

IN THE COURT OF APPEALS OF IOWA

No. 9-510 / 09-0623
Filed July 22, 2009

**IN THE INTEREST OF C.A.W.,
Minor Child,**

**D.M.W., 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.

Annette Martin, Cedar Rapids, for appellant mother.

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

Dawn Wilson, Cedar Rapids, for minor child.

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

MAHAN, P.J.

Daphnne appeals the juvenile court's order terminating her parental rights to her eleven-year-old son, C.A.W. We affirm.

I. Background Facts and Proceedings.

C.A.W. is the son of Daphnne and Richard.¹ This case came to the attention of the Iowa Department of Human Services (DHS) in December 2007, when C.A.W. was found living at Daphnne's home. At that time, Daphnne had two other children in family foster care, due to ongoing concerns about substance abuse, a history of exposing the children to inappropriate persons, and drug and criminal activity.² Her parental rights to those children were terminated on February 14, 2008.

C.A.W. had been living with relatives in Chicago for two or three years prior to coming to Iowa in late October or early November 2007. Daphnne did not enroll C.A.W. in school to avoid detection by DHS. When DHS discovered C.A.W. at Daphnne's home, Daphnne assured DHS that he would be returning to Chicago. Thereafter, DHS was led to believe that C.A.W. was no longer at Daphnne's home. The record suggests, however, that Daphnne lied in order to prevent the removal of C.A.W.

¹ Although there was never any paternity testing to confirm it, Richard is the putative father of C.A.W. His parental rights were also terminated, but he does not appeal.

² DHS first became involved with this family in 2004, when Daphnne gave birth to a premature son who died after twelve hours. Daphnne tested positive for cocaine and hair stat tests conducted on two other children (C.A.W.'s half-siblings) tested positive for cocaine. The children were removed and placed in family foster care. Daphnne regained custody of the children in February 2006. The children were removed again in September 2006, however, when Daphnne tested positive for cocaine and hair stat tests conducted on the children also tested positive for cocaine. Daphnne continued to fail to comply with case permanency plan expectations, including drug testing and substance abuse treatment. C.A.W. lived with relatives in Chicago throughout this time.

On February 8, 2008, DHS spotted C.A.W. at Daphnne's home. C.A.W. was removed from Daphnne's home and placed in family foster care. At the time of his removal, C.A.W. was under the supervision of Daphnne's significant other, Michael Harrell, the father of her then unborn child.³ On March 7, 2008, C.A.W. was adjudicated a child in need of assistance (CINA) and placement was continued in family foster care, where he has remained since that time.

Daphnne was granted supervised visits with C.A.W. In April 2008, however, Daphnne moved to Chicago. Reasonable efforts were waived following a hearing on April 29, 2008. By that time, Daphnne had been offered years of services to reduce or eliminate the adjudicatory harms present in the home, including family safety, risk and permanency services, supervised visitation and services, substance abuse treatment, drug testing, mental health evaluation, foster family care, transportation assistance, budgeting, individual counseling, family counseling, sibling contact, and remedial services. Daphnne consistently failed to comply with case permanency plan expectations. At the time of termination, she had met with her provider for only about fifty percent of her weekly parenting instruction services, and had attended only about sixty percent of the supervised visitations. From the onset of the instant case through February 2008, she had only complied with drug testing on two occasions.

It appears Daphnne moved back to Iowa in May 2008. She provided a cell phone number to DHS, but attempts to reach her were unsuccessful, and she made no attempts to contact DHS to initiate visits with C.A.W. The record

³ Michael has had his parental rights terminated previously and has a substantial criminal history, including domestic violence. Michael has assaulted Daphnne and has also hit C.A.W.

suggests she was hiding from DHS to avoid removal of her fourth child. In June 2008, Daphne gave birth to a son. He tested positive for cocaine and was voluntarily placed in family foster care.

Daphne resumed supervised visits with C.A.W. in July 2008. Daphne began out-patient substance abuse treatment in August 2008 and upon completion, moved to the halfway program in September 2008. Visits moved to semi-supervised in October 2008. Daphne thereafter left the treatment program because she wanted to move out and live with a friend; however, she returned to the program in December 2008. At the time of termination, Daphne claimed she had been sober for four months, the longest she has ever been sober.

