

IN THE COURT OF APPEALS OF IOWA

No. 6-727 / 06-1190
Filed October 11, 2006

**IN THE INTEREST OF M.H.,
Minor Child,**

**M.F.H., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Karla J. Fultz,
Associate Juvenile Judge.

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

Nancy Pietz, Des Moines, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, John Sarcone, County Attorney, and Annette Taylor, Assistant
County Attorney, for appellee State.

Nicole Garbis Nolan of the Youth Law Center, Des Moines, for minor child.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

MAHAN, J.

Meghan appeals the termination of her parental rights. She argues (1) the State failed to show clear and convincing evidence that her rights should be terminated and (2) termination is not in her child's best interests. She also attempts to raise a best interest argument on behalf of the putative father. We affirm.

I. Background Facts and Proceedings

Meghan is the mother of M.H., born May 22, 2002. M.H.'s putative father is Fredy a.k.a. Juan, but paternity has not been established. Fredy is not, and the record gives no indication he ever was, involved in M.H.'s life. M.H. was first removed from Meghan's custody on August 27, 2004. Meghan had been arrested on two counts of manufacture and delivery of narcotics. She left M.H. in the child's maternal grandmother's custody. The State filed for a temporary removal, however, due to the grandmother's history of substance abuse. At that time, two child protective assessments resulted in founded reports of denial of critical care and failure to provide proper supervision. Drug paraphernalia was found in the child's bedroom and within her reach. Meghan admitted using marijuana and methamphetamine while caring for M.H.¹ She also admitted selling drugs. On September 3, 2004, Meghan consented to M.H.'s temporary removal.

M.H. was determined to be a child in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(c)(2) and (n) (2003) on October 6, 2004. Meghan remained in custody after pleading guilty to possession with intent to deliver

¹ Meghan's drug use began at age thirteen.

methamphetamine and failure to have a tax stamp. She was sentenced to ten years for the possession charge and five years for the tax stamp charge. Between November and December 2004, Meghan successfully completed treatment at MECCA. She was granted two years of probation on January 18, 2005. She was also ordered to live at the House of Mercy until maximum benefits had been achieved. Throughout this time, she participated in Family Drug Court and was making significant progress toward reunification.

M.H. was returned to Meghan's custody on April 13, 2005. In late June 2005, however, Meghan violated House of Mercy rules. She had been given a weekend pass to a location previously approved by House of Mercy staff, but instead took M.H. to a home where there were inappropriate people. As a result, she received a forty-eight-hour notice to leave the House of Mercy.² M.H. was returned to Iowa Department of Human Services (DHS) custody.

Because of her discharge from the House of Mercy, Meghan was found in violation of her probation. It was revoked, and she was placed at the Polk County Jail until a bed at the Women's Residential Correctional facility became available. She was originally granted release under electronic monitoring, but elected to stay in jail to assist her placement at the facility. She was placed on September 12, 2005. Meghan successfully completed MECCA treatment in December 2005.

A final review hearing concerning custody was held on March 28, 2006, with DHS retaining custody. Meghan was released from the Women's

² House of Mercy staff had previously reported that Meghan displayed both manipulative and dishonest behavior. She had also been cited for bullying peers at the facility.

Residential Correctional facility on March 29, 2006. Her original release date had been December; however, it was delayed due to her failure to pay rent and various rule infractions.

Since her release, Meghan has obtained both a job and an apartment. She has participated in therapy, after care, parenting classes, Alcoholics Anonymous and Narcotics Anonymous meetings, and supervised visits with M.H. She has made inquiries about available daycare and other activities for M.H. She also completed a psychosocial evaluation and is medication compliant. When not incarcerated and required to submit to drug testing, she has consistently tested negative. She was, however, observed driving without a license. If she were arrested again, she would likely have to serve at least one-third of her ten-year sentence for possession. She recently lied to the in-home worker about the name of a male friend and the nature of their relationship. She also described her thinking to the in-home service provider as “criminal thinking.”

