

IN THE COURT OF APPEALS OF IOWA

No. 2-819 / 12-1404
Filed October 3, 2012

**IN THE INTEREST OF A.J.L., C.L.L.,
and C.R.E.,
Minor Children,**

**C.L.-Z., Mother,
Appellant.**

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

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

Judy Cuevas-Freking, LeMars, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, Patrick Jennings, County Attorney, and Diane Murphy, Assistant County
Attorney, for appellee.

Marchelle Denker, Sioux City, attorney and guardian ad litem for minor
child.

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

MULLINS, J.

A mother appeals the termination of her parental rights to C.E. and C.L. under Iowa Code section 232.116(1)(d) and (f) (2011) and to A.L. under section 232.116(1)(h). She contends the State failed to present clear and convincing evidence of the statutory grounds for termination. She also argues the State failed to make reasonable efforts to reunite her with the children. We affirm.

I. Background Facts and Proceedings

The mother has three children, C.E. (born March 2002), C.L. (born June 2004), and A.L. (born March 2010). Each child has a different putative father. The putative fathers do not appeal the termination of their respective parental rights.

For the majority of their lives, C.E. and C.L. resided primarily with their maternal grandmother. Through an informal agreement between the mother and the children's maternal aunt, A.L. lived with the aunt for days or weeks at a time without the mother giving the aunt provisions for A.L.'s care. Throughout these proceedings, the mother remained homeless and lived with friends or relatives.

On April 12, 2011, the mother returned A.L. to the aunt's care after taking A.L. for approximately two weeks. Upon arrival, A.L. was very dirty and both her diaper and her car seat were soaked with urine. A.L. appeared small, underdeveloped, and malnourished. A.L.'s stomach was hard and distended. A.L. was suffering from extreme constipation and had bloody bowel movements. The aunt attempted to take A.L. to the doctor but could not make an appointment because the mother allowed her Title XIX insurance to lapse.

On April 18, 2011, Dr. Frank Morino assessed A.L. Dr. Morino opined A.L. was malnourished, developmentally delayed in gross motor skills, and diagnosed A.L. with acute bronchitis. Dr. Morino noted A.L. startled easily and was behind in required immunizations. Although Dr. Morino was A.L.'s primary physician, the mother had not taken A.L. to regularly scheduled doctor's appointments. As a result, DHS filed a founded child abuse report against the mother for denial of critical care and failure to provide proper supervision.

Although C.E. and C.L. resided primarily with the grandmother, the mother would often take C.E. and C.L. for temporary visits. On one of these visits, C.E. reported seeing the mother and other adults smoking marijuana. Both C.E. and C.L. reported seeing the mother engage in inappropriate sexual behavior, including seeing the mother in bed with a male without her clothes on several occasions and finding condoms on another occasion. C.E. and C.L. also report the mother taking them to unclean environments. C.E. expressed concern for his mother's safety and worried about whether the mother had a place to live.

On May 5, 2011, the State filed a child-in-need-of-assistance (CINA) petition with the juvenile court. The mother voluntarily placed A.L. with the aunt and placed C.E. and C.L. with the grandmother. The State requested the mother undergo drug testing. The mother tested negative for recent drug use. On June 6, 2011, the juvenile court ordered custody of the children transferred to the Department of Human Services (DHS) pending completion of the adjudication proceedings, but the children remained in placement with the relatives.

On August 5, 2011, the juvenile court held contested CINA adjudication proceedings. The juvenile court adjudicated the children as children in need of assistance pursuant to Iowa Code sections 232.2(6)(a), (b), (c)(2), and (n). The juvenile court ordered the mother to initiate and participate in parenting classes and individual therapy. The juvenile court further ordered the mother to cooperate with DHS and family safety, risk, and permanency (FSRP) services.

