

IN THE COURT OF APPEALS OF IOWA

No. 9-827 / 09-1349
Filed October 21, 2009

**IN THE INTEREST OF D.T. and P.T.,
Minor Children,**

**G.Y.T., Mother,
Appellant.**

Appeal from the Iowa District Court for Linn County, Susan Flaherty,
Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Robin Miller, Cedar Rapids, for appellant mother.

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

Angela Railsback, Cedar Rapids, for minor children.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

MANSFIELD, J.

Gwen appeals the juvenile court's order terminating her parental rights to her two children, D.T. (born 1995) and P.T. (born 1999), pursuant to Iowa Code sections 232.116(1)(e) and (f) (2009).¹ On appeal, Gwen asserts termination was improper because the State failed to prove the statutory grounds by clear and convincing evidence. We affirm.

I. Background Facts and Prior Proceedings

D.T. and P.T. are Gwen's two youngest children. When they were born, Gwen sent them to live with her aunt because she was "running, hanging in the streets" of Chicago and was in and out of jail. Gwen did not resume custody of D.T. and P.T. until July 2007, when they were twelve and eight respectively. Gwen then decided to take the children and move to Cedar Rapids along with her husband, Eric.

Gwen and Eric's relationship is marred by domestic violence and substance and alcohol abuse. Both Gwen and Eric have lengthy histories of substance abuse, and both have been incarcerated for drug-related offenses. In addition, domestic abuse within the home has been witnessed by the children and has led to no-contact orders as well as police intervention. From August 1 through August 6, 2008, police responded to five calls regarding domestic violence between Gwen and Eric.

The unusual events leading to D.T. and P.T.'s removal from Gwen started on the morning of August 6, 2008, when police discovered the dead body of one

¹ The juvenile court also terminated the parental rights of D.T.'s father and P.T.'s father, which are not at issue in this appeal.

of Gwen's neighbors in a nearby schoolyard. The investigation of the death soon led to Gwen and Eric. When interviewed by police, Gwen admitted that the dead man came to her apartment the day before and that he was really messed up. Gwen stated that she offered to help the man by allowing him to stay at the apartment as she went to get him some beer. When she returned, the man had a sip of a beer before lying down on the couch and falling asleep. Gwen and Eric then left the apartment, got dinner, and visited a friend before returning home around 1:00 a.m. During this entire time, D.T. and P.T. were left alone at the apartment with the man asleep on the couch. When Gwen returned, she attempted to awake the man and found he was cold and unresponsive. Instead of calling the police, Gwen told D.T. and Eric to take the body from the apartment and place it in the family's van. Gwen and Eric then delivered the body to the schoolyard. Gwen later tested positive for cocaine at the police station.

On August 8, 2008, D.T. and P.T. were removed from Gwen's care after the police obtained an emergency removal order citing D.T.'s involvement in the incident and concerns over domestic violence and substance abuse. The children were placed into foster care, where they have remained.

Later that same day, the State filed a petition to have D.T. and P.T. determined children in need of assistance (CINA). A hearing was held on the petition on August 15, 2008. At the hearing, Gwen stipulated to the children being adjudicated as CINA pursuant to Iowa Code sections 232.2(6)(c)(1), (c)(2), and (n) (2007).

Following the hearing, the Iowa Department of Human Services (DHS) began offering Gwen services including substance abuse evaluations, drug

treatments, domestic violence support and education, family team meetings, and supervised visitations.

Gwen underwent substance abuse assessments on September 24, 2008, and October 22, 2008, where several services were recommended. However, Gwen never followed through with the services and was discharged on February 26, 2009. Gwen was also supposed to undergo drug testing twice per month. Gwen initially provided five negative drug screens, but failed to undergo any additional testing after December 15, 2008. According to Gwen:

I participated in ASAC [area substance abuse council], but that was one of the – I was doing things kind of wrong. Anger towards – towards DHS. I had anger with DHS because my kids [were taken] and I did not – and anybody can understand that if they got kids, if your kids are taken.

Gwen was also offered family counseling sessions. Gwen initially contacted the children's therapist, but a time could not be scheduled. Gwen was told to call back; however, she failed to do so until July 2009. When asked why she failed to contact family services earlier, Gwen responded:

Yeah. That was my fault. That was through DHS, didn't do a thing. [A DHS worker] was just trying to help me and I was scared because I didn't know who wanted to help me and who didn't.

