

IN THE COURT OF APPEALS OF IOWA

No. 6-260 / 06-0278
Filed April 26, 2006

**IN THE INTEREST OF A.R.,
Minor Child,**

A.R., Minor Child,
Appellant,

STATE OF IOWA,
Appellant.

Appeal from the Iowa District Court for Linn County, Mitchell E. Turner,
Judge.

The guardian ad litem and the State appeal a juvenile court order which
declined to terminate the parental rights of a child's mother. **AFFIRMED.**

Angela M. Railsback of Nazette, Marnier, Wendt, Knoll & Usher, L.L.P.,
Cedar Rapids, guardian ad litem for appellant minor child.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Harold L. Denton, County Attorney, and Lance Hereen,
Assistant County Attorney, for appellant State.

Carla Pearson of Glasson, Sole, McManus & Pearson, P.C., Cedar
Rapids, for appellee mother.

Mary McGee Light, Public Defender's Office, Cedar Rapids, for father.

Considered en banc.

PER CURIAM***I. Background Facts & Proceedings***

Alicia and Timothy are the parents of Avery, born in September 2003. Alicia was herself a minor child under juvenile court jurisdiction at the time of Avery's birth. Due to past incidents of domestic violence, Timothy was ordered to have no contact with Alicia and Avery. However, Timothy violated the no-contact order and assaulted Alicia in December 2003.

Avery was adjudicated to be a child in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(c)(2) (2003) (child is likely to suffer harm due to parent's failure to supervise). Avery was removed from Alicia's care in June 2004 based on reports that Timothy and Alicia had violated the no-contact order. Avery was placed with the maternal grandmother.

Alicia participated in services. She resided in an independent living program until she graduated from high school in May 2004. She began attending a community college and worked part-time. Alicia attended a young parent support group. Alicia attended an anger management class and individual counseling. Service providers noted Alicia had good parenting skills. In December 2004, Alicia started unsupervised visitation with Avery, and these visits went well.

Allegations arose that Alicia had violated the no-contact order in April 2005. In May 2005, the State filed a petition seeking termination of the parents' rights. After a hearing, the district court found Alicia had not violated the no-contact order, and criminal charges against her based on that contact were

dismissed. In August 2005, the parties agreed the termination proceedings would be held in abeyance.

Avery was placed in Alicia's care for a short period of time in September 2005. Avery was removed and placed in foster care because of a domestic dispute between Alicia and Timothy. Alicia stated that Timothy forced his way into her apartment and then assaulted her. She cooperated with his criminal prosecution. Timothy was sentenced to a term of imprisonment not to exceed two years. Alicia reported Timothy when he attempted to contact her from prison.

Due to the incident in September 2005, a hearing on the termination petition was held in January 2006. The juvenile court determined Timothy's parental rights should be terminated. The court also found there were grounds to terminate Alicia's parental rights under section 232.116(1)(h) (2005) (child is three or younger, CINA, removed at least six months, and cannot be safely returned home). The court went on to find:

In the case at bar, the Court believes that it is unquestionably in Avery's best interest that Timothy's parental rights be terminated. The Court cannot, however, similarly conclude at this point in time that it is in Avery's best interests that Alicia's parental rights be terminated. Stated differently, the Court affirmatively believes that it would not be in Avery's best interest to terminate Alicia's parental rights at this time. Alicia has demonstrated substantial compliance with the Department's directives in all areas except for her past violation of the No-Contact Order prohibiting contact with Timothy. Since the incident in September, Alicia has shown a commitment to protect Avery that she had not previously shown. She is also in the midst of completing the 16-week Batterer's Education Program, which appears to be helping her view the situation more maturely. Additionally, her actual care of Avery and their bonding with each other convinces the Court that Alicia should be granted an

additional period of time not to exceed six months within which to achieve reunification with Avery.

The guardian ad litem and the State have appealed the juvenile court's decision not to terminate Alicia's parental rights.

II. Standard of Review

The scope of review in termination cases is de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). The grounds for termination must be proven by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Our primary concern is the best interest of the child. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

III. Merits

The guardian ad litem and the State have raised as issues: (1) whether the State proved by clear and convincing evidence that the child could not be returned to his mother, and (2) whether reasonable efforts were made to reunite the child with his mother. The juvenile court found for the guardian ad litem and the State on these issues, and we do not address them further on appeal.

We turn then to the actual issue in this case, whether it was in Avery's best interest to give Alicia an additional six months to work on reunification. The paramount consideration in parental termination proceedings is the best interest of the child. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). Of course, a child should not be forced to endlessly await the maturity of the natural parent. *Id.* at 175. We note there are no reports that Alicia lacked parenting skills or was unable to care for Avery. The problem in this case has always been Alicia's contact with Timothy and the domestic violence in their relationship. As the

juvenile court noted, with Timothy now in prison, the likelihood of violation of the no-contact order has lessened.

The juvenile court was able to observe the parties, and the court concluded Alicia was sincere in her desire to reunite with Avery and separate from Timothy. We affirm the court's order giving Alicia an additional six months to achieve reunification.

AFFIRMED.

All judges concur, except Sackett, C.J., who concurs in part and dissents in part.

SACKETT, C.J. (concurring in part and dissenting in part)

I concur in part and dissent in part. I affirm the juvenile court's decision not to terminate the mother's parental rights. I would reverse the termination of the father's parental rights. The termination under current Iowa law relieves the father of the obligation to contribute to the child's support. This is not in the child's interest. I would remand to the juvenile court to enter such orders as are necessary to protect the child from the father. The father does not deserve the benefits of fatherhood but the child does not deserve to be deprived of his father's financial support, nor does the father deserve to be relieved of this obligation. The mother does not have the resources to support the child alone.