

IN THE COURT OF APPEALS OF IOWA

No. 9-576 / 09-0941
Filed August 19, 2009

**IN THE INTEREST OF D.W.,
Minor Child,**

**P.L.P., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Karla Fultz, Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights to her child. **AFFIRMED.**

Victoria L. Meade, West Des Moines, for appellant

Barbara Davis, West Des Moines, for intervenor.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Faye Jenkins, Assistant County Attorney, for appellee.

Alexandra Nelissen of Nelissen & Juckette, P.C., Des Moines, for father.

Nicole Garbis Nolan, Des Moines, attorney and guardian ad litem for minor child.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

SACKETT, C.J.

A mother¹ appeals from the order terminating her parental rights to her child. She contends termination is not in the child's best interests and reasonable efforts were not made to reunify her with her child. We affirm.

BACKGROUND. The child, born in 2004, first came to the attention of the Iowa Department of Human Services in 2005 because the mother was actively using methamphetamine. After the child was removed and found to be in need of assistance, the child was placed with the maternal grandmother. A year later, after the mother had successfully completed substance abuse treatment and "appeared to be in solid recovery," the child was returned to the mother's care and the case was closed.

The child was removed a second time in March of 2008 because the mother was again actively using methamphetamine and allegedly was selling methamphetamine from their home. The mother admitted she had relapsed around October of 2007, was using methamphetamine five or six times a week, and was selling methamphetamine. The child again was placed with the maternal grandmother, where the child remained throughout this case.

In May, the guardian ad litem filed a motion to waive reasonable efforts. The court considered the motion at the dispositional hearing in June, but continued the issue because the department noted the mother was participating in services and treatment and the department requested that she be given an additional three months to demonstrate continued stability.

¹ The father's parental rights were not terminated and are not at issue in this appeal.

At the August review hearing, the mother was arrested and charged with multiple felony drug charges. She later pled guilty to two counts of delivery of methamphetamine and one count of possession with intent to deliver. The court sentenced her to three consecutive terms of up to ten years each. She began serving her sentence at the women's facility in Mitchellville.

In November the court heard evidence on the motion to waive reasonable efforts. The court denied the motion and made specific findings it would be in the child's best interests to allow more services. The father, who was incarcerated at the time, was likely to be available before the permanency hearing in March of 2009. Additional time would allow for visitation by the paternal grandmother and continued therapy for the child.

In February of 2009, the mother's request for a reconsideration of her sentence was granted, the sentence was suspended, and she was sent to a recovery facility, where she was to remain until maximum benefits were reached. Following a permanency hearing in late February, the court allowed the father an additional six months to work toward reunification. A decision was made to seek termination of the mother's parental rights, so a decision on permanency was continued until a hearing on the termination petition.

By the time of the combined permanency/termination hearing in late April and early May, the mother had completed her time at the recovery facility and was on intensive supervision of her probation. She had recently become employed. She was attending AA meetings and participating in mental health services. The child's therapist testified there was a strong bond between the

mother and the child, but that the child could not be returned to the mother's care at that time and the therapist could not project when it would be possible to reunite mother and child.

Concerning permanency, the court determined there was no reunification plan that would allow it to find that the reasons for removal would no longer exist if the mother were given an additional six months for reunification. The court determined permanency should be achieved by terminating the mother's parental rights. It found the child could not be returned to the mother's care without being subject to adjudicatory harm. It further found termination was in the child's best interest and would be less detrimental to the child than the harm caused by continuing the parent-child relationship. The court terminated the mother's parental rights under Iowa Code sections 232.116(1)(d), (e), (f), (i), and (l) (2009).

SCOPE OF REVIEW. Our review of termination-of-parental-rights proceedings is de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We review the facts and the law and adjudicate rights anew. *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999). We give weight to the juvenile court's factual findings but are not bound by them. *In re E.H., III*, 578 N.W.2d 243, 248 (Iowa 1998).

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). When the juvenile court terminates a parent's rights, we affirm if clear and convincing evidence supports the termination under the cited statutory

provision. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The State has the burden of proving the allegations by clear and convincing evidence. “Clear and convincing evidence” is evidence leaving “no serious or substantial doubt about the correctness of the conclusion drawn from it.” *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002) (quoting *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa Ct. App. 1983)).

BEST INTERESTS. The mother contends termination of her parental rights is not in the child’s best interests. She argues that she has cooperated with services, she wants what is best for the child, she has been the “sole parental figure” throughout the child’s life, and there is a strong parent-child bond.

A strong bond between parent and child is a special circumstance that militates against termination. See Iowa Code § 232.116(3)(c). However, this is not an overriding consideration, but merely a factor to consider. *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). We, like the juvenile court, have considered the parent-child bond here, and find the risk of psychological and emotional harm to the child if she were returned to her mother and then removed again far outweighs the parent-child bond. Although the mother has recently cooperated with services and appears to be maintaining her sobriety, her past record of responding to treatment, then subsequently relapsing, gives us little confidence the child could be returned to her in the near future or that she could successfully parent the child without relapsing, requiring the child’s removal again. See *id.* (noting that, in considering the impact of a drug addiction, we

must consider the treatment history of the parent to gauge the likelihood the parent will be in a position to parent the child in the foreseeable future).

We find that the bond between the mother and child is not enough to forestall termination. See *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) (“The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.”); *N.F.*, 579 N.W.2d at 341 (“We have repeatedly followed the principle that the statutory time line must be followed and children should not be forced to wait for their parent to grow up.”). “The child will continue to grow, either in bad or unsettled conditions or in the improved and permanent shelter which ideally, at least, follows the conclusion of a juvenile proceeding.” *A.C.*, 415 N.W.2d at 613. The sole, consistent parental figure in this child’s life has been the maternal grandmother, not the mother. She has provided a safe, stable, and secure environment in which the child can flourish. See *J.E.*, 723 N.W.2d at 801 (Cady, J., concurring specially) (“A child’s safety and the need for a permanent home are now the primary concerns when determining a child’s best interests.”). We agree with the finding of the juvenile court on this issue.

REASONABLE EFFORTS. The mother contends the department did not make reasonable efforts to reunify her with her child. The court found reasonable efforts were made, concluding the mother had “been offered every service available that the Department of Human Services designed to reunify her with [the child] and to assist her in maintaining stability and sobriety.” They were provided in part by the department and in part in conjunction with her release

from prison. During cross examination, the mother agreed there were no services that she had asked for that were not provided. From our review of the evidence, we agree with the juvenile court that the State made reasonable efforts to reunify this child with her mother and affirm on this issue.

AFFIRMED.