

IN THE COURT OF APPEALS OF IOWA

No. 9-888 / 09-1467
Filed May 26, 2010

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

**T.C., Mother,
Appellant.**

Appeal from the Iowa District Court for Appanoose County, William S. Owens, District Associate Judge.

A mother appeals from the juvenile court order terminating her parental rights. **AFFIRMED.**

Mary Baird Krafka of Krafka Law Office, Ottumwa, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, and Richard Scott, County Attorney, for appellee.

Jonathan Willier, Centerville, for father.

Vicki Ryan, Centerville, attorney and guardian ad litem for minor child.

Considered by Sackett, C.J., and Vaitheswaran and Danilson, JJ.

SACKETT, C.J.

The mother of C.C. appeals from the orders terminating her parental rights. She contends the court should have continued placement for an additional six months and termination is not in the child's best interests.

I. Background and Proceedings.

The child at issue was born in May of 2008 and removed from his parents' care in September of the same year because his parents were smoking marijuana and there were undefined situations of alleged domestic violence. The child's father, not a party to this appeal, also tested positive for methamphetamine.¹ This was the first time the child had come to the attention of the Department of Human Services, as there had been no previous reports that he was neglected. The child had initially been allowed to remain in his parental home but was removed two days later because the mother apparently was associating with a registered sex offender.² At the time of removal the child was observed to be clean and appropriately dressed. An initial report said the parents were able to insure the basic needs of the child for food, clothing, and shelter and the parents had nurturing skills. It was also reported that the parents saw that the child had adequate medical care.

After the child was removed the mother cooperated with a number of service providers, she was exercising supervised visits, her home had been

¹ At the time of the termination hearing the parents were separated and apparently intended to divorce. The father's rights were also terminated, but he did not appeal.

² There was no evidence the mother continued to associate with this unnamed person after the child was removed.

investigated, and she was ready to advance to having home visits.³ The visits did not happen because in early February of 2009, she was arrested for first-degree kidnapping and was incarcerated. At the time of the termination hearing on June 4, 2009, she was still incarcerated and had had no contact with the child since her arrest. While the mother was incarcerated her attorney had made a request for family safety, risk, and permanency (“FSRP”) services. The court noted that the mother’s arrest in February and incarceration pending trial resulted in her being unable to continue in-home services, as well as greatly impacting her visits.

At the June 2009 termination hearing, the State argued that if the mother were convicted of the charge, she would be sentenced to life in prison. The mother requested that a permanency order issue and that she be given additional time until the charges against her were resolved. The juvenile court did not grant her request, but instead terminated her parental rights. On appeal, she contended the court should have granted her additional time and termination was not in the child’s best interests.

After the appeal was transferred to us, we ordered a limited remand for the purpose of determining whether the mother’s criminal charges had been resolved. The juvenile court held a hearing on December 17, 2009, and filed its order on February 2, 2010, finding the criminal charges had been resolved and the mother would be spending at least several months in a women’s residential

³ Some recommended services were not provided for her because of lack of funding.

facility.⁴ The court affirmed the termination of her parental rights. Following our receipt of the order, we allowed further briefing to address the new order on remand. The mother filed a brief that noted the additional proceedings, but in her argument, the mother did not address anything in the ruling on remand. The State opted not to file an additional brief, noting the mother did not raise any new issues or arguments.

II. Scope and Standards of Review.

We review the juvenile court's termination of parental rights de novo. *In re C.S.*, 776 N.W.2d 297, 298 (Iowa Ct. App. 2009). Although we give weight to the juvenile court's findings of fact, we are not bound by them. *In re J.A.D.-F.*, 776 N.W.2d 879, 883 (Iowa Ct. App. 2009). Grounds for termination under section 232.116(1) must be established by clear and convincing evidence. *In re P.L.*, 778 N.W.2d 33, 34, 39 (Iowa 2010). If a statutory ground exists, the court may terminate a parent's parental rights. *Id.* at 37-39. In determining whether to terminate, our primary considerations are the child's safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child. *Id.* at 37, 39; see also Iowa Code § 232.116(2). We also consider whether any of the exceptions

⁴ The original charge was kidnapping in the first degree, a class A felony. In August of 2009 the State filed an amended trial information, listing two counts of willful injury, a class D felony. The mother pled guilty to the two counts of willful injury and was sentenced to consecutive terms in prison not to exceed five years each. The court suspended the sentences, except for time served, and placed the mother on probation. A special condition of the probation was that she reside at the Women's Residential Facility for 180 days or until maximum benefits were achieved. The director of the facility testified he did not expect an opening for the mother at the facility until mid-to-late February of 2010.

contained in section 232.116(3) allow the court not to terminate. *P.L.*, 778 N.W.2d at 37-39.

