

IN THE COURT OF APPEALS OF IOWA

No. 7-422 / 07-0783
Filed June 27, 2007

**IN THE INTEREST OF C.V.,
Minor Child,**

J.V., Mother,
Appellant.

Appeal from the Iowa District Court for Iowa County, Russell G. Keast,
District Associate Judge.

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

Kenneth Martens of Martens Law Office, Marengo, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, and Tim McMeen, County Attorney for the appellee State.

Dennis Mathahs, Marengo, for the appellee father.

Fred Stiefel, Victor, for the minor child.

Considered by Eisenhauer, P. J., and Baker, J. and Hendrickson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

HENDRICKSON, S.J.**I. Background Facts and Proceedings**

Jill and Terry are the parents of Chase, who was born in September 2000.¹ Chase was removed from Jill's care in April 2005 after he was sexually abused by Jill's boyfriend. Jill did not believe Chase's allegations until they were admitted by the boyfriend. Chase was adjudicated to be a child in need of assistance (CINA). Chase was returned to Jill's care in May 2005. The CINA case was closed in September 2005.

Chase was removed from Jill's care again in October 2005. Chase came to day care with red marks on his neck. He told workers his mother had choked him and had thrown him down on the ground. The parties agreed Chase should be adjudicated CINA under Iowa Code section 232.2(6)(b), (c) and (n) (2005). Chase was placed with a maternal aunt. Due to conflicts between Jill and the aunt, Chase was placed in foster care in August 2006.

Jill has low intellectual functioning. She has problems with anger management. A parent study performed by a licensed therapist found Jill had "relational instability, poor organizational skills, lack of decision-making ability, and lack of insight into potential dangers for her child." The report concluded Jill would be unable to provide a safe, stable home environment for her son. Jill received services of individual parenting sessions, supervised visitation, mental health services, and anger management class. Jill made little progress in improving her parenting skills.

¹ Terry has had little contact with Chase throughout his life. He consented to termination of his parental rights.

In October 2006, the State filed a petition seeking to terminate Jill's parental rights. After a hearing, the juvenile court terminated Jill's parental rights under sections 232.116(1)(d) and (f). The court rejected Jill's suggestion to place Chase with the maternal grandmother or a maternal uncle, finding these alternatives did "not provide Chase with the level of permanency he deserves." The court concluded termination of Jill's parental rights was in Chase's best interests. Jill appeals.

II. Standard of Review

The scope of review in termination cases is de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). The grounds for termination must be proven by clear and convincing 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).

III. Merits

A. Jill contends her parental rights should not be terminated based on her mental status alone. It is clear Jill's parental rights were not terminated based only on her low intellectual functioning. Jill's rights were terminated because of her anger management problems and because she made very little improvement in her parenting skills.

She also asserts that due to her low intellectual functioning she should have been offered different services. A parent has the responsibility to demand services if they are not offered prior to the termination hearing. *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa Ct. App. 1997). Jill did not demand additional or different services prior to the termination hearing. We determine she cannot now

claim she did not receive reasonable services. See *In re M.B.*, 595 N.W.2d 815, 818 (Iowa Ct. App. 1999) (noting the department of human services must make reasonable efforts to eliminate the need for removal).

B. Jill asserts the State did not present clear and convincing evidence sufficient to show her parental rights should be terminated. On our de novo review of the record we find clear and convincing evidence to support termination of Jill's parental rights under sections 232.116(1)(d) and (f). The evidence shows the circumstances that led to the CINA adjudication continued despite Jill's receipt of numerous services. The evidence also shows Chase could not be safely returned to Jill's care. Jill continued to struggle with anger management problems and had difficulty dealing with Chase's own angry behavior.

C. Jill claims the juvenile court should have determined termination was not necessary and placed Chase in the care of the maternal grandmother or an uncle. Under section 232.116(3)(a) the juvenile court need not terminate parental rights if the child is placed in the custody of a relative. This section is permissive, not mandatory. *J.L.W.*, 570 N.W.2d at 781. It is within the sound discretion of the juvenile court, based on the best interests of the child, whether to apply this section. *Id.* The juvenile court carefully considered placing Chase with relatives, and determined this was not in his best interests based on his need for permanency. We concur in the juvenile court's conclusion.

We affirm the decision of the juvenile court.

AFFIRMED.