In August 2008, the State filed a termination petition. After a contested hearing, the court terminated Daphne's parental rights on April 6, 2009, pursuant to Iowa Code sections 232.116(1)(f), (g), and (h) (2007). Daphne now 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. Reasonable Efforts.

Daphne essentially argues the State failed to make reasonable efforts to eliminate the need for continued removal and to return C.A.W. to her care. Most

of Daphnne's complaints arise from DHS's failure to grant additional visitation. She claims the normal process for visitation did not occur in this case.

Reasonable efforts were waived in this case in April 2008. Although DHS was not required to provide services to Daphnne, DHS *did* provide both visitation and drug screens after that time. Visitation with C.A.W. began in March 2008. Daphnne only had three visits with C.A.W. before she moved to Chicago in April 2008. Daphnne did not attempt to initiate visits with C.A.W. upon her return to Iowa in May 2008. DHS's attempts to reach Daphnne on the cell phone number she provided were unsuccessful. Eventually, on July 24, 2008, supervised visits resumed twice per month. At that time, Daphnne visited with both C.A.W. and her newborn baby that had been removed upon his birth earlier that summer. The DHS provider noted that most of Daphnne's time and attention was toward the baby during the visits and did not note a strong bond between C.A.W. and Daphnne. Daphnne eventually began semi-supervised visits with the children in October 2008, but visits did not progress to unsupervised or overnight.

Daphnne contends DHS should have allowed her visitations to progress beyond semi-supervised, due to the improvements she had made in her life. Upon our review, however, we find Daphnne's short period of sobriety prior to termination is too little, too late. Although we commend Daphnne's recent efforts to deal with her substance abuse issues, we cannot say DHS's decision to restrict visitation with C.A.W. was unreasonable. Daphnne has demonstrated years of substance abuse, instability, and failure to comply with services provided to her. For those reasons, reasonable efforts were waived in this case over a year ago. We affirm as to this issue.

B. Clear and Convincing Evidence.

Daphnne argues the court erred in finding C.A.W. cannot be immediately returned to her care. She contends the State failed to prove by clear and convincing evidence that C.A.W. would suffer further adjudicatory harm if returned to her care. See Iowa Code §§ 232.116(1)(f), (g), and (l).

Daphnne has been involved with DHS since 2004, and in the instant case since December 2007. Throughout that time, Daphnne's longest period of sobriety has been four months. In February 2008, she had her parental rights terminated to two other children due to the same issues that exist in this case. In June 2008, she gave birth to another child who tested positive for cocaine and has been removed from her care.

Daphnne has not had any unsupervised visits with C.A.W. In the midst of these proceedings, Daphnne moved to Chicago and suspended any visitation with C.A.W. for months. DHS's attempts to contact her during that time were unsuccessful. There is evidence Daphnne has lied to DHS in an effort to avoid removal of her children. For example, she did not enroll C.A.W. in school to avoid detection by DHS. Daphnne also moved to Illinois to have her baby in order to avoid DHS involvement.

There continue to be major concerns about Daphnne's history of alcohol and drug abuse, accountability, relapse, treatment failures, and lack of responsibility for the harms she places on the children. Daphnne also has a troubling history of domestic violence and exposing her children to inappropriate persons, drugs, and criminal activity. C.A.W. has lived with relatives for most of his life and in family foster care since March 2008.

Daphnne has not consistently and sufficiently accessed services offered to her, nor has she demonstrated significant improvement over many years of services. Past performance of a parent may be indicative of the quality of future care the parent is capable of providing. *In re C.W.*, 554 N.W.2d 279, 283 (Iowa Ct. App. 1996). We are convinced that C.A.W.'s interests are best served by terminating Daphnne's parental rights and continuing C.A.W.'s placement in a safe and stable home. The record clearly supports Daphnne's inability to provide a safe environment for C.A.W., and returning C.A.W. to her home is not an option. We find clear and convincing evidence supports termination of Daphnne's parental rights under sections 232.116(1)(f), (g), and (j).

AFFIRMED.