

IN THE COURT OF APPEALS OF IOWA

No. 8-744 / 08-1217
Filed September 17, 2008

**IN THE INTEREST OF I.F. and R.F.,
Minor Children,**

**N.R.F., Mother,
Appellant.**

Appeal from the Iowa District Court for Webster County, James A. McGlynn, Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Christopher O'Brien of O'Brien Law Office, Fort Dodge, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Timothy Schott, County Attorney, and Sarah Livingston Smith and Jennifer Bonzer, Assistant County Attorneys, for appellee State.

Gregory Stoebe of Stoebe Law Office, Humboldt, for minor children.

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

MAHAN, P.J.

Nickie appeals the district court's order terminating her parental rights to her three-year-old daughter, Raeanna, and her two-year-old son, Isaiah. We affirm.

I. Background Facts and Proceedings.

Raenna is the daughter of Nickie and Derek, and Isaiah is the son of Nickie and Edker.¹ Nickie was never married to either of the fathers. Raenna and Isaiah were initially removed from Nickie's care in August 2006, after results of a child protective investigation showed that the children tested positive for cocaine. Nickie denied use of drugs. Raenna and Isaiah were adjudicated children in need of assistance (CINA) in February 2007. The children were placed in a foster home under the supervision of the Iowa Department of Human Services (DHS).² Nickie has maintained visitation with the children; however, the visits have never been unsupervised or expanded in length.

Nickie has a longstanding history of substance abuse. Nickie also has chronic mental health issues and admits she is bipolar. Although Nickie has acknowledged her substance abuse problem to an extent, she has denied, concealed, and minimized use on many occasions.³ She claims her substance abuse problems stem from her mental health issues. Nickie has been provided substantial services to address her substance abuse and mental health issues.

¹ The parental rights of Derek and Edker were also terminated, but they do not appeal.

² The children have remained in the same foster home since their initial removal.

³ As the court noted, Nickie has denied responsibility for the high drug levels in the children's bodies, and has asserted that she tested positive for drugs as a result of having oral sex with someone who had used drugs. Nickie did not admit to drug use during her first substance abuse evaluation.

She participated in outpatient treatment through Mom's Off Meth, NA/AA, and group sessions. She successfully completed residential substance abuse treatment at Community and Family Resources. She was offered services at Jackson Recovery, but was not interested because it would require her to leave Fort Dodge. Despite these services, Nickie has been unable to maintain sobriety for more than a month at a time.

The termination hearing was held in March, April, and May 2008. The juvenile court found clear and convincing evidence supporting termination of Nickie's 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) and section 232.116(1)(l) (child adjudicated CINA and custody has been transferred from parents for placement pursuant to section 232.102; parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts; and child will not be able to be returned to parents within a reasonable time). By order dated July 8, 2008, Nickie's parental rights were terminated. Nickie 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. Merits.

Nickie 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, Nickie contends DHS failed to provide adequate information regarding her options for inpatient drug abuse treatment. Nickie 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:

[T]he mother requested that the Court give her more time to gain reunification. The mother proposes that she participate in the House of Mercy program and that the children be placed with her at that facility. A program such as the House of Mercy Program would allow the mother to work on all of her issues while having the children with her. In fact, a similar program, Jackson Recovery, was suggested some time ago, but the mother was not interested in such a program at that time because it would have required that she leave Fort Dodge. Instead, the mother went to Community and Family Resources. Now at the termination hearing, the mother has made the last ditch proposal to participate in the House of Mercy Program. The proposal may actually have been made in response to questions asked by the Court at the hearing. The Court finds that the mother's proposal is too little and too late. A parent's challenge to services by the State must be made when the services are offered, not when termination of parental rights is sought after services have failed to remedy a parent's deficiencies.

We agree and conclude this issue has been waived. Even if we were to address it on appeal, we find additional services would have most likely been unsuccessful. As the juvenile court noted:

[T]he mother's history shows that long-term success is unlikely. It was noted in the permanency order that the mother provided a positive drug screen for methamphetamine on August 23, 2007; that she entered residential substance abuse treatment at Community and Family Resources on August 28, 2007; that she completed the treatment on September 17, 2007; that she was participating in intensive outpatient treatment, although she had missed a few of the outpatient sessions; that the mother was complying with recommended mental health treatment; and that the mother was participating with in-home services. Amazingly, subsequent records show on the very same day as the permanency hearing, the mother was charged with Third Degree Theft for allegedly participating in the shoplifting of merchandise. Law enforcement was concerned that the mother was high when she was arrested. A UA taken at the jail was positive for cocaine, methamphetamine, and marijuana. Using the past to predict the future, it appears unlikely that the House of Mercy Program would have any better or more permanent results than the CFR Program.

We agree that additional services would not have made it possible for Nickie to responsibly parent Raeanna and Isaiah. Nickie has been unable to maintain sobriety for more than a month at a time.⁴ The juvenile court did not err in terminating Nickie's parental rights and we affirm.

AFFIRMED.

⁴ Prior to the termination hearing, Nickie had been wearing drug patches. Although eighteen of the patches were negative, forty were positive for drugs, and she failed several urine analysis tests. Even after the termination hearing commenced, Nickie tested positive for drugs on several different dates. Specifically, between the second and third day of the hearing, Nickie could have provided a total of four drug patches. However, she only submitted to one patch, and it was returned tampered.