

IN THE COURT OF APPEALS OF IOWA

No. 3-777 / 13-0886
Filed August 21, 2013

**IN THE INTEREST OF B.L. and E.L.,
Minor Children,**

T.O., Mother,
Appellant.

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A mother appeals the juvenile court's denial of her request for additional time before terminating her parental rights. **AFFIRMED.**

MaryBeth A. Fleming, Dubuque, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Ralph Potter, County Attorney, and Joshua A. Vander Ploeg, Assistant County Attorney, for appellee.

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

TABOR, J.

A mother appeals the juvenile court's termination of her parental rights, arguing a brief extension would allow her to pursue reunification with her two children. She asserts she is complying with the Department of Human Services (DHS) case plan for drug testing and treatment. Because the mother's active participation in DHS services did not start until the month before the termination hearing and her history of compliance is sporadic, an extension would not likely lead to reunification. Accordingly, we affirm the termination of her parental rights.

I. Background Facts and Proceedings

Teresa is the mother of two children: E.L., born in October 2008, and B.L., born in September 2009. The children's father, Dillon, lives in Arizona and has not taken part in the majority of the proceedings.¹

In February 2012, the DHS opened this case following allegations Teresa was not properly supervising the children; specifically, she slept while the young children were awake and locked them in their room for long periods of time. The allegations of improper supervision coincided with Teresa's history of abusing marijuana and painkillers. On April 26, 2012, following incidents of domestic violence between Teresa and Dillon and an injury to B.L.'s wrist, the children were removed from Teresa's care and placed with one of Teresa's sisters.

On June 25, 2012, the juvenile court adjudicated E.L. and B.L. as children in need of assistance (CINA) following a contested adjudication hearing. One

¹ Dillon moved to Arizona shortly after the start of this case. Dillon has a history of substance abuse and arrests and has served time in jail and at a correctional facility. Teresa states the children have occasional telephone contact with their father but have not seen him in close to a year.

month later a dispositional order continued the placement of the children in the custody of the DHS. At the January 14, 2013 review hearing, the juvenile court determined the children remained in need of assistance and encouraged Teresa to reengage in services, citing her early departure from inpatient substance abuse and failure to attend her follow-up outpatient treatment and attend mental health counseling.

Because Teresa's sisters were not in a position to be long-term care options for E.L. and B.L., the DHS placed the children with their paternal grandparents. The case worker reported the children have adjusted very well to their placement.

In the month before the termination hearing, Teresa was receiving services at the Substance Abuse Services Center; Catholic Charities, for personal mental health counseling; Hillcrest Mental Health, for medication management; and Crossroads Counseling, for counseling with her children. Teresa previously entered these services, but either tapered off or failed to complete them. During her mental health treatment, Teresa was diagnosed with depression and anxiety and received medication.² She indicated a desire to continue all services, regardless of the case outcome, believing the services improved her parenting and personal well-being. Teresa was also looking for work; her only source of income was babysitting for one of her sister's children.

Teresa's housing was unstable because the family member with whom she was staying planned to move. At the termination hearing, Teresa identified

² Teresa blames her loss of Title XIX funding for her resumed use of pain killers without a prescription because she was no longer able to pay for her depression medication.

her most likely housing plan as moving with her boyfriend, Charlie, into the three-bedroom trailer he intended to purchase. Teresa and Charlie have dated for about one year. Charlie is employed and has a nine-year-old son. DHS discussed other housing options such as Maria House, a transitional housing program, which requires a clean drug test. Teresa also mentioned purchasing her own trailer if she were able to receive housing assistance.

On several occasions, DHS expressed concern about Teresa and Charlie's relationship, primarily because of the couple's arguments. After one argument Charlie shut off the utilities and Teresa's cell phone, which he paid for. Teresa also left one visit with the children early after she and Charlie had an argument. The case worker feared some arguments may have turned physical.

Teresa acknowledged Charlie has a history of substance abuse and that they relapsed together within the last year. She claimed their relationship had improved since Charlie started consistently taking his prescribed medication. The case worker was concerned about the prospect of Teresa and the children living with Charlie because of his substance abuse history as well as the couple's recurring arguments and inconsistent relationship status.³

On May 6, 2013, the juvenile court held a combined permanency and termination hearing. Teresa testified she last used drugs on April 13, 2013, when she tested positive for multiple prescription drugs and marijuana, though she expected her next drug test to be negative. The social worker and care

³ The social worker noted Teresa would waver regarding her relationship with Charlie, at one meeting suggesting they were not in a relationship and at another suggesting he would be involved in the DHS services, though Charlie failed to follow through.

coordinator both acknowledged Teresa's improvement in the areas of effective parenting, taking care of her mental health, and consistent communication. But both providers recommended termination of Teresa's parental rights. They referred to Teresa's inconsistency and lack of stability, noting the lack of progress during the other fourteen months and comparing Teresa's progress to a roller-coaster. The guardian ad litem (GAL) also supported termination, opposing an extension based on Teresa's lack of consistency over the duration of the case—even when faced with a termination deadline.

