

IN THE COURT OF APPEALS OF IOWA

No. 8-261 / 08-0308
Filed April 30, 2008

**IN THE INTEREST OF
D.D.R.L., H.J.L.L., AND P.J.E.L.,
Minor Children,**

M.L., Mother,
Appellant,

J.L., Father,
Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Mark J. Eveloff, District Associate Judge.

Parents appeal the juvenile court order terminating their parental rights.

AFFIRMED.

Eric J. Nelson, Council Bluffs, for appellant mother.

Kristina M. Kaeding, Council Bluffs, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Matthew Wilber, County Attorney, and Eric Strovers, Assistant County Attorney, for appellee State.

Kimberly Murphy of Murphy & Murphy Law Office, Council Bluffs, guardian ad litem for minor children.

Considered by Sackett, C.J., and Vaitheswaran, J. and Beeghly, S.J.*

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

BEEGHLY, S.J.**I. Background Facts & Proceedings**

Mindy and John are the parents of Prestin, born in 1997, Hannah, born in 2000, and Dawson, born in 2003. John lived separately, and did not have much interaction with the children. The Department of Human Services became involved with the family in June 2006 due to reports of unsanitary conditions in the home. Mindy has a history of mental health problems and alcoholism. In September 2006, Mindy voluntarily placed the children in foster care. Mindy admitted she had difficulty taking care of the three children.

The children were returned to Mindy's care for a short period of time in January 2007, but were removed again when she left treatment for alcoholism. The juvenile court adjudicated the children to be children in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(c)(2), (g), and (n) (2007). The court determined the children should remain in foster care.

Although Mindy attended other treatment centers for alcoholism, in October 2007, she admitted to social workers that she had continued drinking heavily. The State filed a petition seeking termination of the parental rights of Mindy and John. Mindy then entered another treatment program, which she completed. She was unsuccessfully discharged from a residential treatment program in December 2007. Mindy has not addressed her mental health problems.

John had limited contact with the Department. He was in jail for driving while barred from February to June 2007. He had one visit with the children, in July 2007. John did not participate in services.

All three children have behavioral problems. Prestin has been diagnosed with mild mental retardation, attention deficit hyperactivity disorder (ADHD), oppositional defiance disorder, obsessive-compulsive disorder, and pervasive developmental disorder. Prestin needs a high degree of structure in his daily life. Hannah has been diagnosed with mild mental retardation, ADHD, and progressive developmental disorder. She has been hospitalized twice for behavioral problems. Hannah's outbursts have decreased due to medication and a structured living environment. Dawson has been diagnosed with ADHD and fetal alcohol syndrome. Although he is four years old he only occasionally speaks, and he is learning sign language. Dawson needs a consistent and structured environment.

After a terminating hearing, the juvenile court entered an order on February 6, 2008. The court terminated Mindy's parental rights under section 232.116(1)(d). John's parental rights were terminated under sections 232.116(1)(d), (e), and (f). The court found it was in the best interests of the children to terminate the parents' rights, noting "[i]t has been shown that the children need structure in their lives which the parents have been unable to provide." Mindy and John each appeal the termination order.

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 children. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997).

III. Mindy

A. Prior to January 2007, Mindy entered a residential treatment center, but left the program. She made two appointments to commence outpatient treatment, but did not follow through. Then in January 2007, Mindy entered treatment which allowed her to have the children with her. After about two weeks Mindy left the treatment center, even though she was informed the children would be removed if she did so. The next day, Mindy stated she wanted to re-enter treatment and wanted the children returned to her care. Mindy claims the State did not engage in reasonable efforts because the children were not returned to her care at that time.

The State has the obligation to make reasonable efforts, but it is a parent's 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). Due to Mindy's inconsistent attempts to treat her alcoholism, it was not unreasonable for the State to require Mindy to complete a treatment program before the children could again be returned to her care. The record shows Mindy failed in treatment several times. It would not be beneficial to the children to be returned to Mindy

when she was in treatment, only to be removed every time she was unsuccessful in addressing her problems. We conclude Mindy has failed to show the State did not make reasonable efforts in her case.

B. Mindy's parental rights were terminated under section 232.116(1)(d), which requires findings that the children were adjudicated CINA for neglect, and circumstances continue despite the receipt of services. She asserts the State did not show that the circumstances that led to the CINA adjudication continued to exist at the time of the termination hearing.

At the time of the CINA adjudication, Mindy was facing mental health problems and alcoholism. She was still dealing with those problems at the time of the termination hearing. Mindy had been unsuccessful in treatment as recently as December 2007. Furthermore, the evidence did not show she had addressed her mental health problems or parenting concerns. We conclude there is sufficient evidence in the record to support termination of Mindy's parental rights under section 232.116(1)(d).

C. Mindy contends termination of her parental rights was not in the best interests of the children. The paramount consideration in termination proceedings is the best interests of the children. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). We consider children's long-range, as well as immediate interests. *Id.* The children need a great deal of structure due to their behavioral problems. Mindy is not able to meet the children's needs. We conclude termination of Mindy's parental rights is in the children's best interests.

D. Mindy claims that during the CINA review hearings the juvenile court failed to inquire into the services being provided to her. This issue was not raised during the CINA or termination hearings, and we conclude it has not been preserved for our review. See *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994) (noting an issue that has not been raised in the juvenile court may not be raised for the first time on appeal).

IV. John

A. John asserts the State did not engage in reasonable efforts to reunite him with the children. He claims the State should have contacted him earlier and should have permitted him to have more visits with the children. The State must make reasonable efforts to reunite a parent and child prior to the termination hearing. *In re M.B.*, 595 N.W.2d 815, 818 (Iowa Ct. App. 1999). The parent, however, has the responsibility to challenge the services provided prior to the termination hearing. *Id.*

The record does not show John sought additional services prior to the termination hearing. John had very little contact with the Department. The problem was not the State's efforts to provide services to John, but rather John's failure to participate in services.

B. John asserts that it is not in the children's best interests to terminate his parental rights. The record shows John did not have much interaction with the children throughout their lives. John has not met the children's needs in the past, and there was no evidence to show he would be

able to do so in the future. We conclude termination was in the children's best interests.

We affirm the decision of the juvenile court terminating the parental rights of Mindy and John.

AFFIRMED.

Vaitheswaran, J., concurs; Sackett, C.J., concurs specially without opinion.