

IN THE COURT OF APPEALS OF IOWA

No. 8-739 / 08-1168
Filed September 17, 2008

**IN THE INTEREST OF C.W., a/k/a C.K.,
Minor Child,**

**T.L.R.K., Mother,
Appellant.**

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Emilie Roth-Richardson of Roth Law Office, P.C., Dubuque, for appellant mother.

William Lansing, Dubuque, for father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Ralph Potter, County Attorney, and Jean Becker, Assistant County Attorney, for appellee State.

Mary Kelley, for minor child.

Considered by Mahan, P.J., and Vaitheswaran and Doyle, JJ.

MAHAN, P.J.

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

I. Background Facts and Proceedings.

Caden, age eight months at the time of termination, is the son of Terra and Michael.¹ Caden was initially removed from his parents' care and custody in October 2007, when he tested positive for cocaine at his birth. Terra also tested positive for cocaine, and the parties stipulated to Caden's removal and relative placement with Michael's parents. Terra and Michael completed substance abuse evaluations and began attending individual and group counseling sessions.

Caden was adjudicated a child in need of assistance (CINA) in December 2007. In February 2007 the Iowa Department of Human Services (DHS) determined the parents' progress and cooperation with services was sufficient to warrant a trial placement of Caden in their home. Conditions at the home deteriorated quickly, and the parents were unsuccessfully discharged from the Substance Abuse Services Center in Dubuque. In March 2008 Caden was again removed from his parents' care for his own safety, and upon his removal, Caden tested positive for exposure and ingestion of cocaine. Caden resumed placement with his paternal grandparents under the supervision of the DHS.²

The termination hearing was held in late June 2008. At that time, Terra was incarcerated in the Dubuque County Jail on forgery charges and had

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

² The paternal grandparents made it clear to DHS, however, that they were not willing to be considered as a long-term or adoptive placement for Caden.

pending charges in Illinois for possession of crack cocaine and drug paraphernalia. She had been arrested multiple times in Iowa and Illinois, and had tested positive for drugs on several occasions since Caden's birth. The juvenile court found clear and convincing evidence supporting termination of the parents' 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 July 8, 2008, Terra and Michael's parental rights were terminated. Terra appeals.

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. Time Extension.

Terra argues the juvenile court erred in refusing to grant a ninety-day extension of time allowing her to better herself so she could be in a position to resume full custody of Caden. We disagree.

The juvenile court determined that it is too late for reunification. While the record clearly shows that Terra loves Caden and that she initially made some improvements, our primary concern is the child's best interests. In the less than one year since Caden's birth, Terra has tested positive for drugs on several occasions and has been arrested multiple times. She has been without

employment since Caden's birth. At the time of the termination hearing, Terra was incarcerated in Iowa on forgery charges and had felony charges pending in Illinois. At that time, the juvenile court determined that "the parents were in the same, if not worse, position as when Caden was first removed."

We are unable to find that the child could likely be returned to Terra's home within ninety days without further adjudicatory harm. Terra has been unable to adequately care for Caden since his birth. He needs and deserves stability and consistency, which he cannot find with Terra, and it is unlikely he will be able to find it with her ninety days from now. It is not in Caden's best interests to have the termination hearing extended any longer. The district court did not err in refusing to grant Terra ninety more days.

B. Reunification Services.

Terra also 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). Specifically, Terra contends DHS failed to provide inpatient substance abuse treatment. Terra fails to indicate, however, that she requested or otherwise challenged the adequacy of services prior to the termination hearing. In the termination of parental rights order, the juvenile court stated in part:

Terra indicated that she should have been provided with inpatient substance abuse treatment. The evidence at the time of the termination hearing indicates Terra did nothing more than to make a general inquiry about inpatient and she was instructed to follow

through with her substance abuse counselor, who could make an inpatient referral if deemed necessary. Terra did not follow through with substance abuse treatment and therefore, no inpatient referral was made. The Court also believes the parents were properly notified that it was their responsibility to identify any deficiency in services or to request additional services and that a failure to do so would preclude them from challenging the sufficiency of the services in a termination of parental rights proceeding. The Court believes the services offered to the parents were sufficient to address their presenting needs and they failed to follow through or cooperate.

We agree and conclude this issue has been waived. We do not address it on appeal.

AFFIRMED.