

IN THE COURT OF APPEALS OF IOWA

No. 7-724 / 07-1386
Filed October 12, 2007

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

**B.L.M., Mother,
Appellant,**

**P.R.H., Father,
Appellant.**

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

A mother and father appeal the order terminating their parental rights.

AFFIRMED.

Melissa Petersen, Cedar Rapids, for appellant mother.

Cory Goldensoph, Cedar Rapids, for appellant father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Harold Denton, County Attorney, and Lance Heeren, Assistant
County Attorney, for appellee State.

Robin O'Brien-Licht, Cedar Rapids, for minor child.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

ZIMMER, J.

Brenda M. and Paul H. appeal the order terminating their parental rights to their daughter. We affirm.

I. Background Facts and Proceedings.

Brenda is the mother and Paul is the father of Haylee, born in December 2006. Paul and Brenda had one other child together, Tami Rose, born in January 2005. However, their parental rights to Tami were terminated in January 2006. Brenda had three other children, Andrew, born in 1996; Mary Jane, born in 2000; and Billy Jack, born in 2001. Brenda's parental rights were terminated as to Andrew in 1999, Mary Jane in 2002, and Billy Jack in 2002.

Brenda and Paul both have low cognitive abilities. Neither parent has ever demonstrated the ability to provide adequate care for a child.

Haylee came to the attention of the Iowa Department of Human Services (Department) shortly after her birth because of concerns that her parents could not care for her. Brenda also made comments to her doctor regarding the condition of the family home that caused concern for the child's well-being. A Department social worker reviewed the family's history and assessed the child's situation. As a result, the juvenile court entered an order on December 17, 2006, removing Haylee from parental care. Haylee was discharged from the hospital to a foster family.

An adjudicatory hearing was held on February 5, 2007. Following the hearing, Haylee was adjudicated as a child in need of assistance (CINA), and the court determined she should continue in foster family care.

Following adjudication, Brenda and Paul received a variety of services designed to safely return Haylee to parental care. These services included supervised visitation, parenting instruction, drug testing, referral to adult services for mentally retarded, and referrals for anger management counseling. However, the services made available to and received by Brenda and Paul were unsuccessful in significantly improving either Brenda's or Paul's ability to parent a child.¹

The State filed a petition to terminate Brenda's and Paul's parental rights on April 20, 2007. Paul suffered a stroke in April 2007. He has limited verbal skills and limited use of the right side of his body. He requires assistance for his basic care.

The juvenile court held a contested termination hearing on August 2, 2007. The court heard testimony from two service providers and Brenda. The service provider from Tanager Place testified that the parents had a problem with attendance at their visitations—of the sixty-four possible visits, Brenda attended thirty and Paul attended twenty-three. She testified that although some improvements had been made through the parenting sessions, both parents still required fully supervised visitation. The service provider from the Department testified to ongoing issues with the parents' housing and stated the apartment where Brenda currently lived was inappropriate for Haylee. Both service providers recommended termination of parental rights.

¹ Because of a budgeting issue within the Department, parenting skill sessions were suspended from April to June 2007. However, we agree with the juvenile court's conclusion that the two-month gap in parenting sessions did not have any real impact on the outcome of these proceedings because Brenda and Paul had both received these services in the past.

In an order filed on August 3, 2007, the juvenile court terminated Brenda's and Paul's parental rights to Haylee pursuant to Iowa Code section 232.116(1)(g) (2007) (child CINA, parent's rights to another child were terminated, parent does not respond to services). The mother and father have both appealed.

II. Scope and Standards of Review.

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). The grounds for termination must be supported by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). We are primarily concerned with the child's best interests in termination proceedings. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997).

III. Discussion.

In this appeal, Brenda and Paul contend the grounds for termination were not supported by clear and convincing evidence. Brenda also maintains termination is not in the best interests of the child. Upon our review of the record, we find no merit in any of the parents' arguments.²

Paul contends that because the Department service provider did not visit him in the nursing home following his stroke, there was insufficient evidence to conclude he could not parent Haylee. However, the Department service provider testified her recommendation to terminate Paul's parental rights was based on the minimal progress Paul made in his parenting skills prior to his stroke.

