IN THE COURT OF APPEALS OF IOWA

No. 1-593 / 01-498
Filed October 12, 2001

IN THE INTEREST OF B.L.,
Minor Child,

T.L., Mother,
Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Joe E. Smith, District Associate Judge.

Mother appeals from an order terminating her parental rights to her daughter. **AFFIRMED.**

Elias S. Gastelo, Jr., Benzoni & Mains Law Office, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Jennifer Navis, Assistant County Attorney, for appellee-State.

Christopher Kragnes, Des Moines, guardian ad litem for minor child.

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

VAITHESWARAN, J.

Tracy appeals a juvenile court ruling terminating her parental rights. She asserts the Department of Human Services should have done more to reunite her with her child and termination was not in the child's best interests. We affirm.

I. Background Facts and Proceedings

Tracy and Julio are the parents of Breanna, born in April 1997. The parents' relationship involved domestic violence. Tracy moved to Iowa with Breanna to escape the violence. After the move, Julio had no further contact with Breanna.

When Breanna was approximately two and a half years old, she complained to Tracy of vaginal discharge, and abdominal and rectal pain. Tracy took her to a child abuse clinic. A physical examination revealed signs of vaginal and anal penetration. Testing confirmed that Breanna had contracted gonorrhea. The police and the Department of Human Services were notified.

As the perpetrator of the abuse was unknown, a Department employee advised Tracy not to discuss the situation with anyone and not to allow anyone around Breanna. Tracy did not heed these instructions. She told her neighbor and others about the medical diagnoses and allowed her boyfriend to spend the night at her apartment.

The Department sought and obtained an order temporarily removing Breanna from her care. The Department later issued a report confirming the sexual abuse and finding Tracy denied Breanna critical care by failing to provide proper supervision.

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The Department made available to Tracy a range of services designed to address her parenting inadequacies and her own history of sexual and physical abuse. Additionally, the Department enrolled her in a residential facility known as the House of Mercy. After Tracy thrice declined to participate in that program, the Department recommended termination of her parental rights. A court appointed special advocate concurred with this recommendation, although Tracy's therapist did not.

The State filed a petition to terminate the parental rights of Tracy and Julio to Breanna. Following a hearing, the juvenile court granted the petition. Only Tracy appeals. She contends: (1) the Department did not make reasonable efforts to reunite her with Breanna and (2) the court did not act in Breanna's best interests. We review her appeal de novo. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997).

II. Reasonable Efforts

The juvenile court terminated Tracy's parental rights pursuant to Iowa Code sections 232.116(1)(c)[1] and 232.116(1)(g)[2]. Both provisions implicate the reasonable efforts requirement. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

Tracy maintains the "State's obligation to reunify mother with daughter was not met when it failed to find an alternative to the House of Mercy." Additionally, she states "no clear and convincing standard can be established to terminate her parental rights..." The State responds that Tracy did not preserve

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[1] This provision requires a prior adjudication of physical or sexual abuse as a result of an act or omission of a parent and a showing that the circumstances continue to exist despite the offer and receipt of services.

[2] In pertinent part, this provision requires proof by clear and convincing evidence that the child cannot be returned to the custody of the child's parents.

error on her argument that she was entitled to alternate services, because she did not request those services prior to the termination hearing.

We agree with the State that Tracy did not preserve error on her alternate service claim. As our highest court recently reiterated, a parent must object to services early in the process so appropriate changes can be made. *Id.* at 493-4. There is no evidence Tracy did so. Therefore, we will not review the services Tracy now claims she should have received. *Id.* at 494. However, we note the reasonable efforts requirement is part of the State's "ultimate proof the child cannot be safely returned to the care of a parent." *Id.* at 493. As Tracy appears to have challenged the sufficiency of that proof, we will examine whether the services she actually received were sufficient to meet the State's reasonable efforts burden. *Id.* at 494.

