

IN THE COURT OF APPEALS OF IOWA

No. 9-996 / 09-1618
Filed December 30, 2009

**IN THE INTEREST OF S.F.B.,
Minor Child,**

T.W., Mother,
Appellant.

Appeal from the Iowa District Court for Boone County, Steven J. Oeth,
District Associate Judge.

A mother appeals a juvenile court order establishing permanency for her
daughter with a relative caregiver. **AFFIRMED.**

Steven Nalean, Boone, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Jim Robbins, County Attorney, and Daniel Gonnerman, Assistant
County Attorney, for appellee State.

Judd Kruse, Boone, for minor child.

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

MANSFIELD, J.

Traci, the mother, appeals from a permanency order continuing guardianship and custody of her daughter, S.F.B. (born 2002), with the child's maternal grandmother pursuant to Iowa Code section 232.104(2)(d)(1) (2009). On appeal, Traci argues that the juvenile court erred: (1) in not returning S.F.B. to her care, (2) in not granting an additional six-month continuance to allow the mother and child to work further towards reunification, (3) in finding that the reunification services provided to her were reasonable, and (4) in ordering visitation be at the discretion of the child's guardian. We affirm.

I. Background Facts and Proceedings

In September 2007, Traci voluntarily placed S.F.B. in the care of Barbara and Michael, Traci's mother and stepfather. Traci has had her parental rights terminated to three other children. At the time, Traci was in a volatile relationship with S.F.B.'s father resulting in S.F.B. being exposed to domestic altercations. In addition, there were concerns S.F.B. had serious dental problems while in the care of Traci. When S.F.B. was younger, she had severe decay to her four front upper teeth requiring the teeth to be extracted surgically. Traci acknowledges she failed to attend to S.F.B.'s teeth, but blames S.F.B.'s father, stating, "I didn't have the access to the health insurance, that was something [he] had to do."

In May 2008, Barbara filed for a petition for involuntary guardianship of S.F.B. In June 2008, Barbara was appointed as S.F.B.'s guardian. At this time, the Iowa Department of Human Services (DHS) was directed by the court to perform a child-in-need-of-assistance (CINA) assessment so that reunification services between S.F.B. and Traci could be pursued. On September 29, 2008,

the parties stipulated that S.F.B. should be adjudicated a CINA under Iowa Code section 232.2(6)(c)(2) (2007).

DHS initiated services that included supervised visitations, parenting skills classes, weekly phone calls, gas cards, and individual counseling and therapy for both S.F.B. and Traci.

Initially, Traci was inconsistent with her attendance at visitations and in making her weekly phone calls. As a result, S.F.B. became extremely frustrated and very upset with her mother. However, around January 2009, Traci's consistency began to improve, and visits were changed to partially supervised. These visits soon returned to fully supervised after S.F.B. reported to her therapist that some conversations between her and Traci made her feel uncomfortable. Although visitations were going well, DHS continued to have concerns about Traci's lack of structure and consistency in her housing, employment, and relationships.

In June 2008, Traci had moved out of the home of S.F.B.'s father and was living with a man in Huxley. Although the relationship lasted for approximately two months, they were briefly engaged. In August 2008, Traci moved in with another man (Josh), whom she married in July 2009. Currently, Traci and her husband reside in the house of her husband's aunt and uncle.

After their marriage, Traci requested DHS to perform an in-home study on Josh's aunt and uncle's home, where Josh and Traci continued to live. According to the DHS social worker, prior to performing the in-home study, DHS performed a background check on Traci and Josh. As a result of the background check, it was discovered that Josh had a "criminal record check hit" for an OWI.

Therefore, DHS sent Traci and Josh a form to give an explanation for the hit. However, DHS never received the form back; therefore, DHS never completed the home study.

Throughout this case, S.F.B. has received individual counseling. During these counseling sessions, S.F.B. expressed fear about returning to Traci's care, and stated that she wanted to remain in her grandmother's care. She has specifically expressed fear of being spanked again by her mother. She has expressed concern about past occasions when she had to share a room with her mother and whatever man her mother was seeing at the time. In July 2009, Traci requested joint counseling between herself and S.F.B. DHS denied the request based on the recommendation of S.F.B.'s therapist, who believed that S.F.B.'s fear and anxiety toward her mother required individual counseling.

On October 6, 2009, a permanency hearing was held. At this time, the DHS social worker testified that S.F.B. continued to have fear and anxiety about visitations with Traci and the possibility of returning to Traci's care. Barbara also testified that S.F.B. had a lot of anxiety and fear before visitations. According to Barbara, S.F.B.'s fear caused her to become physically ill and throw up the night before visits. However, Barbara did admit on cross-examination that she had never informed DHS or S.F.B.'s counselors of these physical manifestations.