At a permanency hearing on June 6, 2006, DHS requested the State file a petition for termination. On June 11, 2006, the juvenile court terminated the parental rights of both Meghan and M.H.’s putative father pursuant to Iowa Code sections 232.116(1)(d), 232.116(1)(e), 232.116(1)(f), 232.116(1)(l), and 232.111(2)(a)(1) (2005). Meghan appeals.

II. Standard of Review

We review the termination of parental rights de novo. *In re D.G.*, 704 N.W.2d 454, 456 (Iowa Ct. App. 2005). The State must prove the circumstances for termination by clear and convincing evidence. *In re L.E.H.*, 696 N.W.2d 617, 618 (Iowa Ct. App. 2005). Our primary concern is the best interests of the child.

Id. In determining the child's best interests, we look to both long-term and immediate needs. *Id.* We need only find grounds to terminate parental rights under one section cited by the district court in order to affirm the termination. *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2002).

III. Merits

We find grounds to terminate exist under section 232.116(1)(d). Parental rights may be terminated under section 232.116(1)(d) if (1) a child has been previously adjudicated a CINA after a finding of neglect and (2) the circumstances leading to adjudication continue to exist despite the offer or receipt of services. Iowa Code § 232.116(1)(d).

Meghan argues the juvenile court erred both in determining there was clear and convincing evidence to support termination and in finding termination was in the child's best interests. Specifically, she argues the termination is not in the child's best interests because the State failed to secure jurisdiction over the putative father.

Meghan's recent progress has been commendable. However, she continues to engage in behavior that threatens her relationship with her daughter. See *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990) (noting that "children cannot wait for responsible parenting," but must have parenting that is "constant, responsible, and reliable"). As the juvenile court stated:

Unfortunately, this mother cannot at this time demonstrate the insight to make the good choices and not to make impulsive decisions, which will likely cause her to be incarcerated yet again. [Meghan] still is unable to make consistently good choices which would allow her even [to] have unsupervised visits. Despite reasonable efforts and the provision of many services, [Meghan] has not shown the insight that would allow her to parent her child

safely and independently. The Court cannot consider reunification with her daughter even in light of those services she has successfully completed and those in which she continues to participate, under the above-described circumstances and based on the opinions of providers. [M.H.] has waited long enough for her mother to provide the safety and stability she deserves. She deserves permanency in her life.

By driving without a license, Meghan risks arrest that would send her to prison for at least three years. She was given a chance when she received probation and was ordered to live at House of Mercy. She even received custody of her daughter again. She abused her opportunities, however, by breaking the House's rules and taking advantage of the privilege of a weekend pass. As a result, her probation was revoked, her daughter was placed with DHS, and she spent several months in jail. She continued to break rules while living at the Women's Residential Correctional Facility. Upon release, she has obtained a job and an apartment, but continues to attempt to manipulate and lie to service providers. She also continues to associate with individuals potentially harmful to her and her daughter. From Meghan's past parenting performance we can gain insight into her likely future performance. *In re T.D.C.*, 336 N.W.2d 738, 740-41 (Iowa 1983) (quoting *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981)).

Finally, Meghan cannot raise the putative father's best interests argument for him. *In re D.G.*, 704 N.W.2d 454, 459 (concluding one parent cannot join in the other's "best interests" argument). Even if she could, there is clear and convincing evidence the putative father has abandoned M.H. See *In re M.L.M.*, 464 N.W.2d 688, 690-91 (Iowa Ct. App. 1990) (holding failure to notify father did not preclude termination where there was clear and convincing evidence he abandoned the children and could not assume care of them).

In conclusion, the State has both provided clear and convincing reasons for termination and shown that termination is in the child's best interests. For these reasons, we affirm the juvenile court's ruling terminating Meghan's parental rights.

AFFIRMED.