As noted, the Department made available to Tracy a variety of services. First, the Department arranged a psychosocial evaluation. When the evaluator recommended Tracy participate in parenting classes and obtain individual therapy, the Department furnished both those services. After Tracy's relationship with her original counselor deteriorated, the Department assigned a second. Tracy continued to see this counselor up to the time of the termination hearing. The Department also involved Tracy in a mother's group and afforded her supervised visitation with her daughter for two hours per week.[3]

[3] While the court appointed special advocate found the visitation inadequate, Tracy apparently did not ask to have the number of hours increased or to make a transition to unsupervised visitation. Visitation is not challenged on appeal.

As a result of these services, Tracy improved her parenting skills and maintained the close bond she had with Breanna. A Department employee noted Breanna and Tracy had a strong attachment, Tracy was appropriate during visits, and Breanna has not displayed any fear of Tracy. Although this bond waned with the passage of time, there is no question Tracy benefited from the parenting services she was provided.

These services, however, did not resolve issues relating to Tracy's dependence on men. After a month-long relationship with a new boyfriend, Tracy became pregnant. The worker expressed some concern that Tracy might become homeless if this boyfriend withdrew his support after the child was born. Apparently to alleviate this concern and to facilitate reunification with Breanna, the Department recommended Tracy enroll in a one-year program at the House of Mercy residential facility, a program that would have required Tracy to give up her job and apartment. Although Tracy and her attorney expressed reservations, Tracy was placed on the waiting list and informed when an opening became available. On three occasions the Department advised Tracy that there was an opening at the facility and on three occasions she declined to join.

In light of the reservations expressed by Tracy and her attorney, we have serious concerns regarding the department's insistence that Tracy participate in this program. Additionally, Tracy's first counselor expressed doubts about this placement, noting that even if Tracy could potentially have been reunited with Breanna at the facility, the Department was not ready to place Breanna with her at the time the openings came up. Therefore, we find little support for the Department's statement that "Breanna's placement in Foster Care would have

been shortened to 6 months had Tracy accepted the referral to House of Mercy in April 2000, where Breanna could have been placed with Tracy."

Despite our reservations concerning the Department's referral of Tracy to the House of Mercy, we note the only question before us is whether the Department made reasonable efforts to alleviate the conditions which led to the child's removal. We conclude it did. Without considering the House of Mercy referral, we believe the therapy and parenting classes alone were sufficient to meet the Department's statutory mandate. Accordingly, we reject Tracy's reasonable efforts argument.

III. Best Interests

In deciding whether to terminate a parent's rights, our statute requires a court to "give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child." Iowa Code §232.116(2). For a child who has been placed in foster care, the court may consider "whether the child has become integrated into the foster family to the extent that the child's familial identity is with the foster family, and whether the foster family is able and willing to permanently integrate the child into the foster family." Iowa Code §232.116(2)(b).

Tracy claims termination of her parental rights is not in Breanna's best interests because, with the birth of her second child and the benefit of classes and therapy, she has developed the skills needed to protect her daughter. The record partially supports this claim. However, the record also reflects that, at the time of the termination hearing, Tracy had not resolved her problem with

codependency. Her new therapist stated she would need ongoing counseling to address this issue, perhaps for six additional months. Tracy's own testimony reflected impatience with the State's questioning about her current relationship and a reluctance to divulge much if anything about that relationship. As the juvenile court stated, "[a]t this time, Breanna cannot be returned to her mother because Tracy has been unable to establish that the welfare of her child would come before her need for a man in her life."

We also note Breanna was doing well in foster care. The court appointed special advocate stated, "Breanna appears to be completely comfortable and settled with [her foster family]." Breanna's therapist stated that the foster parents showed "the utmost sensitivity to her abuse issues" and enhanced her progress in therapy. Although there is no question Breanna maintained a strong attachment to Tracy despite her tender age, this bond is not an overriding consideration but only a factor to consider. *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). In this case, that factor is overridden by Tracy's lack of sufficient progress toward independence. Accordingly, we agree with the juvenile court that termination was in Breanna's best interests.

We affirm the juvenile court order terminating Tracy's parental rights to Breanna.

AFFIRMED.