

IN THE COURT OF APPEALS OF IOWA

No. 7-794 / 06-1593
Filed October 24, 2007

**IN THE INTEREST OF F.S.,
Minor Child,**

A.S., Mother,
Appellant.

Appeal from the Iowa District Court for Clay County, Donavon D. Schaefer, District Associate Judge.

A.S. appeals from the juvenile court's order terminating her parental rights concerning her child, F.S. **AFFIRMED.**

John P. Greer of Greer Law Office, Spencer, for appellant mother.

Diane Wallwey, Spencer, for father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Michael J. Houchins, County Attorney, and Charles K. Borth, Assistant County Attorney, for appellee State.

Ney McDaniel, Spencer, for minor child.

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

HUITINK, P.J.

A.S. appeals from the juvenile court's order terminating her parental rights concerning her child, F.S. We affirm.

I. Background Facts and Proceedings

Four-month-old F.S. was removed from A.S.'s custody because of the imminent risk of harm presented by domestic violence, as well as A.S.'s mental health and substance abuse issues. F.S. was subsequently adjudicated a child in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(c) and (n) (2005), and placed in foster care. The juvenile court's dispositional order also included a provision of services for A.S., which was intended to facilitate reunification.

On September 1, 2006, the State filed a petition to terminate A.S.'s parental rights concerning F.S. pursuant to sections 232.116(1)(e) and (h). On September 15, 2006, A.S. requested appointment of a new attorney and a continuance of the termination hearing set for September 27, 2006. The juvenile court appointed a different attorney to represent A.S. Her request for a continuance was denied.

When A.S. did not appear for the September 27 termination hearing, her attorney requested a continuance, citing A.S.'s unexplained failure to appear. The juvenile court denied the requested continuance, and the matter proceeded to a hearing on the merits of the State's termination petition.

At the termination hearing, the juvenile court admitted State's exhibit 1, a DHS report with accompanying attachments, over counsel's objections that it was hearsay and recited the author's legal conclusions. State's exhibits 3

through 6 were also admitted over counsel's relevancy objections. Following the termination hearing, the juvenile court entered an order terminating A.S.'s parental rights pursuant to sections 232.116(1)(e) and (h).

On appeal, A.S. claims (1) the juvenile court abused its discretion in denying her attorney's request to continue the termination hearing, (2) the juvenile court abused its discretion in admitting exhibits 1 through 6 because they are inadmissible hearsay, and (3) the record does not contain clear and convincing evidence supporting termination on either ground relied on by the juvenile court to terminate A.S.'s parental rights.

II. Continuance

The juvenile court shall grant a continuance only if good cause exists. Iowa Ct. R. 8.5. We review the denial of a motion for a continuance for abuse of discretion and will reverse only if injustice will result to the party requesting the continuance. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996). The complaining party must show the juvenile court's decision was "unreasonable under the attendant circumstances." *In re J.L.L.*, 414 N.W.2d 133, 135 (Iowa 1987). Because of the urgency of termination proceedings, the juvenile court is not obligated to grant a parent's motion for a continuance because "children simply cannot wait for responsible parenting." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990).

A.S. argues the juvenile court abused its discretion in denying her attorney's request to continue the termination hearing. The juvenile court's findings of fact include the following:

The Court noted that [A.S.] had legal as well as actual notice of the hearing and that no good cause has been shown to continue the hearing, the Court, noting that, in fact, hearing was not commenced until one half hour after the scheduled starting time awaiting the arrival of [A.S.].

Based on our review of the record, we are unable to say the juvenile court abused its considerable discretion by denying A.S.'s requested continuance, and we affirm on this issue.

