IN THE COURT OF APPEALS OF IOWA

No. 8-544 / 08-0783
Filed July 16, 2008

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

C.Y., Mother,
Appellant.

Appeal from the Iowa District Court for Clinton County, Arlen J. Van Zee, District Associate Judge.

A mother appeals from the order terminating her parental rights to a son. **AFFIRMED.**

John Wolfe of Wolfe Law Office, Clinton, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Mike Wolf, County Attorney, and Cheryl Newport, Assistant County Attorney, for appellee State.

Mervin Woodin, Camanche, guardian ad litem for minor child.

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

VOGEL, P.J.

Christina is the mother of B.Y., who was born in November of 2002. The family first came to the attention of the Iowa Department of Human Services (DHS) in July of 2006 when Christina and her husband, John, had a fight outside their apartment. B.Y. was found in a locked room, and later tested positive for the presence of cocaine. Christina underwent a variety of unsuccessful drug treatment programs and B.Y. was adjudicated to be in need of assistance under Iowa Code sections 232.2(6)(c)(2) and (o) (2007).

On January 31, 2008, the State filed a petition seeking to terminate both Christina's and John's parental rights to B.Y. Following a hearing on that petition, the court granted the State's request and terminated Christina's parental rights under sections 232.116(1)(f).[1] Christina appeals, claiming (1) she was making "a reasonable and genuine effort" to place herself in a position to care for her son, and (2) considering her mental impairment, the State did not make reasonable efforts to reunify the family.

We review termination orders de novo. *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). Our primary concern in termination proceedings is the best interests of the child. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). The State must prove the circumstances for termination by clear and convincing evidence. *In re L.E.H.*, 696 N.W.2d 617, 618 (Iowa Ct. App. 2005).

We first reject Christina's contention that termination was inappropriate because she was making a reasonable and genuine effort "to place her in a position to care for her son." As this court has often said, "[c]hildren cannot wait

[1] The father's rights were also terminated, but he does not appeal that ruling.

for responsible parenting," *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990), and "[t]he crucial days of childhood cannot be suspended while the parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). These sentiments are appropriate here. Christina moved to Illinois in January of 2007, thus complicating reunification efforts, but even while still receiving services in the State of Iowa for a time, failed to show progress. She failed in several drug treatment programs, and had unstable housing arrangements. Her position at trial was that since she moved to Illinois and began receiving services from Sinnissippi Centers, Inc., in November of 2007, she had made progress and therefore requested an additional six months to continue improving her parenting skills. The district court considered all the facts and opinions presented, including the more recent reports from Sinnissippi, and concluded Christina was still far from being able to safely parent B.Y. The court observed that the services in Illinois were primarily focusing on improving Christina's ability to care for herself, with budgeting and daily living skills. Whether she would ever be able to care for her child did not appear to be a goal that could be attained in the near future. This conclusion is reflected in the April 9, 2008 DHS report stating, "it does not appear that [Christina] will ever be in a position to independently meet all the needs of her child." We agree with the district court that B.Y. simply cannot now or in the near future be returned to Christina's custody without subjecting him to the possibility of further adjudicatory harm. *See* Iowa Code § 232.116(1)(f)(4).

We next address Christina's argument that her mental impairment placed a burden on the State to accommodate such disability, and that the State failed in

this burden. Initially, this argument does not appear to have been preserved for appellate review, *see In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997) (providing challenges should come when the case plan is entered); however, we nonetheless proceed to the merits of this question. While it is true that a parent's mental disability, standing alone, is not a sufficient reason for termination, *see In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1989), it can be a proper factor to consider in determining the parent's ability to perform essential parenting functions. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993).

Christina is considered to be mildly mentally retarded and has a full scale IQ of 68. The list of services provided is extensive and appropriately tailored to Christina's needs, including a basic "modeling" of behavior for Christina to attempt to follow. Service providers observed that Christina has internalized very little of the parenting education given to her and that she does not understand B.Y.'s special medical and mental health requirements. She does not seem to realize the safety concerns that are involved in parenting a five-year-old child and has been unwilling to make B.Y.'s needs a priority over her own interests and needs. Her interactions with B.Y. during visitations have at times been inappropriate and she has been unable to handle B.Y.'s somewhat demanding behaviors without assistance. In addition, the providers have noted a lack of bonding between Christina and B.Y. Considered in the entire context of Christina's history and her own needs, we conclude the State met its burden to provide reasonable services. We therefore affirm the termination of her parental rights.

AFFIRMED.