

IN THE COURT OF APPEALS OF IOWA

No. 7-879 / 07-1712
Filed November 29, 2007

**IN THE INTEREST OF D.B.,
Minor Child,**

**T.J.R., Mother,
Appellant.**

Appeal from the Iowa District Court for Fayette County, Alan D. Allbee,
Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Jeremiah White, West Union, for appellant mother.

Richard Buffington, Oelwein, for father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, W. Wayne Saur, County Attorney, and Nathan Lein, Assistant
County Attorney, for appellee State.

Andrew Thalacker, Waterloo, for minor child.

Considered by Vogel, P.J., and Mahan and Zimmer, JJ.

ZIMMER, J.

A mother appeals from the juvenile court order terminating her parental rights to her child. We affirm.

I. Background Facts and Proceedings.

Tabatha and Matthew are the parents of Dakota, born in May 2005.¹ Dakota was born in Minnesota. The child tested positive for methamphetamine at the time of her birth due to her mother's use of the drug during pregnancy. The Minnesota Department of Human Services became involved with Dakota four days after her birth and placed the child with her father, conditioned on drug testing. A short time later, the father tested positive for marijuana. The Minnesota authorities removed Dakota from Matthew's care and placed her with her paternal grandparents in Iowa. Dakota's parents refrained from illegal drug use for three or four months, and Dakota was returned to her parents' care in September 2005. The parents and Dakota resided in Iowa at the time they were reunited.

The Iowa Department of Human Services (Department) became involved with the family on December 22, 2005, after an investigation revealed methamphetamine in the parents' home. At that time, Matthew tested positive for marijuana, and Tabatha admitted to using methamphetamine. Dakota was removed from her parents and returned to the care of her paternal grandparents.

Dakota was adjudicated a child in need of assistance (CINA) on January 27, 2006. Following adjudication, Dakota remained in her grandparents' care while her parents received a variety of services designed to safely transition

¹ Matthew has not appealed from the termination of his parental rights.

Dakota back to their care. The parents remained free of illegal substances for six months and completed substance abuse treatment. Following a review hearing on July 7, 2006, Dakota was returned to her parents. The juvenile court “advised that any further relapse and the use of illegal controlled substances while caring for the child will no doubt result in the child’s removal and most likely termination of parental rights.”

Following a review hearing in December 2006, the juvenile court continued Dakota’s placement with her parents. Because the parents had separated, they agreed to a visitation schedule allowing the mother to have Dakota during the day and the father to have her overnight. At the time of the review hearing, the juvenile court was unaware that the parents had not been compliant with services provided by an in-home worker.²

In January 2007 Dakota’s father tested positive for methamphetamine and admitted that both he and Dakota’s mother had used methamphetamine as recently as January 13. On January 22 Dakota tested positive for methamphetamine exposure. The following day, Dakota was removed from her parents’ custody and was placed with her paternal grandparents.

The State filed a petition to terminate Tabatha’s and Matthew’s parental rights on June 28, 2007. The following day a permanency hearing was held, and Tabatha admitted to using methamphetamine in January 2007.

² The in-home service provider began working with the family in September 2006. The parents were compliant with her services from September 20 until October 25, 2006; however, they then “bailed” and failed to meet with her. The service provider was unable to locate the parents until December 16, 2006. Thus, between the end of October and mid-December, no supervision of the case, nor any drug testing, could be done.

The juvenile court held a contested termination hearing on September 19, 2007. At the hearing, the Department supervisor recommended both parents' rights be terminated. The supervisor testified that although Tabatha had been cooperating with the in-home worker since Dakota's removal in January 2007, she had concerns about the pattern of Tabatha's drug use, noting this was Dakota's third removal from her parents' custody. The parents' in-home service provider testified that when she became involved in this case in September 2006, the parents' involvement was initially very sporadic up until January 2007, but following Dakota's removal in January, Tabatha had been cooperative and had refrained from illegal drug use. Based on Tabatha's recent cooperation with services, the in-home provider stated that she saw no imminent risk of harm in returning Dakota to her mother. However, she also testified that she had concerns about Tabatha's stability and stated that she would "have to see if Tabatha can maintain the stability that she has incurred in the past couple months." The child's guardian ad litem recognized that Tabatha had made positive strides since January, but was hesitant to recommend Dakota be returned to her mother at the time of the termination hearing given Tabatha's history of relapse and lack of cooperation. He recommended a six-month continuance to allow Tabatha additional time to show that she can be abstinent in the long-term without relapse.

In an order filed September 20, the juvenile court terminated Tabatha's and Matthew's parental rights to Dakota pursuant to Iowa Code sections 232.116(1)(h) (2007) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home) and

232.116(1)(f) (child CINA, parent has substance abuse problem, child cannot be returned within a reasonable time). Only Tabatha has 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). 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). In determining what the future holds for the child if returned to the parent, we look to the parent's past performance because it may indicate the quality of care the parent is capable of providing in the future. *In re L.L.*, 459 N.W.2d 489, 493-94 (Iowa 1990).

