

IN THE COURT OF APPEALS OF IOWA

No. 9-364 / 09-0211
Filed June 17, 2009

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

**T.M.R., n/k/a T.M.E., Mother,
Appellant.**

Appeal from the Iowa District Court for Linn County, Barbara Liesveld,
District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Ellen R. Ramsey-Kacena, Cedar Rapids, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Harold Denton, County Attorney, and Lance Hereen, Assistant
County Attorney, for appellee State.

Sharon Hallstoos, Cedar Rapids, for minor child.

Considered by Mahan, P.J., and Eisenhauer and Mansfield, JJ.

MANSFIELD, J.

Tiffany appeals from the juvenile court's order terminating her parental rights to T.R. (born 2004) pursuant to Iowa Code section 232.116(1)(h) (2007).¹ On appeal, she asserts that T.R. could have been returned to her care and termination was not in T.R.'s best interests. We affirm.

In March 2007, the Iowa Department of Human Services (DHS) became involved with Tiffany and her two children after Tiffany left them with a friend so she could go to Tama to gamble. When Tiffany failed to return as promised, the friend called the police. The older of the two children child was sent to live with his father. T.R., the younger child, was adjudicated to be a child in need of assistance pursuant to Iowa Code sections 232.2(6)(c)(2) and 232.2(6)(g) and placed with her maternal grandmother.

In October 2007, a trial home placement began. Tiffany repeatedly failed to send T.R. to daycare. During this time, Tiffany also gave birth to a third child. In January 2008, despite being warned not to leave T.R. with a caretaker who was not approved by DHS workers, Tiffany left T.R. in the care of a friend who sexually abused T.R. Tiffany immediately reported the incident and has expressed deep regret that it occurred. The trial home placement ended, and T.R. was again placed with Tiffany's mother. T.R.'s younger sibling was also placed with the maternal grandmother.

On May 13, 2008, the State petitioned to terminate Tiffany's parental rights to T.R. On June 2, 2008, a hearing was held, during which Tiffany

¹ The juvenile court also terminated the parental rights of T.R.'s putative fathers, which are not at issue in this appeal.

reported that she was pregnant with her fourth child and not receiving prenatal care. A termination hearing was scheduled for August 21 and 26, 2008, but was rescheduled due to Tiffany's hospitalization for October 7 and 9, 2008. On October 7, the hearing commenced, but the second day of hearing was continued due to Tiffany's attorney being ill. Shortly thereafter, T.R. turned four years old² and Tiffany also gave birth to her fourth child. On November 25, 2008, the hearing was completed.

By the time of the termination hearing, T.R. had spent approximately eighty percent of her lifetime in the care of her maternal grandmother. Tiffany received semi-supervised visits, which included parenting instruction. Tiffany had addressed some concerns raised in the past by DHS. She and her husband were living in an apartment that was clean and suitable for T.R. Tiffany also appeared to have overcome her past issues with respect to use of illegal drugs.

However, some other concerns remained. Tiffany suffers from depression and has difficulty handling stress. The records suggest that Tiffany has made repeated unnecessary visits to the hospital emergency room. The records also indicate a heavy demand for and usage of prescription painkillers. Although Tiffany had the opportunity to visit T.R. at her mother's home (T.R.'s maternal grandmother), she exercised that opportunity relatively rarely.

² The State pled Iowa Code section 232.116(1)(h), which contains the same substantive requirements as subsection (f), but applies to children "three years of age or younger." At the time the termination hearing began, T.R. was three years old, but she turned four before the hearing was concluded. Tiffany argues on appeal that the juvenile court could no longer apply section 232.116(1)(h) once T.R. turned four. However, we believe subsection (h) may apply in a case where the hearing commenced before the child turned four, especially when the hearing was continued to accommodate the mother and the mother's attorney. See *In re M.T.*, 613 N.W.2d 690, 693 (Iowa Ct. App. 2000).

The State's witnesses testified that they did not believe Tiffany would be capable of taking care of T.R., especially given her responsibilities to her newborn. In her testimony on November 25, 2008, the maternal grandmother described receiving a very recent tearful night-time call where Tiffany was in the parking lot of her apartment with her newborn, having been kicked out of the apartment by her husband. The maternal grandmother testified that she receives calls like this on a weekly basis. Meanwhile, the maternal grandmother is ready and willing to adopt T.R. Tiffany agrees that she has no concerns about her mother's care for T.R. and that this would be a suitable home for T.R. if parental rights are terminated.

We review termination of parental rights *de novo*. See *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Like the juvenile court, we find that Tiffany has made meaningful progress in overcoming challenges in her life. Nonetheless, we ultimately agree with that court that there is clear and convincing evidence that T.R. cannot be returned to Tiffany at this time. See Iowa Code § 232.116(1)(h)(4).³ The last time the T.R. went home with Tiffany, a very poor decision was made that resulted in T.R.'s being sexually abused. Tiffany appears to have ongoing and unaddressed mental health issues. She has been offered mental health counseling, but her participation has been sporadic. Her husband's conduct, including his apparent unwillingness to participate in anger management sessions, also raises concerns.

³ Tiffany does not dispute that T.R. has been adjudicated a child in need of assistance and has been removed from the home for the last six consecutive months. Iowa Code §§ 232.116(1)(h)(2) & (3). As noted above, we also believe that section 232.116(1)(h)(1) has been met because T.R. did not turn four until after the commencement of the termination hearing.

Tiffany makes a further argument that the State did not make reasonable efforts to reunify her with T.R. She particularly finds fault with the parenting services she was offered outside of visitation. The record shows that Tiffany did receive parenting services through Young Parents Network in 2007, but these were ultimately discontinued because Tiffany's husband was dissatisfied with the group. Shortly before the hearing, Tiffany began to receive parenting services through Linn County Home Health. Tiffany contends that during much of 2008, she did not receive parenting skill services. Although the record is not entirely clear on why this occurred, we reemphasize that it is the State's obligation to make reasonable efforts toward reunification, including offering parenting services when needed. However, it is undisputed that at the June 2, 2008 review hearing and pretrial conference, it was noted without objection that reasonable efforts had been made including the provision of parenting services. We believe that if needed services were not being provided, Tiffany and her counsel should have raised the issue at that time. See *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999) (stating a parent who does not demand other services than those provided has not preserved the issue for appellate review); see also *In re C.H.*, 652 N.W.2d 144, 148 (Iowa 2002) (“[I]f a parent fails to request other services at the proper time, the parent waives the issue and may not later challenge it at the termination proceeding.”).

Finally, we find that termination is in T.R.'s best interests. See *J.E.*, 723 N.W.2d at 801 (Cady, J., concurring specially) (stating children's safety and their need for a permanent home are the defining elements in determining a child's best interests). As one witness testified:

Q. Is [T.R.] exhibiting signs of needing permanency?

A. Yes, she has.

Q. In what ways? A. The behaviors that she displays. She cries a lot of times when we're at visits either – and sometimes it's on the way to the visit, that she doesn't want to go. And other times it's when we're leaving the visit that she doesn't want to leave. I've talked to [T.R.] about it. [T.R.] is confused. [T.R.] doesn't know where home is. Is home with grandma or is home with mom? [T.R.] doesn't understand and doesn't want to have to choose if she wants to be with grandma or with mom, because she loves them both but she needs a permanent environment and stability in her life. She needs to be able to call it home and feel comfortable going home every day.

For the foregoing reasons, we affirm the decision of the juvenile court.

AFFIRMED.