

IN THE COURT OF APPEALS OF IOWA

No. 6-598 / 06-0906
Filed August 23, 2006

IN THE INTEREST OF M.B.,
Minor child,

T.K.M.B., Mother,
Appellant,

J.W.B., Father,
Appellant.

Appeal from the Iowa District Court for Mahaska County, Michael R. Stewart, District Associate Judge.

A mother and father appeal from the termination of their parental rights to their daughter. **AFFIRMED.**

Jeffrey A. Smith, Oskaloosa, for appellant mother.

Joel D. Yates of Clements, Pothoven, Stravers & Yates, Oskaloosa, for appellant father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Charles A. Stream, County Attorney, and Misty White-Reinier, Assistant County Attorney, for appellee.

Randy Degeest, Oskaloosa, guardian ad litem for minor child.

Considered by Sackett, C.J., and Hecht and Vaitheswaran, JJ.

HECHT, J.

Jeffrey and Tekins are the parents of Mercades, who was born in November of 2000. The family first came to the attention of the juvenile court in July of 2004 when a petition was filed alleging Mercades to be a child in need of assistance (CINA). The petition was based on the parents' positive drug tests for amphetamine, methamphetamine, and marijuana, as well as Mercades's positive test for methamphetamine and marijuana. Mercades was later adjudicated CINA and was initially placed with Jeffrey, as Tekins was entering an inpatient drug treatment program. However, in September, Mercades was placed in foster care due to Jeffrey's imminent placement in a halfway house program. On February 28, 2006, the State filed a petition seeking to terminate the parental rights of Jeffrey and Tekins. Following a hearing, the court granted the petition and terminated their rights under Iowa Code section 232.116(1)(f) (2005). Both Jeffrey and Tekins appeal from this order.

We review termination of parental rights orders de novo. *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). Our primary concern is the best interests of the child. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

I. Could Mercades be returned to her parents' care? Jeffrey and Tekins both argue, first, that the court erred in its finding that Mercades could not be returned to their care. Iowa Code § 232.116(1)(f)(4). Upon our careful de novo review of the record, we concur in the juvenile court's finding on this issue. As the court noted, both parents have a significant and long-term history of substance abuse that has clearly impacted and endangered Mercades. After Jeffrey was released from a halfway house program, he resumed custody of

Mercades and subsequently relapsed. As the juvenile court noted, by May of 2005 Jeffrey “had stopped contacting the service provider, was no longer taking the child to daycare, had stopped going to work and lost his job, had reunited with [Tekins], and was using methamphetamine.” When she was removed in June of 2005, Mercades was found to be filthy, hungry, and suffering from an extremely bad case of head lice.

Despite her reported period of abstinence at the time of the termination hearing, Tekins has a history of failed drug treatments. Further, at the termination hearing, both Jeffrey and Tekins conceded that their current residence was inappropriate for Mercades and that she could not be returned immediately to their care. Finally, at the time of the termination hearing, neither parent had even progressed past fully supervised visits.

II. Mercades’s best interests. Both Jeffrey and Tekins maintain termination was not in Mercades’s best interest. For reasons similar to those noted in the preceding division of this opinion, we find termination is in the child’s best interests. Mercades was five years old at the time of the termination hearing. A large portion of her short life has been spent dealing with her parents’ immaturity and drug use. The resulting instability has apparently long plagued Jeffrey and Tekins as the record establishes that in 1997 their parental rights to another child were terminated, based largely on their drug use and the child’s exposure to those drugs. Mercades cannot wait any longer for her parents to finally establish they have the maturity and insight necessary to raise a child in a healthy and nurturing environment. *In re D.C.*, 436 N.W.2d 644, 645 (Iowa Ct.

App. 1988) (noting that insight into a child's future can be gained from evidence of the parents' past performance).

III. Continuance of the termination hearing. Finally, Jeffrey and Tekins contend the juvenile court erred in denying Tekins's request for a continuance. Tekins notes that on May 11, 2006, her original attorney, Karen Taylor, requested a continuance of the trial due to a scheduling conflict. After denying the motion on May 16, the court granted Taylor's motion to withdraw. Trial was held on the following day, and the termination order which provoked this appeal followed.

We first conclude Jeffrey lacks the necessary standing to raise this issue because the record does not support a determination that he joined in Tekins's motion for continuance or that he made his own such request. Accordingly, Jeffrey lacks "a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of the controversy." *Birkhofer ex rel. Johannsen v. Brammeier*, 610 N.W.2d 844, 847 (Iowa 2000). We further conclude the court did not abuse its discretion in denying Tekins's request for a continuance. The denial of a motion for continuance must be unreasonable under the circumstances to justify reversal. *Michael v. Harrison County Rural Elec. Coop.*, 292 N.W.2d 417, 419 (Iowa 1980). Because the motion was filed on the eve of the termination hearing, and Tekins fails to suggest what difference the granting of such a motion would have made in the outcome, we find no abuse of discretion in the court's ruling.

AFFIRMED.