

**IN THE COURT OF APPEALS OF IOWA**

No. 8-295 / 08-0211  
Filed April 30, 2008

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

**E.E., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Des Moines County, Michael Dieterich, District Associate Judge.

A mother appeals from the district court's order terminating her parental rights to her daughter. **AFFIRMED.**

Matthew Bessine of Smith, Kultala & Boddicker, L.L.P., Burlington, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Patrick C. Jackson, County Attorney, and Jennifer Slocum, Assistant County Attorney, for appellee State.

Peter Hansen of Hansen Law Office, Burlington, for minor child.

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

**VOGEL, P.J.**

Elizabeth appeals from the district court order terminating her parental rights to K.B. (born November 2004).<sup>1</sup> She claims the State failed to prove that K.B. could not be returned to her care. She also maintains that termination of her parental rights is not in K.B.'s best interests. We affirm.

We review termination of parental rights de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). In December 2005, K.B. was brought to the emergency room with a severe spiral fracture of the left femur and was subsequently removed from Elizabeth's care for physical abuse, lack of appropriate supervision, and denial of critical care. K.B. was adjudicated to be a child in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) (2005). Elizabeth pled guilty to child endangerment, was granted a deferred judgment, and placed on probation for five years.

Elizabeth was offered a variety of services to achieve reunification, including budgeting assistance, domestic violence counseling, family skill development, mental health counseling, medication management, and supervised visitation. Elizabeth obtained a psychosocial evaluation and a psychiatric evaluation, both resulting in recommendations for mental health therapy and medication as a result of Elizabeth's diagnosis of depressive disorder. In a December 2006 order, the district court noted that Elizabeth had maintained employment and a home, but had not followed through with mental health therapy and had discontinued taking her medication. The district court

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<sup>1</sup> The district court also terminated the parental rights of all putative fathers, whose rights are not involved in this appeal.

granted Elizabeth a six-month extension to participate in reunification services before permanency was determined.

In May 2007, Elizabeth gave birth to another child, D.M. The following month, K.B. had her first extended two-day visit with Elizabeth and D.M. Sadly, when K.B. was returned to her foster parents, they discovered bruising on K.B.'s buttock and leg. Additionally, K.B. exhibited aggressive behavior towards other children in her extended foster family and at day care. K.B. reported that Elizabeth had spanked her, which Elizabeth admitted. Elizabeth reported to DHS and later testified that she did not think she had hit her hard enough to leave bruises. Visitation was returned to fully supervised and DHS began an investigation into the alleged physical abuse by Elizabeth.

The permanency hearing that was scheduled for June 2007 was continued so that DHS could complete its investigation into the physical abuse, which ultimately resulted in another founded abuse report, naming Elizabeth as the perpetrator. In October 2007, the permanency order stated that the placement of K.B. in foster care "continues to be necessary because of the continued physical abuse of the child while in the mother's home, the mother's lack of participation in mental health therapy, [and] the mother not taking her medications as prescribed . . . ." Following another hearing, a January 2008 district court order terminated Elizabeth's rights to K.B. pursuant to Iowa Code section 232.116(1)(g) (2007).

Elizabeth contends that the DHS investigation was inadequate. We disagree. The child protective worker who investigated the abuse allegation testified that K.B. told the investigator that Elizabeth had spanked her. In

addition, that “[Elizabeth] indicated she had popped [K.B.] on the buttocks and she may have left a bruise.” The investigator opined the bruising occurred when and as described resulting in the type and age of the marks observed on K.B.

Furthermore, it is not just this one further incident of abuse that led the district court to find clear and convincing evidence to terminate Elizabeth’s parental rights. Of great concern is that Elizabeth has not addressed her mental health needs, which appear to be a substantial factor in her continuing inability to safely parent K.B. A year after K.B. was removed from Elizabeth’s custody, the district court granted Elizabeth a six-month extension so that she could comply with mental health services. During that time, Elizabeth refused mental health services and instead further physical abuse occurred. Ultimately, Elizabeth had two years to utilize the mental health services offered by DHS, but chose not to do so. K.B. should not be forced to wait endlessly for her mother to be able to care for her. See *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). “At some point, the rights and needs of the child rise above the rights and needs of the parents.” *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). At the termination hearing, a DHS caseworker testified that Elizabeth still presents a substantial risk of injury towards K.B. We conclude that the State proved by clear and convincing evidence that K.B. cannot be safely returned to Elizabeth’s care either now or in the foreseeable future.

Furthermore, we find that termination is in K.B.’s best interests. At the time of the termination hearing, K.B. had been out of her mother’s care for twenty-four months and had been living with the same foster family for twenty-one months. K.B. has done well in foster care and has bonded with her foster

family. She needs a safe and permanent home. See *In re J.E.*, 723 N.W.2d at 802 (Cady, J., concurring specially) (stating a child's safety and need for a permanent home are the defining elements in a child's best interests). Therefore, we affirm the district court.

**AFFIRMED.**