

IN THE COURT OF APPEALS OF IOWA

No. 08-298 / 08-0397

Filed April 30, 2008

**IN THE INTEREST OF A.A. and G.L.,
Minor Children,**

**T.A.C., Mother,
Appellant.**

Appeal from the Iowa District Court for Appanoose County, William S. Owens, Associate Juvenile Judge.

A mother appeals from a juvenile court order terminating her parental rights. **AFFIRMED.**

Amanda M. Demichelis of Demichelis Law Firm, P.C., Chariton, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Robert Bozwell, County Attorney, for appellee.

Joseph Goedken, Centerville, for father of G.L.

Debra George, Centerville, for father of A.A.

Kevin Maughan, Albia, guardian ad litem for minor children.

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

MILLER, J.

Taylor appeals from a juvenile court order terminating her parental rights to six-year-old Ajaicia and four-year-old Genesis. The order also terminated the parental rights of both Ajaicia's father and Genesis's father, and neither of them has appealed. We affirm.

Ajaicia and Genesis ("the children") came to the attention of the Iowa Department of Human Services (DHS) in February 2005 as a result of concerns that Taylor was not providing appropriate supervision of Ajaicia, leaving her in the care of Taylor's mother, Julia, who had a history of mental illness and was believed to be exposing the children to illegal drugs. Drug tests of Julia and her boyfriend were both positive for cocaine. Ajaicia and Genesis each tested positive for exposure to methamphetamine and marijuana. Taylor and the children's stepfather, Michael, each tested negative. The children were adjudicated children in need of assistance (CINA) in August 2005. Legal custody of the children remained with Taylor, subject to restrictions on contact with Julia.

Services, including in-home services, were offered. Taylor's participation was initially poor, but became better by early 2006. Then in February 2006 Ajaicia tested positive for cocaine, at such a level as to indicate she may have ingested it. In March 2006 Michael tested positive for cocaine. Michael was thereafter not to have contact with the children unless and until he underwent a substance abuse evaluation and followed any resulting recommendation for treatment.

The children were removed from Taylor in April 2006 because she was exposing them to Julia and to Michael. They were temporarily placed in the legal

custody of the DHS, for placement in family foster care. Genesis claimed Michael had touched her sexually. An earlier allegation by Ajaicia that Michael had molested her had been investigated but not substantiated. Genesis's allegation was investigated, and resulted in a founded abuse report, with Michael as the perpetrator of lascivious acts upon Genesis.

Following a removal hearing the juvenile court confirmed the children's removal from Taylor. It placed their legal custody with the DHS. The children have thereafter remained in the legal custody of the DHS, placed in family foster care.

The State filed a petition seeking termination of parental rights in late August 2007. Following a hearing the juvenile court filed detailed findings of fact, conclusions of law, and its resulting order in late February 2008. The court terminated Taylor's parental rights pursuant to Iowa Code section 232.116(1)(f) (2007). On appeal Taylor claims (1) the State failed to prove the fourth element of section 232.116(1)(f), that the children could not be returned to her at the time of the termination hearing without remaining CINA, (2) the State failed to provide reasonable efforts to return the children to her, and (3) the juvenile court erred when it determined the termination of her parental rights was in the best interest of the children.

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

In re C.B., 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

Taylor has long-standing physical and mental health problems. She was ordered to undergo a psychological assessment. In mid-2006 she reported she had done so, but later admitted she had not. She did not do so until January 2007.

Taylor was diagnosed as suffering from post-traumatic stress disorder, sexual abuse as a child, neglect as a child, neglect of child, partner relational problem, and paranoid personality disorder with avoidant and obsessive-compulsive personality features. The psychologist opined that as a result of such problems Taylor's perceptions and thought processes are often quite distorted, frequently leading her into conflict with others, especially authority figures; her mental health problems significantly interfere with her ability to implement appropriate parenting; and her distortions of perception and logic have interfered with and will continue to significantly interfere with her ability to nurture and protect her children.

