IN THE COURT OF APPEALS OF IOWA

No. 7-172 / 07-0220
Filed March 28, 2007

**IN THE INTEREST OF T.A., A.A., C.A., and C.A.,
Minor Children,**

K.A., Mother,
Appellant.

Appeal from the Iowa District Court for O'Brien County, David C. Larson, District Associate Judge.

K.A. appeals from the order terminating her parental rights. **AFFIRMED.**

Missy Clabaugh of Jacobsma, Clabaugh & Freking, P.L.C., Sioux Center, for appellant.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Bruce A. Green, County Attorney, and Robert Hansen, Assistant County Attorney, for appellee State.

Shannon Sandy of Sandy Law Firm, P.C., Spirit Lake, for minor children.

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

HUITINK, J.

K.A. is the mother of four children: T.A. (age six), A.A. (age five), C.A. (age four), and C.E.A. (age three)[1]. All four children were removed from parental custody in July 2005 based on allegations of K.A.'s failure to provide proper care and supervision. All were subsequently adjudicated children in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) (2005) (parent fails to exercise reasonable degree of care in supervising the child). On September 6, 2005, the juvenile court entered a dispositional order continuing the children's placement in foster care. The dispositional order also provided for services and a visitation schedule intended to facilitate K.A.'s reunification with her children.

On January 16, 2007, the juvenile court terminated K.A.'s parental rights to T.A. and A.A. pursuant to section 232.116(1)(f) (child four or older, child CINA, removed from home for twelve of last eighteen months and child cannot be returned home). Her parental rights to C.A. and C.E.A. were terminated pursuant to 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).

On appeal K.A. argues: (1) the trial court's order terminating her parental rights to C.A. and C.E.A. pursuant to section 232.116(1)(h) is not supported by the record because both children were returned to her for a trial period that exceeded thirty days and the Iowa Department of Human Services did not make reasonable efforts at reunification; (2) the trial court's order terminating her parental rights to T.A. and A.A. pursuant to section 232.116(1)(f) is not supported

[1] C.E.A.'s given name is C.A., however, for the purpose of distinguishing between the two youngest children, we have used his nickname as his middle name.

by the record; and (3) the trial court's order is not supported by clear and convincing evidence that it is in the best interests of the children to terminate K.A.'s parental rights.

Our review of K.A.'s claims is de novo. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). The grounds for termination must be proven by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). The primary concern in termination proceedings is the best interests of the children. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

C.A. and C.E.A.

Iowa Code section 232.116(1)(h) provides:

> 1. Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and child on any of the following grounds:
>
> . . . .
>
> h. The court finds that all of the following have occurred:
>
> (1) The child is three years of age or younger.
>
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
>
> (3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
>
> (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

K.A. challenges the sufficiency of the State's proof concerning the requisite duration of the children's removal from parental custody. More specifically, K.A. argues the State failed to prove the children were removed for the requisite time because both were returned to her custody for a trial period lasting more than thirty days. We disagree.

The record indicates C.A. was in foster care placement for eight of the twelve months preceding termination. The record indicates C.E.A. was in foster care placement for approximately ten of the last twelve months. We, like the juvenile court, find the State has met its burden of proof concerning the requisite duration of the children's removal under section 232.116(1)(h)(3).

K.A. correctly argues the State is required to make reasonable efforts to reunite parent and child prior to initiating termination proceedings. *In re C.L.H.*, 500 N.W.2d 449, 453 (Iowa Ct. App. 1993). When a parent fails to demand services other than those provided, the issue of whether services provided were adequate has not been preserved for appellate review. *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). There is no indication in the record that K.A. ever demanded more or different services. Moreover, there is no indication in the mother's brief she ever requested additional services. K.A. has therefore failed to preserve error on her claim that the State failed to make reasonable efforts to reunite her with C.A. and C.E.A. We affirm on this issue.

T.A. and A.A.

Iowa Code section 232.116(1)(f) provides:

> 1. Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and child on any of the following grounds:
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> . . . .
>
> f. The court finds that all of the following have occurred:
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> (1) The child is four years of age or older.
>
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
>
> (3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.

> (4) There is clear and convincing that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

K.A. challenges the sufficiency of the State's proof that the children cannot be returned to her custody. She argues:

> The record before the Court at the termination hearing clearly established that there had never been any attempt by the department to return the care of these two children to their mother. Following the removal of these two children, the department made no efforts whatsoever to reunite [K.A.] with these two children, not even on a trial basis, and therefore it can not [sic] be said that there was clear and convincing evidence that the children could not be returned to the custody of their mother.

Because K.A. failed to demand services other than those provided, she has also failed to preserve error on her reasonable efforts claim concerning T.A. and A.A. *In re S.R.*, 600 N.W.2d at 65. We affirm on this issue.

Best Interests.

Even if the statutory requisites for termination have been established, termination is not mandatory. Iowa Code § 232.116(3); *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994); *In re C.W.*, 554 N.W.2d 279, 282 (Iowa Ct. App. 1996).

K.A. argues that termination of her parental rights is not in the children's best interests because she has had "a very deep and long standing relationship" with her children. She states she "has undoubtedly built and maintained a relationship with her children . . . and she maintained as much contact with the children through the court process as has been permitted based on her circumstances."

The record shows this is simply not the case. Between June 2006 and the termination hearing in November 2006, K.A. attended only twenty-five percent of

possible visits. Furthermore, K.A. sometimes waited four to six weeks without arranging visits. On other occasions, K.A. simply missed scheduled visits. K.A. also missed medical appointments for the children. Furthermore, K.A. attended only five or six sessions with a caseworker assigned to help her improve her parenting skills.

While K.A. made some efforts to get her children back, they have not been sufficient. K.A. cannot successfully argue that she can be the kind of parent these children need when she made only sporadic efforts to contact her children. K.A. has not provided any explanation for missing seventy-five percent of her visits with her children. Additionally, K.A. has not shown how she will support her children financially or provide shelter for them. She also failed to demonstrate the necessary improvement in her parenting skills. "Children simply cannot wait for responsible parenting." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). "Parenting cannot be turned off and on like a spigot." *Id.* "It must be constant, responsible, and reliable." *Id.* "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). We find termination of K.A.'s parental rights is in the best interests of these children. We also find the State has met all the grounds for termination under sections 232.116(1)(f) and (h). Accordingly, we affirm the juvenile court's order terminating K.A.'s parental rights.

AFFIRMED.