During a family team meeting in August 2011, case workers informed the mother she needed to secure independent housing for herself and her children. Workers suggested the mother contact the Sioux City Housing Authority, Women Aware, and Bridges West, and apply for Section 8—all services designed to assist the mother in securing independent housing. Despite the offer of such services, the mother failed to follow through with housing recommendations.

The juvenile court held a review hearing on October 4, 2011. At that time, C.E. and C.L. were in the grandmother's care. A.L. was in the aunt's care. The juvenile court found the children were thriving in these environments. The juvenile court noted,

[The mother] has not made enough progress at this point for the children to be returned to her care. She has been unable to secure suitable housing for herself and her children. She has obtained full-time employment, however, her hours (4 p.m. to 3 a.m.) make it difficult to schedule visitation with school-aged children.

[The mother] still needs to follow through with attending individual therapy at Siouxland Mental Health. She has not submitted the paperwork in order to set up the appointment. [The mother] also needs to make contact with Women Aware in order to seek other services. At this point, it appears that [the mother] has a significant amount of work to do in order to have the children returned to her care.

On October 31, 2011, the mother initiated therapy at Siouxland Mental Health. She continued to attend individual therapy about two times per month throughout the pendency of these proceedings.

On November 8, 2011, the mother sent a letter to DHS inquiring about additional services and requesting additional visitation with her children. At that time, the mother had formal visitation with C.E. and C.L. two times per week with the grandmother approved to supervise the visits. The mother had unlimited visitation opportunities outside the formal visits, but failed to avail herself of those opportunities outside of formal visits even when she was not working. The DHS case worker later testified she did not recommend an increase in visitation because the mother still required a lot of prompting to provide proper supervision during current visits, had not obtained stable housing, and was unemployed.

On February 21, 2012, the mother sent a letter to DHS again requesting DHS to place custody of the children with the mother and seeking permission for the mother to move into the grandmother's home. The DHS worker later testified she did not recommend increasing visitation or returning custody to the mother because the mother failed to take responsibility for the conditions leading to removal, including exposing the children to unhealthy relationships, drug use, and unstable living arrangements. Nor did the DHS worker approve of the mother moving in with the grandmother because, as the DHS worker later explained, she was "securing and protecting the placement that best fits the children's needs at that time" in light of the mother and grandmother's volatile relationship.

On April 3, 2012, the State petitioned the juvenile court to modify the previous dispositional order concerning A.L. The aunt decided it was no longer a viable option for her to care for A.L. because of “extreme family conflict” between her and the mother. The juvenile court ordered placement of A.L. in family foster care.

On May 3, 2012, the juvenile court held a permanency hearing concerning all three children and a modification hearing concerning A.L. The juvenile court heard testimony from the DHS case worker and scheduled the hearing to reconvene on May 24, 2012. At time of the permanency hearing, the mother had completed five levels of the recommended ten levels of parenting classes.

On May 15, 2012, the State filed a petition for termination of parental rights. The State asserted grounds for terminating the mother’s parental rights to A.L. under Iowa Code section 232.116(1)(h). The State alleged grounds for terminating the mother’s parental rights to C.E. and C.L. under sections 232.116(1)(d) and (f). In support of its petition the State asserted, “On June 6, 2011, the court transferred custody of the children to the Department of Human Services for placement in relative care. The children have never been returned to the custody of [the mother] since that time, a period of over one year by the time of hearing on the matter.”

On May 24 and June 4, 2012, the juvenile court held a combined permanency and termination of parental rights hearing. The juvenile court reasoned,

[G]iving primary consideration to the safety, best placement option for furthering the long-term nurturing and growth of the children,

and to the physical, mental, and emotional condition and needs of the children, the court concludes that it would be in their best interest to terminate the parent-child relationships so that they will have the opportunity to grow and mature in a safe, healthy and stimulating environment.

The juvenile court terminated the mother's parental rights of C.E. and C.L. pursuant to Iowa Code sections 232.116(1)(d) and (f). The juvenile court terminated the mother's parental rights of A.L. pursuant to Iowa Code section 232.116(1)(h). The mother appeals the termination of her parental rights.

