

IN THE COURT OF APPEALS OF IOWA

No. 2-916 / 12-1477
Filed October 31, 2012

**IN THE INTEREST OF M.D., C.D., AND J.D. Jr.,
Minor Children,**

D.A., Mother,
Appellant,

J.D. Sr, Father,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Mary J. Sokolovske, Judge.

A mother and father separately appeal the judgments terminating their parental rights. **AFFIRMED.**

Joseph W. Kertels of Juvenile Law Center, Sioux City, for appellant mother.

Tobias Cosgrove, Sioux City, for appellant father.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant Attorney General, Patrick Jennings, County Attorney, and Diane M. Murphy, Assistant County Attorney, for appellee State.

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

Considered by Vaitheswaran, P.J., and Potterfield and Bower, JJ.

POTTERFIELD, J.

A mother and father appeal separately from the termination of their parental rights to three children: M.D., C.D., and J.D. The biological mother (Mother) contends the state did not provide reasonable efforts, the grounds for termination were not supported by clear and convincing evidence, the court abused its discretion in denying her request for additional time, termination was not in the children's best interests, and the court should have applied a factor weighing against termination under 232.116(3)(c) (2011). The children's biological father (Father) appeals separately, contending the State did not prove by clear and convincing evidence the grounds for termination of his rights, termination of his rights was not in the children's best interests, the State failed to make reasonable efforts, and the court abused its discretion in denying his request for additional time. We affirm the termination of parental rights for both parents.

I. Facts and Proceedings

M.D., C.D., and J.D. were born in 2009, 2008, and 2007, respectively. The three siblings, along with three older half-siblings, came to the attention of the department of human services (DHS) in 2010 after a domestic violence incident where Mother attacked Father in the presence of the children. Mother and Father were married from 2006–2009 and had a long history of domestic abuse. A five-year no-contact order was put in place in 2009 after an incident leading to Father's guilty plea to domestic abuse. After they were removed from their parents' care, the three older children described a pattern of domestic violence in the household.

Investigation of the children's home found all six children, Mother, and Father lived in a two-bedroom trailer infested with cockroaches and mice, with a hole under the bathtub, and, electrical, furnace, and plumbing problems. There was little room to move and no room for the three young children to play. The trailer was red-tagged by housing authorities. A child-in-need-of-assistance (CINA) petition was filed in January of 2011.

Another report to DHS was made that month that one of the older children had suffered an injury to his lower back. During investigation into the injury, reports of the Mother's frequent "checks" of the vaginas of the female children surfaced. Mother was concerned the daughters would become victims of sexual abuse and regularly checked whether they were still virgins. At this time the family moved from the uninhabitable trailer to the house of Mother's stepfather, who had a known history of sexual abuse. The court entered an order in February of 2011 removing all six children from parental custody.

During interviews with DHS, the older siblings reported several other instances of abuse by Mother. These included Mother hitting, choking, and screaming at the children. Mother also had a history of mental illness. Mother and Father reunited, believing they would have a better chance of regaining custody of the children if they were together. They began couples' counseling. However, the conflict persisted. While Father participated in a mental health assessment, the doctor noted the unreliability of his reports and blame-shifting. Father would not admit to abuse, though he attended batterer's counseling. A dispositional hearing was held in August of 2011. Mother's two older daughters were returned to her custody at their request. The third older sibling was placed

with his biological father. M.D., C.D., and J.D. remained in their successful foster care placement. Mother and Father continued their dysfunctional relationship.

A permanency hearing was held in January of 2012, maintaining the children's placements. The court ordered a termination-of-parental-rights petition be filed. Father relocated to Colorado in February of 2012. A dispositional review hearing was held for the older three children in conjunction with the termination hearing for M.D., C.D., and J.D. on May 31 and June 1, 2012. Custody of the two teenage daughters remained with Mother.

While Mother participated in visits with the three youngest children, these visits were supervised, and Mother struggled to incorporate parenting techniques provided in classes. Father participated in services and visits before his move, but did not seem to desire the responsibility of single parenthood. After the move, he did not maintain contact with the children and did not provide financially for the children either, though he reported making a significant income. In August, the petition for termination of parental rights for Mother and Father to M.D., C.D., and J.D. was granted. Each parent now appeals separately.

II. Standard of Review

"Our review of termination of parental rights proceedings is de novo. We are not bound by the juvenile court's findings of fact, but we do give them weight, especially in assessing the credibility of witnesses." *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010).

III. Analysis: Mother's Appeal

A. Reasonable Efforts

Mother first contends reasonable efforts were not made as required before termination. It was Mother's responsibility "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); *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa Ct. App. 1997). Complaints regarding services are properly raised "at removal, when the case permanency plan is entered, or at later review hearings." *In re C.H.*, 652 N.W.2d 144, 148 (Iowa 2002). Failure to request other services at a proper time will waive the issue. *Id.* There is no evidence Mother brought a request for additional services to the juvenile court's attention before the termination hearing. Therefore she has waived this issue.

