IN THE COURT OF APPEALS OF IOWA

No. 8-641 / 08-0906
Filed August 27, 2008

IN THE INTEREST OF H.L.,
Minor Child,

M.S.H., Mother,
Appellant,

D.L., Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Joe E. Smith, District Associate Judge.

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

Robert Luedeman, Windsor Heights, for appellant-mother.

Jeffery Wright of Carr & Wright, P.C., Des Moines, for appellant-father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Michelle Chenoweth, Assistant County Attorney, for appellee.

Kimberly Ayotte of Youth Law Center, Des Moines, guardian ad litem for minor child.

Considered by Sackett, C.J., and Miller and Potterfield, JJ.

MILLER, J.

Melissa is the mother of two-year-old Hailey. She appeals from a May 2008 order terminating her parental rights to Hailey.[1] We affirm.

In April 2007, members of a drug task force executed a search warrant at a home where Melissa and Hailey were spending the night. A large quantity of drugs was found in the home. Methamphetamine was also found in Melissa's purse. Melissa admitted to using methamphetamine with the owner of the home. She also admitted that she was involved in the distribution of methamphetamine.

Hailey was removed from her mother's care and placed in the temporary legal custody of her maternal grandfather under the supervision of the Iowa Department of Human Services (DHS). She has thereafter remained in her maternal grandfather's custody and care. She was adjudicated a child in need of assistance (CINA) in May 2007 pursuant to Iowa Code sections 232.2(6)(c)(2) and (n) (2007).

Following Hailey's removal, the juvenile court ordered Melissa to provide drug screens and complete a substance abuse evaluation. She did not provide a drug screen until June 20, 2007, which tested positive for methamphetamine. She admitted to the DHS caseworker that she was actively abusing methamphetamine and Valium at that time. Her substance abuse evaluation, which she did not complete until mid-July 2007, recommended intensive residential treatment due to the "high risk" that she would "continue engaging in problematic use." Melissa missed scheduled appointments with various service

[1] The order also terminated the parental rights of Hailey's putative father, Damon. His appeal was dismissed by order of our supreme court.

providers throughout May, June, and July 2007. She had only four or five visits with Hailey between April and July 2007 despite the liberal visitation that was offered to her.

In July 2007, Melissa was arrested and charged with various drug-related offenses, including possession of methamphetamine with intent to deliver and failure to possess a drug tax stamp, stemming from the April 2007 drug task force raid. She pled guilty to those offenses and remained incarcerated until the end of February 2008. While she was incarcerated, she participated in an in-jail substance abuse treatment program. Upon her successful completion of the in-jail portion of the treatment program in February 2008, Melissa was sentenced to fifteen years in prison. Her sentence was suspended, and she was placed on probation for two years. As a condition of her probation, the district court ordered her to reside at a transitional housing facility and comply with the aftercare requirements of the in-jail treatment program.

After she was released from jail, Melissa resumed supervised visits with Hailey. She consistently visited with Hailey once every week throughout March and April 2008 and appropriately interacted with her during those visits. Melissa also obtained full-time employment, participated in substance abuse aftercare, provided negative drug screens, and attended parenting classes and counseling sessions.

The State filed a petition to terminate parental rights in March 2008. Prior to the hearing on the petition, Melissa filed a motion seeking to suspend the termination proceedings for six months, arguing that pursuant to Iowa Code

section 232.116(3)(a) the juvenile court need not terminate her rights. She also filed a motion in limine, which sought, in part, to prohibit the State from introducing "evidence relating to [her] purported amorous relations with" an individual whom the State alleged had a "long history o[f] criminal and drug related issues."

At the termination hearing in April 2008, the juvenile court denied Melissa's motion in limine and allowed the State to present evidence regarding her alleged relationship. Following the hearing, the juvenile court entered an order denying Melissa's request for an additional six months and terminating her parental rights pursuant to Iowa Code sections 232.116(1)(d) and (*l*). Melissa appeals.

> 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).

Melissa initially claims the juvenile court erred in finding there was clear and convincing evidence to support termination of her parental rights under section 232.116(1)(d) because she was not able to utilize the services offered by the State while she was incarcerated.[2] Her claim implicates only the second element of that section, which requires a finding that she was "offered or received

[2] Because we conclude termination of Melissa's parental rights was proper under section 232.116(1)(d), we need not and do not address her claim regarding section 232.116(1)(*l*). *See S.R.*, 600 N.W.2d at 64 ("When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm.").

services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services." Iowa Code § 232.116(1)(d)(2).

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). Challenges to services should be made when the case plan is entered. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). 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*. Melissa makes no showing that she demanded other, different, or additional services prior to the termination hearing.

Even if we were to assume, arguendo, that Melissa preserved error on this issue, we would find her claim to be meritless. "The services required to be supplied an incarcerated parent, as with any other parent, are only those that are reasonable under the circumstances." *In re S.J.*, 620 N.W.2d 522, 525 (Iowa Ct. App. 2000). Although Melissa argues on appeal that DHS "does not as a matter of policy permit visits with parents who are incarcerated," she in fact requested that Hailey not visit her at jail because she did not "want Hailey to see her th[at] way." She does not identify any other services that should have been provided to her by DHS during her incarceration. Moreover, any services DHS could have provided to Melissa while she was in jail were extremely limited due to her own actions that produced the situation. *See In re J.L.W.*, 523 N.W.2d 622, 624 (Iowa

Ct. App. 1994) ("An incarcerated parent must take full responsibility for the conduct which has resulted in his confinement."). Melissa cannot fault DHS for being unable to provide her with "meaningful" services when her own actions prevented her from taking advantage of those services. *In re M.T.*, 613 N.W.2d 690, 692 (Iowa Ct. App. 2000).