The juvenile court terminated Teresa's parental rights on May 17, 2013, finding the statutory requirements were met, termination was in the best interests of the children, and no exceptions called for a delay. The juvenile court recognized Teresa's progress but acknowledged her "history of doing well for short periods of time and then regressing, especially with her substance abuse." The court commended Teresa's "twenty-two days of sobriety prior to the termination hearing" but found this progress "insufficient to delay the children's permanency."

II. Standard of Review

Our review of termination proceedings is de novo, with weight given to the juvenile court's fact finding and credibility determinations. *In re A.B.*, 815 N.W.2d 737, 764, 773 (Iowa 2011). We are primarily concerned with the best interests of the children, looking to both "the child[ren]'s long-range as well as immediate interests." *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006) (quoting *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997)); see Iowa Code § 232.116(2) (2013).

III. Analysis

A. Was a Brief Extension Appropriate Allowing Teresa to Pursue Reunification?

Teresa does not contest the grounds for termination.⁴ She asserts instead the juvenile court should have allowed a three-month extension given her recent progress and successful visits with the children.

Iowa Code section 232.104(2)(b) authorizes extending the time to reunify before the court terminates parental rights. The juvenile court must “determin[e] that the need for removal of the child[ren] from the child[ren]’s home will no longer exist at the end of the additional . . . period.” See Iowa Code § 232.104(2)(b); see also *In re A.A.G.*, 708 N.W.2d 85, 92 (Iowa Ct. App. 2005). In considering the extension, the juvenile court should “constantly bear in mind that if the plan fails, all extended time should be subtracted from an already shortened life for the children in a better home.” *In re A.A.G.*, 708 N.W.2d 85, 92 (Iowa App. 2005). Especially when progress is recent, the child deserves to have the time standards for termination followed, because parents cannot be allowed to wait “until the eve of termination” to take an interest in parenting. *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000); see also *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997), overruled on other grounds by *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010).

In the juvenile court’s assessment, extra time would not eliminate the need for removal. The court found Teresa lacked stability and her past conduct did not

⁴ The juvenile court terminated Teresa’s rights according to Iowa Code sections 232.116(1)(h), as to B.L., and 232.116(1)(f), as to E.L..

“demonstrate sustained periods of sobriety.” The case worker declined to recommend an extension, citing Teresa’s uncertain housing situation, her questionable relationship with Charlie, and her history of substance abuse and inconsistent following-through with treatment. The GAL agreed with the recommendation to terminate parental rights, but expressed regret Teresa’s last-minute efforts were too tenuous to forestall termination. The GAL recognized the strong bond between the children and their mother and opined if the efforts had been more consistent the GAL may have recommended an extension.

We agree with the juvenile court’s decision not to postpone the children’s permanency based on Teresa’s recent attention to her substance abuse problem. We can’t “gamble with the children’s future’ by asking them to continuously wait for a stable biological parent,” balancing instead the parent’s efforts and the child’s long-term best interests. *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010); *see also In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (recognizing parent’s efforts “in the two or three months before termination hearing, in light of preceding eighteen months, are insufficient”). The goal of an extension is to reunite the children with a stable parent; based on Teresa’s inconsistency, we do not believe a three-month reprieve would achieve that aim. See Iowa Code § 232.104(2)(b). Therefore, we affirm the juvenile court’s denial of the extension.

B. Was Termination of Teresa’s Parental Rights in the Best Interest of E.L. and B.L.?

In determining best interests, we consider the children’s safety, as well as looking for the placement that will best further their long-term nurturing and

growth and satisfy their physical, mental, and emotional needs. Iowa Code § 232.116(2); *In re P.L.*, 778 N.W.2d 33, 39 (2010). We also take into account discretionary reasons for not terminating parental rights. See Iowa Code § 232.116(3). Those reasons include placement with a relative and the closeness of the parent-child relationship. See Iowa Code § 232.116(3)(a), (c).

Because the children reside with their parental grandparents and are close with their mother, the record leaves hope Teresa will be able to remain part of the children's lives. But neither their placement with relatives nor their bond with Teresa weighs heavily enough to reverse the termination. These children are young enough that priority must be placed on the permanency of their placement and prospect for adoption by their paternal grandparents. See *In re Z.H.*, 740 N.W.2d 648, 652 (Iowa Ct. App. 2007) (describing strong bond between parent and child as militating factor, but not overriding consideration). Teresa's recent progress shows an earnest effort to become a responsible caregiver and we have no doubt she loves her children. But Teresa lacks employment, acceptable housing, and any track record of staying drug free. Like the juvenile court, we believe the children's best interests are served by severing their legal tie with Teresa. See *J.L.W.*, 570 N.W.2d at 781 (allowing "rights and needs of the children [to] rise above the rights and needs of the parent").

AFFIRMED.