III. Discussion.

In this appeal Tabatha contends the grounds for termination were not supported by clear and convincing evidence. She 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 mother's arguments.

When the juvenile court terminates parental rights on more than one statutory ground, we only need to find grounds to terminate under one of the sections cited by the court in order to affirm the court's ruling. *In re S.R.*, 600

N.W.2d 63, 64 (Iowa Ct. App. 1999). In this case, we choose to focus our attention on 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) as the basis for termination.

Tabatha contends the court erred in terminating her parental rights because the State failed to prove by clear and convincing evidence that Dakota could not be returned to her custody at the time of the termination hearing. Upon our review of the record, we disagree. Tabatha has an extensive history of drug use.³ Most recently, Tabatha admitted to using methamphetamine in January 2007. Although Dakota was removed from her parents' care at that time, Tabatha did not obtain another substance abuse evaluation until May 2007. She did not enter a dual diagnosis treatment program, for mental health and substance abuse, until mid-May 2007. And it was not until June 2007 that Tabatha obtained employment.

Although Tabatha has made recent progress, there is no assurance that this progress will be long term. See *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000) ("While [the mother] took positive steps to turn her life around in the months prior to the termination hearing, these steps do not eliminate her past, including her absence from the lives of the children and her failure to utilize services."). Like the juvenile court, we are concerned that the mother is motivated to make changes in her life only when the child has been removed from her care. While

³ At age eleven she experimented with heroin; at ages fifteen and sixteen she used acid, ecstasy, cocaine, alcohol and marijuana; at age seventeen she used methamphetamine together with marijuana and cocaine; and at age eighteen she abused alcohol. Tabatha claims much of her substance abuse is the result of illegal drug use by her parents.

Tabatha has made some recent positive strides, she has a significant history of relapse and lack of cooperation. We find clear and convincing evidence supports the juvenile court's decision to terminate Tabatha's parental rights under section 232.116(1)(h).

Even when the statutory grounds for termination are met, the decision to terminate parental rights must reflect the child's best interests. *M.S.*, 519 N.W.2d at 400. The in-home service provider testified that she has not seen a cycle of abstinence and relapse by Tabatha.⁴ However, this service provider has only been involved in the case for one year. As noted by the juvenile court, the service provider "does not have the broader perspective of the nearly two years of state agency involvement." The Department supervisor testified that given Tabatha's history and that this is Dakota's third removal she believed termination of parental rights was in Dakota's best interest. We agree.

Dakota has been living with her paternal grandparents for the majority of her life—twenty of twenty-nine months. She is closely bonded to her paternal grandparents, and they are willing to adopt Dakota. They are also willing to support a continued relationship between Dakota and her parents provided the parents are emotionally stable and not using illegal drugs. While Dakota has been doing very well in her grandparents' care, the Department reported in June

⁴ The in-home provider also testified there is an obvious bond between Dakota and her mother. We recognize that a strong bond between parent and child can be a special circumstance that militates against termination even when the statutory grounds have been satisfied. Iowa Code § 232.116(3)(c). However, this is not an overriding consideration, but merely a factor to consider. *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998).

2007 that Dakota was having difficulty adjusting to visits with her mother.⁵ Dakota deserves stability and permanency, which her mother cannot provide. *In re C.D.*, 509 N.W.2d 509, 513 (Iowa Ct. App. 1993).

“The future can be gleaned from evidence of the parents’ past performance and motivations.” *T.B.*, 604 N.W.2d at 662 (Iowa 2000). Dakota is twenty-nine months old and has been removed from her parents’ care on three occasions because of the parents’ substance abuse. Dakota should not have to wait any longer for her mother to learn how to become a responsible parent. *L.L.*, 459 N.W.2d at 495 (Iowa 1990). We agree with the juvenile court’s finding that termination of Tabatha's parental rights is in the child's best interests.

IV. Conclusion.

We affirm the juvenile court’s decision to terminate Tabatha’s parental rights.

AFFIRMED.

⁵ At the time of the termination hearing, Tabatha, who is twenty-two years old, was living with her paramour, Bryon, who is thirteen years older than her. She is currently pregnant with his child. They met several years ago in a bar in which she worked, and have been in a relationship for the last seven months. The couple has no current plan to marry. Bryon is divorced and has shared custody of three teenaged-children who live with him every other week. Although Bryon appears to be a positive influence in Tabatha’s life, we agree with the juvenile court that “their age difference, complications of his having three teenage children, and lack of long-term plans for a stable relationship do not necessarily indicate long-term stability.”