In addition, we observe that the State did offer Melissa numerous services throughout these proceedings, including an evaluation for Hailey at a child protection center, a child protective assessment, relative placement, protective daycare, supervised visitation, in-home family centered services, drug screens, a substance abuse evaluation, and substance abuse treatment. Unfortunately, Melissa chose to not to take full advantage of these services before her incarceration in July 2007.

Melissa estimated that she visited with Hailey on only four or five occasions from April through July 2007. She did not maintain contact with DHS during that time period and often failed to keep scheduled appointments with various service providers. Melissa admitted that she continued to use drugs after Hailey was removed from her care. She provided only one drug screen in June 2007, which was positive for methamphetamine, and she did not complete a substance abuse evaluation or participate in substance abuse treatment until her incarceration. It was only after Melissa was incarcerated and faced with the prospect of an extended stay in prison that she gained the motivation to address what the juvenile court described as her "pervasive and tenacious" substance abuse issues.

Upon our de novo review, we conclude the State offered Melissa services to correct the circumstances that led to Hailey's adjudication before, during, and after her incarceration. Melissa, however, did not make it a priority to take advantage of the offered services until it was too late. Our supreme court has recognized that children "should not be forced to endlessly await the maturity of a natural parent." *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). "Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable." *Id*. With these principles in mind, we reject Melissa's next claim that the district court abused its discretion "by not suspending the proceedings for six months."

Melissa argues she should have been afforded additional time for reunification with Hailey due to her commitment after her release from jail to "sobriety and her adamantly stated wish to build a sober life for her and her daughter." While we recognize and commend the progress Melissa made in addressing her long-standing issues with substance abuse[3] in the final months of these proceedings, such efforts, as we said, simply came too late. The changes acknowledged by the service providers in the two months before the termination hearing, in light of the preceding ten months, are insufficient. *See In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981) *(*stating evidence of a parent's past performance may be indicative of the quality of the future care that parent is capable of providing). As the juvenile court stated, "It would merely delay the

[3] Melissa, who was twenty-eight years old at the time of the termination hearing, testified that she began using marijuana when she was thirteen years old, progressing to methamphetamine by the time she was sixteen years old.

inevitable to allow an additional six months. In essence, Melissa would have to do in the next six months what she has been unable to do in the past year."

A parent does not have unlimited time in which to correct her deficiencies. *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997). "At some point, the rights and needs of the child rise above the rights and needs of the parent[ ]." *J.L.W.*, 570 N.W.2d at 781. "[P]lans which extend the . . . period during which parents attempt to become adequate in parenting skills should be viewed with a sense of urgency." *In re A.C.*, 415 N.W.2d 609, 614 (Iowa 1987). "The judge considering [an extension of time] should however constantly bear in mind that, if the plan fails, all extended time must be subtracted from an already shortened life for the children in a better home." *Id.*

Hailey has been in the legal custody and care of her maternal grandfather for more than a year.[4] She is doing very well. She needs and deserves permanency, which her grandfather and his wife are committed to providing as evidenced by their stated desire to adopt her. *See In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (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

[4] Melissa also claims that the juvenile court erred in terminating her parental rights due to Hailey's placement with her maternal grandfather and the closeness of the parent-child relationship. *See* Iowa Code § 232.116(3)(a), (c). Although it appears Melissa raised section 232.116(3)(a) in her motion requesting an additional six months, the juvenile court did not address any section 232.116(3) issues in its order terminating her parental rights. "Issues must ordinarily be presented to and passed upon by the trial court before they may be raised and adjudicated on appeal." *Benavides v. J.C. Penney Life Ins. Co.*, 539 N.W.2d 352, 356 (Iowa 1995). Melissa did not file a motion to enlarge or modify the court's order. *See State Farm Mut. Auto. Ins. Co. v. Pflibsen*, 350 N.W.2d 202, 206-07 (Iowa 1984) ("It is well settled that a [rule 1.904(2)] motion is essential to preservation of error when a trial court fails to resolve an issue, claim, defense, or legal theory properly submitted to it for adjudication."). This rule has been held to apply to termination proceedings. *See In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994). Melissa thus has not preserved error on this claim, and we do not address it any further.

best interests."). In light of the foregoing, we do not believe the juvenile court abused its discretion in denying Melissa's request to suspend the termination proceedings for six months. This is especially so considering testimony at the termination hearing that Melissa's prognosis for sustained sobriety outside of a structured setting was uncertain at best.

We reject Melissa's final claim that the juvenile court abused its discretion in allowing the State to present evidence regarding her "purported romantic relationship" with a "person of criminal inclinations." Without addressing whether the juvenile court abused its discretion in admitting this evidence, we conclude Melissa suffered no prejudice from its admission. *See* Iowa R. Evid. 5.103 ("Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of a party is affected . . . ."); *In re C.D.*, 508 N.W.2d 97, 100 (Iowa Ct. App. 1993). Melissa emphatically denied the existence of the relationship at the termination hearing, and the juvenile court did not refer to or rely on any evidence regarding such a relationship in its order terminating her parental rights. Moreover, excluding this evidence from our own de novo review, we find there is ample other evidence supporting termination of Melissa's parental rights.

We therefore conclude, as the juvenile court did, that Melissa was offered services to correct the circumstances that led to Hailey's adjudication. Those circumstances, however, continued to exist despite the offer of such services. The juvenile court did not abuse its discretion in denying her request to suspend

the termination proceedings for six months. We further conclude, as the juvenile court did, that termination of Melissa's parental rights is in Hailey's best interests.

AFFIRMED.