III. Merits.

The mother does not challenge the statutory ground for termination. The record contains clear and convincing evidence the child could not be returned to her care at the time of the termination hearing. See Iowa Code § 232.116(1)(h).

A. Permanency Order. The mother contends “compelling reasons existed” (at the time of the June 2009 hearing) for the court to continue the child’s placement for an additional six months. See *id.* § 232.104(2)(b). She argues the State did not make reasonable efforts toward reunification while she was in jail between February and June of 2009 awaiting trial. She further argues the court should have deferred termination for six months to allow resolution of the pending criminal charges.

Prior to her arrest in February of 2009 the mother was not taking advantage of services offered by the State. She was not participating in counseling or medication management. She had been evicted from her residence for nonpayment of rent and had lost her housing assistance. She had missed several visits with the child.

When questioned about the lack of services while the mother was in jail between February of 2009 to June of 2009 Wade Marvin, the social work case manager, testified the mother was transferred from the Appanoose County jail to Wapello County because of overcrowding. Although he wrote to the mother asking her to put his name on her visitor list so he could meet with her to discuss

the case, she did not do so. In April of 2009, at a family team meeting, he again asked the mother to put him or a service provider on her visitor list so FSRP services could be continued while she was in jail. The mother failed to put any case worker or service provider on her visitor list while she was in Wapello County.⁵ By the time of the hearing on remand, the mother had been returned to Appanoose County. FSRP services were available, but the mother would probably have to start over because she had not participated in services for about a year. Some services, such as psychological and mental health services could not begin until the mother was released from the residential facility.

Although a parent's incarceration does not absolve the State from making reasonable efforts to reunify the parent and child, the services provided an incarcerated parent, as with any other parent, "are only those that are reasonable under the circumstances." See *In re S.J.*, 620 N.W.2d 522, 525 (Iowa Ct. App. 2000). "[T]he reasonable efforts requirement is not viewed as a strict substantive requirement of termination." *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). "The State must show reasonable efforts as a part of its ultimate proof the child cannot be safely returned to the care of a parent." *Id.*; see also Iowa Code § 232.116(1)(h) (requiring proof the child "cannot be returned to the custody of the child's parents . . . at the present time").

The mother asserts, "[the child's] need for permanency should not be at the cost of his mother's statutory right to reunification services." Under the circumstances before us, we conclude the State met its obligation to make

⁵ The mother testified she believed it was the jail staff who refused to place the individuals on her visitor list, but she did not follow up with her attorney or the jail staff.

reasonable efforts toward reunification. The mother's own actions or inaction made providing services while she was jailed in Wapello County impossible. At some point, the rights and needs of a child rise above the rights and needs of a parent. See *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). Given the age of the child and the length of time before any reunification could be considered because of the mother's incarceration or time in a residential facility, we conclude the court did not err in refusing to extend permanency for an additional six months.⁶

B. Best Interests. The mother contends it is in the child's best interest "to be raised by his biological parent." She argues the juvenile court, "by denying additional time, has denied [the child] the opportunity to be raised by his biological parent." We are "required to use the best-interest framework established in section 232.116(2)" when deciding what is in a child's best interests. See *In re P.L.*, 778 N.W.2d at 37.

We look to the child's long-range, as well as immediate, interests. We consider what the future holds for the child if returned to his or her parents. Insight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care the parent is capable of providing.

In re R.R.K., 544 N.W.2d 274, 275 (Iowa Ct. App. 1995) (citation omitted).

⁶ Given the circumstances at the time of the original termination hearing and even at the time of the resolution of the mother's criminal charges, the juvenile court could not have continued placement of the child for an additional six months under section 232.104(2)(b) because it would have been impossible for the court to determine "that the need for removal of the child from the child's home will no longer exist at the end of the additional six-month period."

Giving due weight to case history records and the mother's past actions, we conclude placement with her is not the best placement to provide for the child's safety or for "furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child." Iowa Code § 232.116(2); see *J.K.*, 495 at 110; *In re L.L.*, 459 N.W.2d 489, 493-94 (Iowa 1990). The mother has spent time in jail for two felony convictions and had yet to begin her term in the residential facility at the time of the court's hearing on remand. See Iowa Code § 232.116(2)(a). The child has been in a "stable, satisfactory environment" for almost its whole life and "maintaining that environment and continuity" for the child would be beneficial. See *id.* § 232.116(2)(b)(1). The mother has not been available to provide for the child's needs since February of 2009 because of her own poor choices.

It is well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child.

P.L., 778 N.W.2d at 41 (citation omitted). Termination is appropriate. See *id.* at 37, 39.

The mother does not claim and we do not find any of the exceptions to termination in section 232.116(3) apply. See *id.* at 41. We affirm the juvenile court's termination of the mother's parental rights.

AFFIRMED.