asked for additional visitation and for visitation to progress to semi-supervised and unsupervised. The court ordered visitation at the discretion of the State and the guardian ad litem.

The mother failed to engage in services other than visitation until late in these proceedings. While the State has the responsibility to make reasonable efforts to reunify families, the efforts required are only those reasonable under the circumstances. *See In re S.J.*, 620 N.W.2d 522, 525 (Iowa Ct. App. 2000) (noting "the department must assess the nature of its reasonable efforts obligation based on the circumstances of each case"). Considering the number

and variety of services offered or provided, the delays in or failure of services attributable to the mother, the age of the child, and the length of time the child has been removed from the mother's care, we find the State made reasonable efforts to reunite the mother with her daughter.

C. Additional Time for Reunification. The mother contends the court erred in not allowing her an additional six months to work toward reunification. She requested the additional time both at the permanency hearing and the termination hearing. Given the child's age: thirteen months at the time of trial, the length of time the child had been removed from the mother's care: one year, and the mother's lack of progress in dealing with the anger and violence issues that led to the child's removal and continued to plague the mother during these proceedings, we find no error in the court's refusal to give the mother more time. Once the statutory time period for reunification has passed, we view the case with a sense of urgency. *See In re A.C.*, 415 N.W.2d 609, 613-14 (Iowa 1987); *In re R.C.*, 523 N.W.2d 757, 760 (Iowa Ct. App. 1994). Giving "primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child," we conclude termination, rather than delaying permanency for six more months, is proper. Iowa Code § 232.116(2); *see In re P.L.*, 778 N.W.2d 33, 41 (Iowa 2010); *see also* Iowa Code § 232.104(2)(b) (requiring the court to enumerate the specific changes or conditions that form the basis for a determination the need for the child's removal would no longer exist after the after six-month period).

D. Best Interests. The mother contends termination of her parental rights is not in the child's best interests because of her progress as a parent and the hardships the child will face dealing with separation from her mother, the "abrupt end of visitation," and severing the parent-child bond.

In considering a child's best interests, we consider both the child's immediate and long-term interests. *In re T.P.*, 757 N.W.2d 267, 270 (Iowa Ct. App. 2008). We give primary consideration to "the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child." Iowa Code § 232.116(2). We consider what the future likely holds for the child if the child is returned to the parent. *In re J.K.*, 495 N.W.2d 108, 110 (Iowa 1993). Insight for that determination is to be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of future care the parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493-94 (Iowa 1990). We agree with the district court the best interests of the child require she be freed for adoption in order to have her physical, mental, and emotional needs met.

AFFIRMED.