II. Standard of Review

We review termination of parental rights *de novo*. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We give deference to the juvenile court's findings of fact, but are not bound by those determinations. *Id.*

III. Statutory Grounds

The mother contends the State failed to present clear and convincing evidence of circumstances preventing the juvenile court from returning the children to her custody. When the juvenile court terminates parental rights on more than one ground, we need only find one proper ground to affirm. *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010).

The juvenile court terminated the mother's parental rights to A.L. pursuant to section 232.116(1)(h). Section 232.116(1)(h) provides the juvenile court may order termination when there is clear and convincing evidence of a child under the age of three, who has been adjudicated a CINA, and removed from the parent's care for at least the last six consecutive months, cannot be returned to the parent's custody at the time of the termination hearing.

At issue is whether the State presented clear and convincing evidence the juvenile court could not, at the time of the termination hearing, return A.L. to the mother's custody pursuant to section 232.102. See Iowa Code § 232.116(1)(h) (setting forth the requirements for termination). The State meets its burden to prove this element if it presents clear and convincing evidence the child cannot be returned to the parental home because the child has suffered or is imminently likely to suffer an adjudicatory harm upon their return. See Iowa Code §§ 232.116(1)(h)(4), .102(5)(a)(2), and .2(6)(c); *In re A.M.S.*, 419 N.W.2d 723, 725 (Iowa 1988). The State need not show the circumstances leading to the original adjudication exist at the time of termination. *A.M.S.*, 419 N.W.2d 725. The State need only show the child is imminently likely to suffer an adjudicatory harm. *Id.*

On April 12, 2011, the mother returned A.L., dirty and in urine soaked diapers, to the aunt's care. Upon arrival, A.L. appeared small, underdeveloped, and malnourished. A.L.'s stomach was hard and distended. A.L. was suffering from extreme constipation and had bloody bowel movements. The mother had allowed her Title XIX insurance to lapse, and this initially prevented A.L. from obtaining medical treatment. Six days later, A.L.'s treating physician indicated A.L. was malnourished, developmentally delayed in gross motor skills, easily startled, and behind in immunizations, and had acute bronchitis. At all relevant times throughout these proceedings, the mother was homeless and has been unable to provide adequate shelter, care, and supervision for A.L. We find clear and convincing evidence supports terminating the mother's parental rights to A.L. pursuant to Iowa Code section 232.116(1)(h).

The mother further asserts the State failed to present clear and convincing evidence the circumstances leading to the adjudication of C.E. and C.L. continued to exist at the time of termination. *D.W.*, 791 N.W.2d at 707. To establish statutory grounds for termination pursuant to 232.116(1)(d), the State must show the court previously adjudicated the child a CINA after “finding the child to have been physically or sexually abused or neglected as the result of the act or omissions of one or both parents, or the court has previously adjudicated a child who is member of the same family to be a CINA after such a finding.” The juvenile court may then order termination under section 232.116(1)(d), if, after the State offered services to the parent, “the circumstances that led to the adjudication continue to exist.” *D.W.*, 791 N.W.2d at 707.

C.E. and C.L. have resided primarily with the grandmother for their entire lives. Meanwhile, the mother was homeless and lived with a variety of friends and relatives. The mother would often take C.E. and C.L. for temporary visits. During these visits, the mother took the children to unclean environments, smoked marijuana, and engaged in inappropriate sexual behavior in front of the children. Despite the offer of services to correct the stability of her housing situation, the mother failed to follow through with housing recommendations. At the time of the termination hearing, the mother was unable to provide adequate shelter for her children. We cannot “gamble with the children’s future” and must not ask the children to await their mother’s maturity any longer. *Id.* As to C.E. and C.L., we find the State presented clear and convincing evidence of grounds to support termination under section 232.116(1)(d). Consequently, we do not

reach the question of whether termination was proper under section 232.116(1)(f).¹

