

IN THE COURT OF APPEALS OF IOWA

No. 9-616 / 09-0864
Filed August 6, 2009

**IN THE INTEREST OF K.Z.,
Minor Child,**

**D.L.C., Father,
Appellant,**

**C.L.Z., Mother,
Appellant.**

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

A mother appeals the termination of her parental rights. **AFFIRMED.**

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

Steven Drahozal, Dubuque, for appellant father.

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

Mary Kelley, Assistant Public Defender, Dubuque, for minor child.

Considered by Sackett, C.J., and Vogel and Potterfield, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

This case began in November of 2007 when C.Z. sought help from the Iowa Department of Human Services (DHS) in caring for her seven-year-old daughter, K.Z.¹ C.Z. consented to a voluntary foster placement at the time because she could not control K.Z.'s significant out-of-control behavior. K.Z. was moved to a second foster home in January of 2008. On April 22, 2008, the juvenile court entered an order adjudicating K.Z. to be a child in need of assistance. On September 13, 2008, K.Z. was moved into a foster adoptive home, where she currently resides.

C.Z. initially had unsupervised visits with K.Z., but visits between C.Z. and K.Z. were consistently chaotic and stressful for both mother and daughter. Because of this, in April of 2008, DHS allowed only fully supervised visits. In July of 2008, C.Z. asked that overnight visits stop because she could not control K.Z. for an extended period of time. She felt she could control K.Z. for only two to five hours.

A review of the record establishes that C.Z. has been inconsistent in her parenting and in her willingness to meet the substantial challenges presented by K.Z.'s behaviors. Carrie Habel, the DHS worker assigned to this case, noted, "[C.Z.] has vacillated throughout the case on her commitment level and long-term parenting of [K.Z.]" Several care providers noted that C.Z. was inconsistent with discipline, often sending K.Z. mixed messages. At the request of the juvenile

¹ C.Z.'s rights are the only rights at issue on appeal. K.Z.'s father's appeal was dismissed by the Iowa Supreme Court on July 14, 2009.

court, Lynne Lutze conducted an evaluation of C.Z.'s psychological functioning and assessed her ability to care for K.Z. Lutze found, "[C.Z.] is currently exhibiting severe challenges in her ability to function consistently and effectively as a parent in the short-term and long-term." Lutze's report noted, "[C.Z.] reported 'giving up' where [K.Z.] was concerned." Further, C.Z. was inconsistent in attending visits with K.Z., cancelling twenty out of a total of 104 for reasons DHS found to be unexcused.

C.Z. frequently invited a friend, Kristy, over during visits with K.Z. Habel reported that C.Z. was not responsive to her daughter's needs when Kristy was around. Because of this, Habel requested that C.Z. visit with Kristy when it did not impact her time with her daughter. C.Z. continued to invite Kristy over when K.Z. visited.

II. Statutory Grounds for Termination

C.Z. argues the juvenile court erred in finding clear and convincing evidence that her parental rights should be terminated. Upon our de novo review of the record, we agree with the juvenile court that the State presented clear and convincing evidence that C.Z.'s parental rights should be terminated under Iowa Code section 232.116(1)(f) (2009). See *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981) ("Appellate review of proceedings to terminate a parent-child relationship is de novo."). K.Z. is more than four years old, has been adjudicated a child in need of assistance, and has been removed from C.Z.'s physical custody for more than the last twelve consecutive months. See Iowa Code § 232.116(1)(f). Further, clear and convincing evidence establishes that K.Z. cannot be returned to C.Z. at the present time. See *id.*

C.Z. continues to be unable to manage K.Z.'s behavior. On March 1, 2009, C.Z. ended her visit with K.Z. early because K.Z. was hitting, kicking, and biting her. During this incident, C.Z. pushed K.Z. off of her body to free herself. During visits on April 1 and April 8, 2009, K.Z. again hit and kicked C.Z. Habel noted, "At one point during the visitation [C.Z.] reported that she did not think she could handle [K.Z.] long-term in her home." These outbursts do not occur at school or in her current placement.

After these recent incidents, C.Z. told Habel "that she had been really thinking and possibly 'maybe' she could not parent [K.Z.] due to her special needs." Habel noted that C.Z. "visibly cannot handle [K.Z.'s] behaviors during extended periods of visitation." When asked at the termination hearing whether K.Z. could return home and live safely with her, C.Z. responded, "I don't believe that can be answered today." "Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). C.Z. is unable to consistently and reliably parent K.Z.

K.Z.'s therapist recommended that C.Z.'s parental rights be terminated. Michelle Parsons, a care coordinator at Families First, testified that K.Z. cannot be safely returned to C.Z.'s custody because of inconsistencies and lack of structure. Habel reported, "It is very apparent that [K.Z.] would suffer further harm if she was returned to [C.Z.] at this time." We agree.

III. Mother's Request for Additional Time

C.Z. also argues the juvenile court should have granted her additional time to regain custody of her daughter. The primary concern in termination

proceedings is the best interests of the child. *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa Ct. App. 1995). We find the juvenile court's denial of C.Z.'s request for additional time to regain custody of K.Z. is in the child's best interests. In the approximately seventeen months during which DHS has offered services, C.Z. has shown little progress. Habel reported that C.Z. "appeared to lack insight as to her role in the relational difficulties" with K.Z. Multiple caregivers noted that C.Z. does not accept responsibility, but rather blames K.Z. for the problems between her and her daughter. This denial of responsibility likely explains why Habel noted in April of 2009 that "[C.Z.] appears to be at a plateau, and the providers are not seeing a lot of progress." Parsons also noted that C.Z. had shown no improvement in her ability to parent her child.

In considering what the future likely holds for the children, we can gain insight from the parent's past performance, which "may be indicative of the quality of the future care the parent is capable of providing." *Id.* Because C.Z. has not shown progress in the past, we find no reason to grant her request for additional time to work to regain custody of K.Z. "A parent does not have an unlimited amount of time in which to correct his or her deficiencies." *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997).

IV. Placement of the Child

C.Z. argues the juvenile court erred in denying placement of K.Z. with her friend Chiquitta Carroll. Carroll has known K.Z. all her life and is a licensed foster parent. In April of 2009, she asked that K.Z. be placed with her. The juvenile court found that it was in K.Z.'s best interests that she continue with her current placement. We agree.

K.Z. is happy in her current home and is doing well in school. Habel reported, “[K.Z.] has thrived in the structure and stability of her new placement.” Habel recommended against removing K.Z. from her current placement due to the immense progress she had made while in a consistent and stable home. K.Z. has not had violent outbursts with her current family or at school. K.Z. loves her foster parents and is very bonded to them. Further, the record shows Carroll does not have a significant bond with K.Z. Carroll testified she sees K.Z. on Sundays and sporadically on holidays. Carroll did not become involved in this case until recently. Though we do not dispute that Carroll could provide a positive environment for K.Z., we find it is in K.Z.’s best interests that she be given permanency and stability in the home to which she has already become accustomed. See *In re C.D.*, 509 N.W.2d 509, 513 (Iowa Ct. App. 1993) (finding the permanency and stability needs of the children must come first).

AFFIRMED.