The psychologist recommended Taylor be treated for post-traumatic stress disorder, by an experienced mental health professional, utilizing one or both of two certain psychotherapeutic techniques, and that she thereafter continue the psychotherapeutic treatment to help her develop the cognitive and interpersonal skills she could not develop in the childhood environment in which she grew up. The psychologist had stated Taylor would need to participate in therapy before the children could be returned to her.

Taylor was inconsistent in participating in mental health treatment; purported to have changed therapists, but apparently had not done so; and

refused to sign a release to allow her in-home service provider to receive information from her mental health counselor.

Until the State filed a petition for termination of her parental rights, and even for a time thereafter, Taylor was inconsistent in her visitations with the children, often forgetting or perhaps ignoring scheduled visitations. Those visits were for a time semi-supervised. However, on the recommendation of a child psychologist because of inappropriate comments by Taylor to the children during such visitations, the visitations were returned to fully supervised in the period immediately preceding the termination hearing.

Ajaicia has mild physical health problems. Genesis has severe physical health problems, including an illness that requires medication several times each day and ongoing appointments and monitoring. The DHS and service providers are properly concerned that Taylor's mental problems, which probably cause or contribute to her forgetting or ignoring mental health therapy appointments and visitations, will cause and perhaps have caused her to be less than properly attentive to the children's physical health problems and needs, particularly those of Genesis.

As earlier noted, Taylor's husband, Michael, has used illegal drugs and was found to have committed lascivious acts upon Genesis. He has not been willing to participate in substance abuse evaluation and treatment, or sex offender evaluation and treatment. Taylor denies any ongoing relationship or contact with him. However, there is substantial evidence they were having contact in late May 2007 and were thereafter living together in August 2007. Michael had earlier expressed a desire or intent to get back together with Taylor.

The likelihood of Taylor further exposing the children to Michael and his drug use and child abuse is an unresolved problem.

The children have suffered from a variety of emotional and behavioral problems. Taylor is unable or unwilling to accept and implement instruction concerning appropriate and consistent correction and discipline of the children. As a result, she is unable to control their inappropriate behavior.

We conclude the children could not be returned to Taylor at the time of the termination hearing without being subject to such imminent threat of abuse or neglect as would cause them to remain CINA. We therefore conclude the State proved the fourth element of section 232.116(1)(f).

While the State has an obligation to provide reasonable reunification services, the parent has an equal obligation to demand other, different, or additional services prior to the termination hearing. *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). When a parent alleging inadequate services fails to demand services other than those provided, the issue of whether services were adequate is not preserved for appellate review. *Id.*; *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994).

The only service the record indicates Taylor requested in the juvenile court was additional visitation. However, Taylor had made little effort to comply with requirements that she secure treatment of her serious, ongoing mental health problems. She had disguised her mother in order to have the children have contact with her. It appeared that Taylor continued her contact with Michael, with the attendant danger the children would be exposed to him. Taylor was unwilling or unable to manage and control the children's behaviors. In early July 2007 the

children's psychologist recommended retreating from semi-supervised visits to supervised visits. We conclude the visitation of two hours per week, later reduced to one hour per week, constituted reasonable visitation under the circumstances.

Taylor has a recognized bond with the children. She has the knowledge necessary to parent the children. However, she fails or refuses to appropriately deal with her mental health problems, and those essentially untreated and clearly unresolved problems prevent her from effectively parenting them. She has lied to counselors about a psychological assessment, her mental health treatment, exposure of the children to her mother, and her contact and relationship with Michael. She has made only little and inconsistent progress in parenting skills. At the time of the termination hearing the children had been removed from Taylor for over eighteen months. They had for that entire time remained in the same attentive and caring foster home, a home in which they feel safe and secure and in which their emotional and medical needs have been carefully monitored and attended to. Genesis's physical health has substantially improved while in foster care. The foster parents are willing to adopt the children. The children need the security, stability, and permanency that their foster parents can provide and that Taylor cannot, either at present or for the foreseeable future. We conclude, as the juvenile court did, that termination of Taylor's parental rights is in the children's best interest.

AFFIRMED.