IV. Reasonable Efforts

The mother contends the State failed to make reasonable reunification efforts because the State did not comply with the mother's request to increase visitation, return custody of the children to the mother, and provide additional services. When the State removes a child from a parent's care, the State has an obligation 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." *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). In making reasonable efforts, "[a] child's health and safety shall be the paramount concern." Iowa Code § 232.102(10)(a) (defining reasonable efforts). The State's duty to make "reasonable efforts is not viewed as a strict substantive requirement of termination. *C.B.*, 611 N.W.2d at 493. The State has the burden to "show reasonable efforts as a part of its ultimate proof the child cannot be safely returned to the care of a parent." *Id.*

The State's duty to make reasonable efforts encompasses a visitation arrangement "designed to facilitate reunification while protecting the child from the harm responsible for the removal." *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996).

Visitation, however, cannot be considered in a vacuum. It is only one element in what is often a comprehensive, interdependent

¹ We note, contrary to the State's petition, however, the juvenile court transferred physical custody of the children to DHS for relative placement on June 6, 2011. The last day of the termination hearings was on June 4, 2012. Although this period is less than twelve months, we do not reach the question of whether termination was proper under Iowa Code section 232.116(1)(f).

approach to reunification. If services directed at removing the risk or danger responsible for a limited visitation scheme have failed its objective, increased visitation would most likely not be in the child's best interests.

Id.

On November 8, 2011, the mother requested increased visitation. Visitation between a parent and child is an important ingredient to the goal of reunification. *In re S.W.*, 469 N.W.2d 278, 280–81 (Iowa Ct. App. 1991). The best interests of the child, however, control the nature and extent of visitation and may warrant limiting parental visitation. *In re C.G.*, 444 N.W.2d 518, 520 (Iowa Ct. App. 1989). The DHS case worker testified she did not recommend increased visitation because the mother still required a lot of prompting to provide proper supervision during current visits, had not obtained stable housing, and was unemployed. Further, the mother had not availed herself of the unlimited visitation opportunities outside of formal visitation.

In a letter dated February 21, 2012, the mother requested to move into her the grandmother's home. The mother suggested new visitation arrangements and again requested the return of her children. The DHS worker denied this request. The DHS testified she denied the mother's request because it was in the children's best interest to protect C.E. and C.L.'s placement in light of the mother and grandmother's volatile relationship. A dispute between the mother and grandmother had the potential to disrupt the children's current placement. We find it was in the children's best interest to deny the mother's requests for a change in visitation, a change in living arrangements, and a return of custody, and such denials did not amount to the State's failure to make reasonable efforts.

The mother alleges she requested additional reunification services on November 8, 2011, and again on February 21, 2012. A parent has an obligation to request other, different, or additional services prior to the termination proceedings. *C.B.*, 611 N.W.2d at 493–94. If a parent fails to demand services other than those already provided, the parent waives the right to object to those services. See *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999) (finding the mother’s failure to demand services, other than those provided, was insufficient to preserve appellate review). In a letter dated November 8, 2011, the mother inquired about additional services generally and requested custody of her children. In her February 21, 2011 letter the mother again inquired about additional services and requested custody of her children. She did not object to the current reunification services nor did she make a request for any specific additional service not already provided. The mother’s general inquiry into additional services is insufficient to preserve the request for our review. *Id.*

V. Conclusion

We find the State presented clear and convincing evidence to support terminating the mother’s parental rights to A.L. under section 232.116(1)(h). We find the State presented clear and convincing evidence to support terminating the mother’s parental rights to C.L. and C.E. under section 232.116(1)(d). We do not reach the question of whether termination was proper under any other statutory ground. Finally, we find the State made reasonable efforts to reunite the mother with her children and the mother’s general inquiry about additional services was

insufficient to preserve the request for our review. For the foregoing reasons, we affirm.

AFFIRMED.