IN THE COURT OF APPEALS OF IOWA

No. 8-736 / 08-1117
Filed September 17, 2008

IN THE INTEREST OF R.T., Minor Child,

S.L.T., Mother,
Appellant,

J.D.D., Father,
Appellant.

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

A mother appeals the juvenile court decision terminating her parental rights to one child. **AFFIRMED.**

Tod J. Beavers of Tod J. Beavers, P.C., Des Moines, for appellant-mother.

Jeffrey Wright, 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.

Steve Clarke of Juvenile Public Defender, Des Moines, guardian ad litem for minor child.

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

SACKETT, C.J.

A mother has filed a petition on appeal challenging the juvenile court's decision terminating her parental rights to her daughter born in October of 2007. She contends reasonable efforts were not made to reunify her with her daughter and the grounds for termination were not proved by clear and convincing evidence. The father also filed a petition on appeal that was dismissed by a three judge panel of the Iowa Supreme Court as untimely. We affirm.

I. SCOPE OF REVIEW AND AUTHORITIES.

Our review is de novo. Iowa R. App. P. 6.4. We give weight to the district court's findings, especially concerning credibility, but are not bound by them. Iowa R. App. P. 6.14(6)(*g*).

The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978); *Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35 (1972). The State has the right to terminate the legal relationship between a parent and a child, but the Constitution limits its power to do so. *Quilloin*, 434 U.S. at 255, 98 S. Ct. at 554, 54 L. Ed. 2d at 519; *see Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S. Ct. 625, 626, 67 L. Ed. 1042, 1045 (1923); *In re T.R.*, 460 N.W.2d 873, 875 (Iowa Ct. App. 1990). The State has the burden of proving the grounds for termination by clear and convincing evidence. Iowa Code § 232.96(2) (2007); *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997). "The issue of whether or not to legally sever the biological ties between parent and child is an issue of grave importance with serious repercussions to the child as well as the biological parents." *Id.* The goals of child-in-need-of-assistance

proceedings are to improve parenting skills and to maintain the parent-child relationship. *Id.* An underlying issue in a termination action is whether the parent is beyond help, but a parent does not have an unlimited amount of time in which to correct his or her deficiencies. *Id*.; *see In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990).

II. ERROR PRESERVATION.

The State contends that error was not preserved, for the mother did not raise her reasonable efforts argument prior to the termination hearing and she only makes a blanket statement that the statutory elements for termination were not proved. Assuming without deciding that the error was preserved, we address the mother's challenges.

III. BACKGROUND.

At the time of the child's birth in October of 2007, the mother had been incarcerated in the Polk County jail as a result of a probation violation for providing positive drug screens. She was returned to jail following the child's birth. The child was found to be in need of assistance on December 13, 2007.[1] During her time in jail the mother received substance abuse treatment. On her release from jail she went to the House of Mercy for inpatient substance abuse treatment. She quickly advised that she did not want to be at the House of Mercy, but did stay with the program for what appears to be less than a month. She was less than truthful with the staff at the facility and she ultimately left.

[1] On October 31, 2007, in reference to an inquiry regarding Native American heritage, the following note was made, "mother reports Cherokee." An earlier reference indicated the mother had reported no Native American heritage in the proceedings involving her two older children. It does not appear that an issue under the federal or Iowa Indian Child Welfare acts was litigated.

While she indicated that she would be willing to attend outpatient substance abuse treatment there, she left before services could be set up. She had a second chance to return to the House of Mercy, but she was not able to comply with their expectations and did not appear at a scheduled appointment.

Two older children had been removed from her care earlier and at the time of this child's birth a decision in the State's case to terminate parental rights to these two children was pending. By the time of this termination hearing the juvenile court had terminated the mother's parental rights to these children.[2]

It appears that initially the mother had visits with the child. But ultimately the Department of Human Services was not able to contact her to arrange for further services and visits.

The mother did not appear at trial. Her attorney stipulated to the admission of certain files and exhibits and asked that she be given an additional six months to prepare for the return of her daughter. The father appeared at the hearing and testified that he was ready and able to assume his daughter's care. He and the mother were not married and he provided little information concerning her. It was suggested that she did not appear because there were outstanding warrants for her arrest on probation violations.

IV. REASONABLE EFFORTS.

Reasonable efforts were clearly made to preserve the family relationship. The mother's problem was substance abuse. She was provided help for the problem while incarcerated and she was given the opportunity to have both

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[2] The father here was not the father of those children.

inpatient and outpatient treatment at the House of Mercy, a substance abuse program for women. She rejected the opportunity at the House of Mercy. There is no evidence she requested other services.

V. CLEAR AND CONVINCING EVIDENCE SUPPORTING TERMINATION.

The mother contends there is not clear and convincing evidence to support termination. The State contends there is clear and convincing evidence to terminate under Iowa Code sections 232.116(1)(d), (g), and (h) (2007).[3] We

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[3] Iowa Code sections 232.116(1)(d), (g), and (h) provide as follows:

> 1. Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds:
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> . . . .
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> d. The court finds that both of the following have occurred:
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> (1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.
>
> (2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.
>
> . . . .
>
> g. The court finds that all of the following have occurred:
>
> (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
>
> (2) The court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family.
>
> (3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.
>
> (4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.
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> . . . .
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> h. The court finds that all of the following have occurred:
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> (1) The child is three years of age or younger.
>
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
>
> (3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

agree. It is undisputed that the child had been found to be in need of assistance, was continuously out of her parent's care for over seven month at the time of the termination hearing, and that the mother had her parental rights to two other children terminated. Furthermore, there is clear and convincing evidence the mother would not be responsive to further services or rehabilitation and that at the time of the termination hearing the child could not be returned to her mother's care. We affirm the termination of the mother's parental rights on all three statutory grounds.

AFFIRMED.

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(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.