Traci also testified and stated that she and S.F.B. had a lot of fun together and argued that S.F.B. had never acted scared around her. Traci further testified that she had continued to be consistent in her visitation, and that she had completed an online parenting class. Traci also argued that she had gained stability with her marriage to Josh, and had found consistent and suitable

housing with Josh's aunt and uncle. However, Traci also stated that she and Josh were trying to save money so that they could move into a place of their own. Traci also admitted that she was currently unemployed and had only worked briefly at two jobs during the pendency of this action. Traci attributed some of her difficulties in finding and maintaining work to back surgery she underwent in November 2008.¹

On October 15, 2009, the juvenile court entered a written permanency order determining that S.F.B.'s long-term best interests required guardianship and custody to remain with Barbara. Traci appeals.

II. Standard of Review

We review permanency orders de novo. *In re N.M.*, 528 N.W.2d 94, 96 (Iowa 1995). Although we give weight to the juvenile court's factual findings, we are not bound by them. *Id.* Our paramount consideration is the best interests of the child. *In re K.C.*, 660 N.W.2d 29, 32 (Iowa 2003).

III. Analysis

Traci first contends the juvenile court erred in not returning S.F.B. to her care at the time of the permanency hearing. Traci argues that she has made substantial progress in her parenting skills and has gained stability in her life such that she can now provide for S.F.B.'s needs.

The State must prove by convincing evidence that the child cannot be returned to the parent's care. Iowa Code § 232.104(3) (2009). While in Traci's care, S.F.B. was exposed to domestic unrest and severe neglect in her dental

¹ There was evidence, however, that Traci had recently given S.F.B., who weighs sixty pounds, a lengthy piggyback ride during one of the supervised visits.

care. See *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981) (stating insight for what the future likely holds for children “can be gained from evidence of the parent’s past performance, for that performance may be indicative of the quality of the future care that parent is capable of providing”). As a result, S.F.B. has developed a sense of deep fear, distrust, and anxiety about being returned to her mother’s care. In addition, although Traci has made progress in improving her life, the record still shows significant concerns as to the stability of Traci’s employment and housing. At the time of the permanency hearing, Traci was still unemployed. Further, Traci admitted that she and Josh had no home of their own and were looking to move into new housing in the mid to long-term. Accordingly, we believe there is convincing evidence that S.F.B. could not presently be returned to Traci’s care.

Traci also argues that she should have at least been granted an additional six months to work towards reunification with S.F.B. In order to continue placement for six months, the court must make a determination that the need for removal will no longer exist at the end of the extension. See Iowa Code § 232.104(2)(b); see also *In re A.A.G.*, 708 N.W.2d 85, 92 (Iowa Ct. App. 2005). In this regard, the juvenile court determined that there was no evidence that S.F.B.’s “trauma and fear of her mother will be lessened in any significant degree by continuing the permanency decision for another six months.”

Again, while we note that Traci has made improvements in her life, the past emotional damage sustained by S.F.B. has not been lessened. Despite intensive counseling over the last year, S.F.B. continues to fear returning to

Traci's care. Therefore, we agree with the juvenile court that this trauma and fear will still be present in six months, thereby preventing reunification.

Traci next contends that DHS failed to provide reasonable reunification services. Traci asserts that DHS should have provided the in-home study and the joint counseling sessions that she requested in July 2009. The evidence shows that the in-home study was denied because Traci never returned the form providing an explanation for Josh's OWI. As the DHS social worker testified, the form was a part of DHS protocol, and "if they would have returned the form, then we would have continued with the home study, but we didn't get it back." Therefore, fault for the home study lies with Traci, not DHS. See *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (stating when DHS provides services, the parents must respond). Furthermore, DHS denied joint counseling sessions due to the recommendation of S.F.B.'s individual therapist. According to the therapist, S.F.B. needed her own counselor due to her continued fear and anxiety about being around her mother. Based upon our de novo review of the record, we conclude the State's efforts toward reunification were reasonable.

Traci's final contention is that the juvenile court erred in ordering visitation to be at the discretion of Barbara. According to Iowa Code section 232.104(4), "[a]ny permanency order may provide restrictions upon the contact between the child and the child's parent or parents, consistent with the best interest of the child." The permanency order placed S.F.B. into the custody of Barbara. Therefore, Barbara, as the primary caregiver, would have the best understanding of S.F.B.'s schedule and the times when visitation can be arranged. Although concerns have been raised about some animosity that may exist between Traci

and Barbara, Barbara did testify that she would not stop Traci from having any visitation with S.F.B. as long as they were supervised by a third-party. Further, Barbara stated that she does “think it’s important for Traci and [S.F.B.] to have a relationship.” Accordingly, we find that placing visitation in Barbara’s discretion was in the child’s best interest.

Additionally, the undisputed evidence shows that S.F.B. is a bright and energetic second-grader who has thrived while in the care of Barbara. S.F.B. has also gained safety, stability, and permanency in Barbara’s home. See *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially) (stating a child’s safety and need for a permanent home are the defining elements in determining a child’s best interests). Therefore, we find the permanency order to be in S.F.B.’s best interests.

For the foregoing reasons, we affirm the permanency order of the juvenile court.

AFFIRMED.