III. Evidentiary Rulings

We review evidentiary rulings based on hearsay evidence for correction of errors at law. *State v. Ross*, 573 N.W.2d 906, 910 (Iowa 1998). In general, hearsay is not admissible unless an exception applies. Iowa R. Evid. 5.802. Iowa Code section 232.96(6) allows the admission in a CINA proceeding of a report, study, record, or other writing made by DHS, a juvenile court officer, a peace officer, or a hospital, notwithstanding any objection to the hearsay statements contained therein, if it is relevant and is not unduly prejudicial. This hearsay exception is also applicable to termination proceedings. See *In re E.J.R.*, 400 N.W.2d 531, 532-33 (Iowa 1987) (holding that because of the interdependent nature of CINA and termination cases, evidence admissible in a CINA proceeding should be accorded the same standard of admissibility in a subsequent termination proceeding). The nature of this evidence is considered for its probative value, rather than its admissibility. *In re H.R.K.*, 433 N.W.2d 46, 48 (Iowa Ct. App. 1988).

A.S. argues the juvenile court abused its discretion in admitting exhibits 1 through 6 because they are inadmissible hearsay. At the hearing, her attorney objected to all of the exhibits except for exhibit 2. Her attorney objected to only

exhibit 1 based on hearsay. Although her attorney objected to exhibits 3 through 6 based on relevance, A.S. makes no argument in support thereof in her brief. Therefore, any alleged error based on the admission of exhibits 2 through 6 either has not been preserved or has been waived. See Iowa R. Evid. 5.103(a)(1) (“Error may not be predicated upon a ruling which admits . . . evidence unless . . . a timely objection” has been made.); Iowa R. App. P. 6.14(1)(c) (“Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue.”). Exhibit 1, a DHS report with accompanying attachments, was clearly admissible under section 232.96(6). We affirm on this issue.

IV. Sufficiency of the Evidence

We review a juvenile court’s decision to terminate a parent’s rights de novo. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). Although we are not bound by the juvenile court’s factual findings, we give them weight. Iowa R. App. P. 6.14(6)(g). Our primary concern is the best interests of the child. *In re R.C.*, 523 N.W.2d 757, 760 (Iowa Ct. App. 1994). The State must prove the statutory grounds for termination by clear and convincing evidence. *In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1989).

A.S. argues insufficient evidence exists to support termination of her parental rights under sections 232.116(1)(e) and (h). When the juvenile court terminates a parent’s rights on more than one statutory ground, we need find that termination was proper under only one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Under section 232.116(1)(h), the juvenile court may terminate a parent’s rights if all of the following exist:

- (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 292.96.
- (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.

A.S. argues insufficient evidence exists regarding the fourth element. The juvenile court's findings of fact include the following:

The Court finds that the evidence is not only clear and convincing but overwhelming that the grounds set forth in the Petition for Termination of [A.S.'s] parental rights have been met. . . .

The Court further finds that the State has made not just reasonable but extraordinary efforts to attempt to reunite or preserve the family, including:

- a. Family Foster Care;
 - b. Foster Care Review Board;
 - c. Court Appointed Special Advocate Program;
 - d. Family Centered Services;
 - e. Individual Parental Counseling and Education;
 - f. Substance Abuse Treatment and Services;
 - g. Iowa Workforce Development (Assistance in developing a plan for completion of GED for [A.S.]);
 - h. Centers Against Abuse and Sexual Assault (CAASA);
- [and]
- i. Individual Therapy for [A.S.] at Plains Area Mental Health[.] . . .

The Court further finds that, due to . . . [A.S.'s] failure to cooperate or follow through with all of the services provided and her lack of stability and failure to maintain a stable residence, [F.S.] cannot be returned to [her] custody at the present time nor in the foreseeable future.

The record includes abundant evidence supporting these findings of fact, and we adopt them as our own. Therefore, we conclude that sufficient evidence exists to terminate A.S.'s parental rights to F.S. under section 232.116(1)(h).

In addition to meeting the statutory requirements, the termination must be in the best interests of the child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). However, because A.S. does not argue that termination is not in F.S.'s best interests, this issue has been waived. See Iowa R. App. P. 6.14(1)(c).

We accordingly affirm the juvenile court's decision terminating A.S.'s parental rights to F.S.

AFFIRMED.