

IN THE COURT OF APPEALS OF IOWA

No. 6-857 / 06-1360
Filed October 25, 2006

**IN THE INTEREST OF E.W.,
Minor Child,**

**M.L.D., Mother,
Appellant.**

Appeal from the Iowa District Court for Benton County, Jane F. Spande,
District Associate Judge.

A mother appeals the district court's order terminating her parental rights.

AFFIRMED.

James T. Peters, Independence, for appellant mother.

Shawn Harden, Independence, for appellee father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, David C. Thompson, County Attorney, and Tony Janney,
Assistant County Attorney, for appellee State.

Marty Hagge, Cedar Rapids, for minor child.

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

VOGEL, J.

Maria appeals from the district court's order terminating her parental rights to her daughter, Emily. Because we conclude termination was proper and in Emily's best interests, we affirm upon our de novo review. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005).

In April 2005, Emily was voluntarily placed by Maria and Emily's father, Josh,¹ with Maria's grandmother, Ellen, due to concerns of domestic violence and drugs in the home. Emily was adjudicated a child in need of assistance (CINA) in July 2005. After noted progress with appropriate services, Maria and Josh were able to have Emily placed back in their care in late November 2005. However, she was removed again in early January 2006, due to concerns of drugs in the home and ongoing domestic violence. Emily was again placed with Ellen until May, when the court ordered an emergency removal to the custody of the Iowa Department of Human Services (DHS) when it was learned that Ellen allowed Maria unsupervised, overnight visitation with Emily. Such visits were not authorized by DHS at that time, as concerns still existed over Emily's exposure to drugs and domestic violence while in Maria's care. Emily was placed in foster care in May 2006 and was reported at the time of the termination hearing to be thriving in that environment.

Since Emily has been removed, Maria has been fairly consistent with visitation and has demonstrated acceptable parenting skills. The primary concern of DHS and other service providers through the pendency of the case has been Maria's ability to prevent Emily's exposure to illegal substances and

¹ Josh's parental rights to Emily were also terminated, but he does not appeal.

domestic violence. Emily had a positive hair stat test in January 2006 for methamphetamines, for which Maria faulted Josh, as Emily was left in Josh's care when Maria worked. Nonetheless, Maria admitted continued association with peers as well as romantic relationships with persons that use illegal substances or have a criminal drug history. She does not appear to understand why or how this would impact Emily.

Although she has had five clean urinary analysis tests for controlled substances, Maria did not comply with requests to submit to testing on four other occasions, citing transportation problems. Maria was also informed to not chemically alter or cut her hair until a hair stat test could be performed in early January 2006, but Maria dyed her hair in spite of that warning. To her credit, Maria did complete drug treatment and appeared to remain substance free as of June 2006.

Throughout the pendency of this case and against the advice of service providers, Maria continued to engage in contact with Josh. Their relationship has been chronically violent, and law enforcement has been called to intervene on numerous occasions. In January 2006, Josh was arrested for interference with official acts. When the police arrived, they could hear arguing from outside Josh's apartment, but Josh claimed he was home alone. Maria then came out of the bathroom with noticeable facial injuries and two black eyes, but claimed her injuries came from sources other than Josh. Police were also called to a scene outside the courthouse in early April 2006 when Josh alleged Maria had some friends and her new boyfriend summoned to "beat him up." Josh was again

arrested on April 22, for assaulting Maria after he punched a hole in her apartment wall and tried to choke her.

As of the termination hearing, there remained a no-contact order in place between Maria and Josh though Josh admitted they continued to communicate. The concern for Emily's safety was paramount due to her parents' violent relationship. Maria refused to attend counseling, insisting that she did not need or believe therapy would help her. Although Maria had obtained her own apartment by March, DHS was unable to determine her ability to pay her bills without assistance from others, including Josh, because Maria did not provide pay stubs or rent receipts as requested. DHS recommended termination of Maria's parental rights due to the inability to return Emily to her care, for fear that Maria would be unable or unwilling to make better choices to provide a safe environment free from substance abuse and domestic violence.

The State filed a petition² to terminate Maria's parental rights in March 2006, pursuant to Iowa Code section 232.116 (1)(h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home). Following the hearing in August, the district court found clear and convincing evidence established grounds for termination. Maria appeals, arguing that clear and convincing evidence does not support termination and that DHS failed to exert reasonable efforts and services to reunify her with Emily.

The grounds for termination must be proven by clear and convincing

² The petition also asserted sections 232.116(1)(a) and (l), as applied to Josh due to his voluntary consent to termination and/or chronic substance abuse; and 232.116(1)(e) as to both parents, (child CINA, removed for six months, parent has not maintained significant and meaningful contact with child), which was not established by the evidence presented.

evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Our primary concern is the best interests of the child. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). In determining the best interests of the child, we look to the child's long-range and immediate interests. *In re J.J.S., Jr.*, 628 N.W.2d 25, 28 (Iowa Ct. App. 2001). "Insight for the determination of a child's long-range best interests can be gleaned from 'evidence of the parent's past performance for that performance may be indicative of the quality of the future care that parent is capable of providing.'" *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (quoting *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981)).

We first address Maria's claim that reasonable efforts were not made by DHS and the State to promote reunification. Specifically, Maria contends that she requested unsupervised visitation with Emily, which she also asserted during the termination hearing. We find no indication in the record that Maria requested additional visitation prior to the hearing, thereby failing to preserve this issue for appellate review. *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). Even if we accept Maria's allegation that she previously requested additional, unsupervised visitation, the record reflects the circumstances that necessitated supervised visitation due to Maria's inability to protect Emily from exposure to illegal substances and domestic violence. We conclude reasonable efforts with regard to this issue were made. See *In re L.M.W.*, 518 N.W.2d 804 (Iowa Ct. App. 1994).

Maria lastly argues that the State failed to prove the grounds for termination by clear and convincing evidence, particularly that Emily could not be returned to her care. The record demonstrates Maria's inability and/or

unwillingness to change her lifestyle and associations in order to protect her daughter from exposure to illegal substances and domestic violence. Maria has had continual interaction with Josh throughout the pendency of the case, even though her association with Josh poses a great physical and emotional threat to both Emily and Maria's safety. While the steps Maria has taken to gain independence and control of her own life are commendable, she has not been able to sever her abusive relationship with Josh or her relationships with others who use illegal substances. She has refused to abide by the no-contact order or to seek counseling or therapy to assist her. Maria has also failed to show an understanding of how the unhealthy relationships she chooses for herself have a negative impact on Emily. As the district court found:

Maria is very young and immature in her thought processes. She still does not appreciate the harm to Emily from the violence in her parents' relationship. She still does not accept responsibility for Emily's exposure to methamphetamine or other drugs. She is concrete rather than abstract in her thought process. As long as Emily has not sustained actual observable harm there is no harm. Maria cannot be trusted to report truthfully as to what is occurring in her life or with Emily.

We conclude that the State proved by clear and convincing evidence that Emily could not be returned to Maria's care. We do not doubt Maria's love for Emily, but Emily's best interests necessitate termination of Maria's parental rights in order to give Emily safety, stability, and permanency. As we have previously noted, "[c]hildren simply cannot wait for responsible parenting." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). We affirm the district court's termination order.

AFFIRMED.