B. Grounds for Termination

Mother contends clear and convincing evidence does not exist for termination under any of the sections found by the district court. We need only find one ground to affirm the termination. See *D.W.*, 791 N.W.2d at 706. The court found grounds for termination under Iowa Code section 232.116(1)(d) for all three of the children. This section allows for termination where:

The court finds that both of the following have occurred:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

Iowa Code § 232.116(1)(d). Mother contends she was not offered sufficient services under subparagraph 2, and therefore termination was not proper under this paragraph. She also contends that her ability to care for her two teenage daughters has been demonstrated, and therefore she can care for the three youngest children.

The district court noted Mother has been offered many services, including parental training classes, couples counseling, supervised visitation, and mental health assessment and treatment. Mother's therapist found that while her skills are improving, she would need more time to be able to manage the children. The district court wrote she has been unable to focus on more than one child at a time, manage their behaviors, recognize her paranoia, and control her frustration and anger. "She has continued to need assistance and will likely need assistance in the future in parenting her children."

Her ability to parent her teenage daughters is not dispositive as to her ability to parent three children who are age five and under. See *In re. E.B.L.*, 501 N.W.2d 547, 553 (Iowa 1993) (stating "while the mother can successfully parent the three children she now has custody of, she does not possess the skills necessary to deal successfully with [other two children]"). We therefore find clear and convincing evidence existed to terminate Mother's rights to the children under Iowa Code section 232.116(1)(d).

C. Additional Time

Mother contends the court erred in not allowing her more time before termination. Sixteen months passed between removal and termination. In this time, the children—the oldest of whom is now five years old—have settled in with

a foster family willing to adopt them. While progress has been made by Mother, she is not ready now, and “patience on behalf of the parent can quickly translate into intolerable hardship for the children.” *In re R.J.*, 436 N.W.2d 630, 636 (Iowa 1989). Our statutory requirements reflect this sense, recognizing “the child’s right to appropriate custodial care and the important element of time.” *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000).

D. Half-Sibling Visitation

Mother next points to Iowa Code section 232.116(2), arguing that termination is not in the children’s best interest because there is no guarantee they will see their half-siblings in the future because the foster family need not follow through with its agreement to allow half-sibling visitation. We have recognized that, while keeping siblings together is important, the overarching concern is for the child’s best interests. *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994). Under the section 232.116(2) framework, “the court shall 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.”

The court noted the children’s continuing behavioral difficulties after visitation with their mother, their strong bond with the foster family with whom they had lived for sixteen months, and the mother’s parenting abilities. In applying the best-interests framework, the court properly decided termination was in the children’s best interests. See *D.W.*, 791 N.W.2d at 706–07.

E. Closeness of Parent-Child Relationship

Finally, Mother argues the court should not have terminated her parental rights, as the conditions under Iowa Code section 232.116(3)(c) applied. This section allows the court discretion not to terminate parental rights where clear and convincing evidence proves that termination would be detrimental to the children due to the closeness of a parent-child relationship. The juvenile court uses its discretion in this section to determine whether to decline to terminate parental rights despite proof of statutory grounds. *In re D.S.*, 806 N.W.2d 458, 475 (Iowa Ct. App. 2011). The district court found that due to of the length of time during which the children lived in foster care with little exposure to their mother, no close bond existed between Mother and the children. Instead, they had bonded with their foster family. We find no error in declining to apply this factor weighing against termination.

IV. Analysis: Father's Appeal

A. Grounds for Termination

Father claims there was not clear and convincing evidence his parental rights should be terminated. He claims his participation in services and move away from Mother is sufficient to prevent the termination of his rights under Iowa Code section 232.116(1)(d)(2). His rights, however, were terminated not only under section 232.116(1)(d), but under (f) to J.D., (h) to M.D. and C.D., and (i) for all three children. We will affirm the termination if evidence supports one of the grounds cited by the juvenile court. *D.W.*, 791 N.W.2d at 706. By failing to contest his termination under these sections, we find his argument is waived.

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.”).

B. Best Interests of Child

We find termination of Father’s parental rights was in the best interests of the children for the same reasons stated in our discussion of Mother’s argument.

C. Reasonable Efforts

As stated above, it is the parent’s responsibility “to demand other, different, or additional services *prior* to the termination hearing.” *S.R.*, 600 N.W.2d at 65 (emphasis added); *H.L.B.R.*, 567 N.W.2d at 679. Failure to demand such services in a timely manner results in waiver of the issue. *C.H.*, 652 N.W.2d at 148. There is no evidence this issue was raised before termination, therefore the father has waived this issue on appeal.

D. Additional Time

Father also claims the district court abused its discretion in denying his request for additional time to make reunification efforts. Once again, over sixteen months had passed since the children were in the home of either biological parent. Father moved from Iowa to Colorado six months before the termination proceedings and did not visit the children during this time. The children are five years old and younger. The district court did not abuse its discretion in denying Father’s request for additional time.

AFFIRMED.