IN THE COURT OF APPEALS OF IOWA

No. 8-590 / 08-0974
Filed July 30, 2008

IN THE INTEREST OF B.S.,
Minor Child,

C.M., Mother,
Appellant.

Appeal from the Iowa District Court for Poweshiek County, Michael R. Stewart, District Associate Judge.

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

Jane Odland of Walker & Billingsley, Newton, for appellant mother.

Dennis McKelvie, Grinnell, for father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Michael W. Mahaffey, County Attorney, and Rebecca L. Petig, Assistant County Attorney, for appellee State.

Michael Fisher, Oskaloosa, for minor child.

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

MAHAN, J.

Crystal appeals from the order terminating her parental rights to her two-year-old son, Braden. We affirm.

I. Background Facts and Prior Proceedings.

Braden was born in April 2006 to Crystal and Randy. He was removed from their care in February 2007 amidst allegations of drug use and domestic violence in the family home. Braden was placed with a foster care family and has remained there ever since. He was adjudicated a child in need of assistance (CINA) on April 6, 2007.

Shortly after the removal, the district court issued a no-contact order between Crystal against Randy. Crystal promptly obtained a substance abuse evaluation and began to submit negative drug screens. She also obtained stable housing. By the end of May, the DHS caseworker recommended that B.S. be returned to Crystal's care.

Randy objected to the recommended reunification, and the matter was set for a contested hearing. Prior to the hearing, Crystal began to associate with Randy again, even though this was a direct violation of the no-contact order. Randy tested positive for methamphetamine in July 2007.

By the time of the contested hearing, DHS no longer recommended that Braden be returned to Crystal's care, so the court continued the current placement. Crystal and Randy moved in together, and Randy refused to comply with drug screening. During supervised visitations, the parents had little interaction with Braden. One service provider noted that neither parent "seem[s] to show that Braden is a priority in their life." Service providers tried to work with

Crystal and Randy to improve their parenting skills. However, both did not believe they needed to improve their parenting skills, so they did not attempt to implement the providers' suggestions.

Crystal gave birth to her second child in early February 2008. On March 13, 2008, the State filed the present petition to terminate both parents' parental rights regarding Braden. In the weeks leading up to the termination hearing, Crystal began to take steps towards reunification. She separated from Randy, obtained her own apartment, and completed another substance abuse evaluation. She also increased her interaction with Braden during visitations. However, she did not have a job and had still not completed the recommended substance abuse treatment program (which dated back to the time of the removal) by the time of the termination hearing.

On May 22, 2008, after a contested termination hearing, the court issued an order terminating both parents' parental rights pursuant to Iowa Code section 232.116(1)(h) (2007). Crystal now appeals.[1]

II. Standard of Review.

We review termination of parental rights de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Grounds for termination must be proved by clear and convincing evidence, and our primary concern is the child's best interests. *Id.*

III. Merits.

Sufficiency of the Evidence. Crystal claims there were insufficient grounds for termination because the State failed to provide clear and convincing evidence that Braden could not be returned to her care at the time of the

[1] Randy is not a party to this appeal.

termination proceeding. She contends that any concerns over Randy's influence on her life are irrelevant because they are now separated and she has her own apartment. She also argues that she must be able to care for Braden because DHS has not begun CINA proceedings with regards to her newborn child.

Under section 232.116(1)(h), a parent's rights may be terminated if the court finds by clear and convincing evidence (1) the child is three or younger, (2) the child has been adjudicated in need of assistance, (3) the child has been removed from the home for six of the last twelve months, and (4) the child cannot be returned home at the present time. The first three elements are not in dispute; the only question is whether Braden could have been returned to his mother's care at the time of the termination hearing.

Even though she complied with random drug screenings, Crystal has still not completed her recommended drug treatment program, and her attempts to address her deficient parenting skills and obtain stable housing only occurred in the weeks leading up to the termination hearing. The record also reveals that stable employment is not a priority in Crystal's life. We, like the district court, find that her recent separation from Randy is not permanent, and was likely done for the termination hearing. When deciding whether Crystal is capable of caring for Braden, we cannot simply focus on the few weeks leading up to the termination hearing and ignore her performance and overall instability during the other fourteen months since removal. *See In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) ("A parent cannot wait until the eve of termination, after the statutory time periods for reunification have expired, to begin to express an interest in parenting."). Likewise, we will not infer that she is capable of caring for Braden

merely because authorities have not taken any steps to adjudicate her newborn child CINA. Upon our de novo review of the record, we find Braden could not be safely returned to Crystal's care at the time of the termination hearing. Accordingly, we find there is clear and convincing evidence to support termination of her parental rights under Iowa Code section 232.116(1)(h).

Reasonable Efforts. Crystal also argues the State failed to provide her with reasonable services intended to facilitate reunification with Braden. "While the State has the obligation to provide reasonable reunification services, the [parent] ha[s] the 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). We find this claim meritless because, in her appellate brief, Crystal does not point to any unfulfilled requests for services and does not specify what additional services would have facilitated reunification.

Best Interests. Lastly, Crystal claims termination is not in Braden's best interests because he has a strong bond with his natural mother. A strong bond between parent and child is a special circumstance that militates against termination. Iowa Code § 232.116(3)(c). However, this is not an overriding consideration, but merely a factor to consider. *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App.1998).

While we realize it may be difficult for Braden to sever whatever emotional bond[2] he may have with his mother, it is also obvious that, based on Crystal's prior behaviors, there is a strong possibility she will never be able to provide for

[2] One service provider expressed doubt as to whether Braden even recognizes Crystal and Randy as his parents.

his basic needs. *See J.E.*, 723 N.W.2d at 798 (noting a parent's past performance is likely indicative of the quality of care the parent will provide in the future). The statutory period set forth in section 232.116(1)(h) directs that six months is the point where the rights and needs of the child surpass the needs of the parent. This threshold was passed long ago, as Braden has been out of Crystal's care for nearly fifteen months. As a result, Braden has spent more than half his life growing up with one particular foster family. This foster family provides him with constant love and support and is willing to adopt him so he can be a permanent part of their family. We find that the bond between Crystal and her two-year-old son is not enough to forestall termination. *See In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) ("The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems."); *N.F.*, 579 N.W.2d at 341("We have repeatedly followed the principle that the statutory time line must be followed and children should not be forced to wait for their parent to grow up."). Braden needs permanency now. *See J.E.*, 723 N.W.2d at 801 (Cady, J., concurring specially) ("A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests.").

We affirm the district court's order terminating Crystal's parental rights.

AFFIRMED.