

IN THE COURT OF APPEALS OF IOWA

No. 7-093 / 07-0029
Filed February 14, 2007

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

N.P., Mother,
Appellant.

Appeal from the Iowa District Court for Linn County, Susan Flaherty,
Associate Juvenile Judge.

Mother appeals from the order terminating her parental rights.

AFFIRMED.

Lorraine Machacek, Cedar Rapids, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Harold Denton, County Attorney, and Kelly Kaufman, Assistant
County Attorney, for appellee State.

Sheree Smith, Cedar Rapids, for minor child.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

BAKER, J.

Nicole is the mother of Najeh, born in February 2004. Najeh is the second of Nicole's three children.¹ Najeh came to the attention of the Iowa Department of Human Services (DHS) in April of 2004 following an incident of violence between Nicole and the person thought at the time to be Najeh's father.² Following the incident, Nicole went to stay with her biological mother, who has a significant substance abuse history and lost custody of all of her children. As a result of this situation, DHS sought and obtained an order removing Najeh from Nicole's physical custody, placing him in foster family care. Following his removal, a hair stat test indicated Najeh had been exposed to cocaine.

At a May 11, 2004 hearing to review the removal order, all parties stipulated that Najeh was a child in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(b), (6)(c)(1), (6)(c)(2), and (6)(n) (2004), and that Najeh should continue in foster family care. On June 24, 2004, citing the significant strides Nicole had made since the removal, the court entered a dispositional order allowing Najeh to be placed with Nicole on a trial home placement. Despite issues concerning Nicole allowing Najeh to have contact with known drug users and placing him in situations where drugs were present, her inconsistent participation in drug testing and DHS services, and her unstable housing and employment, the trial home placement was allowed to continue until

¹ Nicole's first child, born in January 2001, was removed from her custody in May 2002 and has since been placed with his father. Nicole has consented to the termination of her parental rights to her youngest child, born in April 2005.

² In fact, Kareem is the biological father of Najeh. He did not involve himself in this process, and his parental rights to Najeh were terminated by the same order of termination of Nicole's parental rights. He has not appealed the termination of his parental rights.

September 7, 2005. On October 28, 2005, Najeh's custody was placed with DHS, who placed Najeh with his daycare provider. There have been no further trial home placements or extended visitations with Nicole since the September 2005 removal.

On January 17, 2006, the State filed a petition seeking to terminate Kareem and Nicole's parental rights to Najeh. On December 15, 2006, following a hearing, the juvenile court terminated Nicole's parental rights under Iowa Code section 232.116(1)(h) (2006). Nicole appeals from this order.

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

Nicole asserts that issues exist regarding (1) whether the State proved by clear and convincing evidence that Najeh could not be returned to Nicole, and (2) whether termination of parental rights is in Najeh's best interest. The State contends that, because the mother provides no argument in support of her assertions, the arguments are waived on appeal. While it is true that Nicole's brief does not contain arguments for her positions, the brief cites to legal authority to support her positions. Therefore, we will consider the merits of her asserted issues. See Iowa R. App. P. 6.14(1)(c) ("Failure in the brief . . . to cite authority in support of an issue may be deemed waiver of that issue.").

Nicole first raises the issue of whether the State proved by clear and convincing evidence that Najeh could not be returned to Nicole. Upon our careful de novo review, we agree with the juvenile court that the State has established

statutory grounds for termination of Nicole's parental rights pursuant to Iowa Code section 232.116(h).³

Following the trial home placement with Nicole, Najeh's hair stat test was again positive for cocaine, indicating Nicole had allowed him to be exposed to drug use. Nicole continues to have problems with substance abuse. She has not demonstrated the ability to maintain sobriety for any significant period of time and is not involved in any substance abuse treatment program. While at the time of trial Nicole had made recent efforts to improve her situation, the recent efforts are insufficient to prove that she can provide for Najeh's basic needs, safety and protection. We find clear and convincing evidence supports the juvenile court's conclusion that Najeh cannot be returned to Nicole's care without substantial risk of suffering further harm.

Nicole next raises the issue of whether termination of parental rights is in Najeh's best interests. Even where the statutory requirements for termination of parental rights are met, the termination must still be in the best interests of the child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994) (citations omitted). To determine what is in Najeh's best interests we evaluate his long-range as well as immediate interests. Insight into the Najeh's prospects may be gained by reviewing Nicole's past performance. *See id.*

We agree with the juvenile court that, despite services offered through DHS, Nicole continues to have the same issues, and her ability to provide for the

³ At the time of termination, Najeh was three years of age or younger; he had been adjudicated a child in need of assistance; he had been removed from Nicole's physical custody for at least six months of the last twelve months, or for the last six consecutive months, and any trial period at home had been less than thirty days; and there was clear and convincing evidence that Najeh cannot be returned to Nicole's custody.

day-to-day needs of Najeh remains virtually unchanged. Najeh is adoptable, and he needs a permanent family to love and care for him. He cannot wait for Nicole to provide him the stability he needs. See *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990) (“Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable.”).

We find that the record contains clear and convincing evidence that Najeh cannot be returned to Nicole and that termination of Nicole’s parental rights is in Najeh’s best interest. We therefore affirm the termination order.

AFFIRMED.