² The mother also contends the State did not provide reasonable efforts to reunite her with Haylee. However, she did not raise this issue until the termination hearing, which is too late to preserve error on reasonable services provided. See *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App.1999) (holding a failure to demand a service, other than those already provided, waives the issue of whether services were adequate); see also *In re C.B.*, 611 N.W.2d 489, 493-94 ("We have repeatedly emphasized the importance for a parent to object to services early in the process so appropriate changes can be made.").

Additionally, she stated that prior to the stroke Paul had angry outbursts and needed continual repetition to parent. Like the juvenile court, we find no merit in this argument.

Neither Brenda nor Paul has demonstrated the ability to provide safe housing for the child. At the time of Haylee's birth, Brenda and Paul reported there were holes in the walls of their home and a broken window. They also reported a problem with bug infestation. After Paul's stroke, Brenda moved into a one-bedroom apartment, which she shared with her brother, three cats, a dog, a bird, and an iguana.³ The Department social worker found the home was not suitable for Haylee to visit or live in.

Based on Brenda's and Paul's past performance, the juvenile court concluded it was very unlikely Haylee would be safe or that her basic needs would be met on a long-term basis if she were returned to the care of either parent. We agree. Despite receiving extensive services since Haylee's birth, Brenda and Paul are still not capable of supervising their child alone. Moreover, this is not the first time Brenda and Paul have failed to benefit from receiving services to improve their parenting skills. See *In re Marriage of Winnike*, 497 N.W.2d 170, 174 (Iowa Ct. App. 1992) ("In determining what is in the best interests of the child we can look to a parent's past performance because it may be indicative of the quality of the future care that parent is capable of providing.").

Haylee is Brenda's fifth child, and her second child with Paul. After the birth of each child, it was necessary to remove the child from parental custody

³ During the termination hearing, Brenda stated that Paul would be released from the nursing home the following day and would also reside in this apartment.

due to the parents' inability to provide minimally adequate care and supervision. Brenda's parental rights to each of her four older children have been terminated. Paul's parental rights to the first child he had with Brenda were also terminated. Prior to the termination in each case, the parents worked with the Department and service providers to obtain basic parenting skills and to demonstrate the ability to provide the child with a safe home. The Department service provider testified she had worked with this family since October 1997 and she did not see anything different with Haylee's case compared to the older children.

It is apparent that serious concerns still exist regarding Brenda's and Paul's ability to provide adequate care for their child. Brenda and Paul have been provided with extensive services since the inception of this case, as they were in the past with their other children. Although minimal progress had been made in their parenting skills, both parents' visitations are still required to be fully supervised. Due to the condition of their home, their visits take place at the Harambee House. Since Haylee's birth there has never been a trial home placement. The evidence does not support the conclusion that additional time would allow the child to be returned to her parents' care. Therefore, we find clear and convincing evidence supports the juvenile court's decision to terminate Brenda's and Paul's parental rights under section 232.116(1)(g).

Even when the statutory grounds for termination are met, the decision to terminate parental rights must reflect the child's best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). When we consider the child's best interests, we look to her long-range as well as immediate best interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). Haylee has been living with the same foster

family since she left the hospital. Haylee is developmentally on target and is a healthy, adoptable child. To continue to keep a child in temporary or even long-term foster care is not in the child's best interests, especially when the child is adoptable. *Id.* at 175.

When a parent is incapable of changing to allow the child to return home, termination is necessary. *In re T.T.*, 541 N.W.2d 552, 557 (Iowa Ct. App. 1995). Haylee deserves stability and permanency, which her parents cannot provide. *In re C.D.*, 509 N.W.2d 509, 513 (Iowa Ct. App. 1993). We agree with the juvenile court's finding that termination of Brenda's and Paul's parental rights is in the child's best interests.

IV. Conclusion.

We affirm the juvenile court's decision to terminate Brenda's and Paul's parental rights.

AFFIRMED.