

IN THE COURT OF APPEALS OF IOWA

No. 8-389 / 08-0312
Filed June 11, 2008

**IN THE INTEREST OF W.H.,
Minor Child,**

**B.M.H., Mother,
Appellant.**

Appeal from the Iowa District Court for Greene County, Steven J. Oeth,
District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Mark Rasmussen, Jefferson, for appellant mother.

N.O.M., Jacksonville, Texas, father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, and Nicola Martino, County Attorney, for appellee State.

Vicki Copeland of Wilcox, Polking, Gerken, Schwarzkopf & Copeland,
P.C., Jefferson, for minor child.

Considered by Sackett, C.J., and Huitink, and Mahan, JJ.

MAHAN, J.

Brenda appeals the district court's order terminating her parental rights to her son, Wyatt. We affirm.

I. Background Facts and Proceedings.

Wyatt, age twenty-one months at the time of termination, is the son of Brenda and Nicholas.¹ Wyatt has been out of Brenda's care and custody since July 2006, when he was hospitalized because he was not being properly fed. Wyatt was almost four months old when he was hospitalized, but had only gained 4 lbs. 3 oz. since birth. His weight was in approximately the third percentile while his length was in approximately the fiftieth percentile. After Wyatt's health improved, he was placed in foster care.

Wyatt was adjudicated a child in need of assistance (CINA) in October 2006 and continued to reside in foster care under the supervision of the Iowa Department of Human Services (DHS). At the time of the termination proceeding, Wyatt had been in foster care for over eighteen consecutive months.

Following Brenda's receipt of reunification services, the termination hearing was held in late January 2008. The district court found clear and convincing evidence supporting termination of Brenda's parental rights pursuant to Iowa Code section 232.116(1)(h) (child age three or younger; adjudicated CINA; removed for six of the last twelve months, and cannot be returned to parents at time of hearing). By order dated February 1, 2008, Brenda's parental rights were terminated. Brenda appeals.

¹ The parental rights of Nicholas were also terminated, but he does not appeal.

II. Scope and Standard of Review.

We review termination of parental rights de novo. *In re Z.H.*, 740 N.W.2d 648, 650-51 (Iowa Ct. App. 2007). Grounds for termination must be proved by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Our primary concern is the best interests of the child. *Id.*

III. Issues on Appeal.

A. Reunification Services.

Brenda first argues DHS failed to provide sufficient services to her during the pendency of the case to promote reunification. A parent's challenge to services by the State should be made when they are offered, not when termination of parental rights is sought after services have failed to remedy a parent's deficiencies. *In re C.W.*, 522 N.W.2d 113, 117 (Iowa Ct. App. 1994). Brenda fails to indicate that she requested or otherwise challenged the adequacy of services prior to the termination hearing. The juvenile court advised Brenda in October 2006 and January, April, August, and December 2007 that her failure to request additional reunification services would result in a waiver from challenging the sufficiency of those services at the termination hearing. Further, in January, April, August, and December 2007, the juvenile court inquired into the sufficiency of the services being provided and in each instance, Brenda agreed that all services being provided to her at the time were sufficient. We conclude this issue has been waived and do not address it on appeal.

B. Clear and Convincing Evidence.

Brenda also argues the State failed to prove the grounds for termination by clear and convincing evidence. Brenda has been offered numerous services,

including parenting classes, food assistance, budgeting classes, supervised visitation, contact and interaction with a public health nurse, and access to the H.O.P.E.S. Program. Brenda has only sporadically accessed services, and her participation and commitment to accessed services has been minimal. Brenda is unemployed, unable to financially provide for Wyatt, fails to accept jobs provided to her, and fails to apply for financial assistance that may be available. Brenda lacks the parenting skills necessary to care for Wyatt, and is resistant to efforts intending to get her to learn parenting and nurturing skills. Brenda is inconsistent with her visits with Wyatt and is regularly late to the visits, cuts them short, or misses them entirely. Wyatt is not a priority in his mother's life. Returning Wyatt to Brenda's home is not an option. The record clearly supports Brenda's inability to provide a safe environment for Wyatt.

“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). Clear and convincing evidence supports termination of Brenda's parental rights under section 232.116(1)(h), and we affirm on this issue.

AFFIRMED.