Supervised visitations were scheduled on a weekly basis. By December 10, 2008, Gwen had been offered ten supervised visitations, but had failed to attend two and ended one visitation early. These absences caused the children, especially D.T., to have increased feelings of frustration and disappointment with Gwen and her inability to make the needed changes. As a result, at the December 10 visitation, D.T. and P.T. told Gwen they did not want to return to her care. The children then refused to attend the visit scheduled for

December 17. At this point, DHS stopped supervised visitations and tried to maintain communication between Gwen and her children through weekly supervised telephone conversations.

In late January 2009, DHS lost contact with Gwen. Gwen was unemployed; had no financial resources; had been evicted from two different residences; and was living in hallways, laundry rooms, and friends' houses. These circumstances resulted in Gwen missing scheduled phone conversations and appointments in January and February.

On March 29, 2009, Gwen sought help from her church and was taken to the hospital for drug and substance abuse rehabilitation and psychiatric treatment. While Gwen was in treatment, DHS struggled to keep in constant contact with her as she moved between residential shelters and different treatment programs. During this time period, Gwen had no visitations with her children and was sporadic in her supervised telephone conversations. In addition, Gwen tested positive for cocaine again in July 2009.

On April 15, 2009, the State filed a petition seeking to terminate Gwen's parental rights. A hearing on the petition was held on August 24, 2009. At the termination hearing, Gwen testified that she currently resided at a voluntary residential treatment facility for adults. Gwen further stated that she planned to remain at that facility for an additional six months. In addition, Gwen acknowledged that even in six months she "would have to have a counselor to help [her]" find stability in employment and housing.

On August 25, 2009, the juvenile court entered a written order terminating Gwen's parental rights in regards to D.T. and P.T. Gwen now appeals.

II. Scope of Review

Our review of proceedings to terminate parental rights is de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We give weight to the juvenile court's factual findings, but are not bound by them. Iowa R. App. P. 6.904(2)(g); *J.E.*, 723 N.W.2d at 798.

III. Analysis

Gwen argues that the State failed to prove by clear and convincing evidence that termination was proper under Iowa Code sections 232.116(1)(e) and (f) (2009). When the juvenile court terminates parental rights on more than one statutory ground, we need to find termination was proper under only one ground to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). After a de novo review of the entire record, we find clear and convincing evidence that D.T. and P.T. cannot presently be returned to Gwen's custody. See Iowa Code § 232.116(1)(f).

As Gwen admitted, she needs the residential treatment facility right now in order to maintain a sober and stable lifestyle. This placement does not allow children, and Gwen would be unable to regain custody of D.T. or P.T. until she finishes her treatment in six months. Although Gwen concedes this fact in her brief, she argues it is "conceivable that she would be in a position where the children could be returned to her within six months." However, the Iowa Supreme Court has held that we cannot gamble with children's futures, and children must not be made to wait their mother's maturity. *In re D.W.*, 385 N.W.2d 570, 575 (Iowa 1986). "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own

problems.” *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). In addition, even if Gwen was able to regain her children in six months, concerns would still remain as to her ability to maintain stable employment and housing and remain drug-free.

There are also significant issues within the family as D.T. and P.T. have grown increasingly resentful and angry at Gwen as time has passed. D.T. and P.T. have lived apart from Gwen for the vast majority of their lives. These issues would still require extensive family counseling sessions. Accordingly, at the time of the termination hearing, there was clear and convincing evidence that D.T. and P.T. could not be returned to Gwen’s custody at the present time.

In addition to meeting the statutory requirements, the termination must still be in the best interests of the children. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). We must reasonably limit the time for parents to be in a position to assume care of their children because “patience with parents can soon translate into intolerable hardship for the children.” *A.C.*, 415 N.W.2d at 613. “Children simply cannot wait for responsible parenting.” *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). “At some point, the rights and needs of the child rise above the rights and needs of the parents.” *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). After careful consideration of the entire record, we conclude it is in the children’s best interests to terminate the parental rights of Gwen.

For the foregoing reasons, we affirm the juvenile court’s decision terminating Gwen’s parental rights to D.T. and P.T.

AFFIRMED.