IN THE COURT OF APPEALS OF IOWA

No. 1-150 / 00-1553
Filed April 27, 2001

FILED
APR 27 2001
CLERK SUPREME COURT

IN THE INTEREST OF
T.M., Minor Child,

P.A.M., Mother,
Appellant.

Appeal from the Iowa District Court for Dubuque County, Jane Mylrea, District Associate Judge.

A mother appeals the decision of the juvenile court terminating her parental rights. **AFFIRMED.**

Todd N. Klapatauskas of Reynolds & Kenline, L.L.P., Dubuque, for appellant.

Thomas J. Miller, Attorney General, Tabitha Gardner, Assistant Attorney General, and Jean Becker, Assistant County Attorney, for appellee State.

Mary Kelley, Assistant Public Defender, Dubuque, guardian ad litem for minor child.

Robert Sabers, Dubuque, for father R.M.

Considered by Sackett, C.J., and Zimmer and Miller, JJ.

MILLER, J.

A mother appeals the decision of the juvenile court terminating her parental rights. She claims: (1) the State failed to offer her reasonable reunification services; (2) termination is not in the child's best interests; and (3) the burden of proof in the termination proceeding was improperly placed on her.

Patricia and Robert are the parents of Tyler, born in August 1994. Tyler was removed from Patricia's care later that month, because she had left the child in the care of an inappropriate babysitter, a person who had her parental rights to her own children terminated. The Department of Human Services (DHS) issued a founded report of denial of critical care. Tyler was adjudicated to be a child in need of assistance pursuant to Iowa Code sections 232.2(6)(b) and (c)(2).

In December 1994, Tyler was returned to Patricia's care, with intensive services. The home became filthy and cluttered. Patricia did not meet Tyler's medical needs. He was a premature infant and has respiratory problems. Patricia smoked cigarettes in Tyler's presence, even though this was dangerous for his health. In February 1995, Tyler was removed from Patricia's care and briefly hospitalized for pneumonia. After Tyler was released from the hospital he was placed in foster care.

Patricia did not cooperate with services. She was hostile, argumentative, and dishonest. A psychological evaluation showed she had a personality disorder. In September 1995, the State filed a petition to terminate the parental rights of Patricia and Robert to Tyler. Patricia absconded with Tyler during an unsupervised visit in March 1996 and took him to Missouri. Patricia was arrested

a few days later and Tyler was returned to foster care. Tyler had a serious respiratory infection at the time.

At the termination hearing held in April and May 1996, Robert testified he intended to divorce Patricia. He stated he was interested in caring for the children. The juvenile court did not terminate the parents' rights, but instead entered a permanency order. The juvenile court found:

> There is clear and convincing evidence currently that the children cannot be returned to the care, custody and control of their mother without placing the children at significant risk. Further, the Court finds that the issues that resulted in the removal in the first place, namely, unstable residence, improper housekeeping and parenting, and improper medical care for Tyler, would currently exist if the children were returned to their mother.

The court extended the case for another ninety days in order to allow Robert an opportunity to show he could separately care for the children. The court determined no further services for Patricia were necessary. She was permitted one hour of supervised visitation per month.

Robert provided adequate care for Tyler, and in September 1996, the juvenile court entered an order continuing him in Robert's care. The parents were divorced in November 1996.

Patricia made repeated requests for additional visitation with Tyler. In July 1997, the juvenile court ruled it would not consider any change in the current monthly supervised visitation schedule unless Patricia showed evidence of a substantial change in circumstances which would support a change in visitation and would be in Tyler's best interests. The requests for additional visitation were denied.

Patricia had only one visit with Tyler from early 1998 to August 1999 because she was in prison. The juvenile court permitted her to have written contact with Tyler in lieu of visitation during this time, but she took limited advantage of this opportunity. Patricia made monthly telephone calls to Tyler, but he did not appear to understand who was talking to him.

In June 1999, concerns arose that Tyler was developmentally delayed. The parties agreed he should be placed in a foster home for the summer. In August 1999, Patricia was released to a halfway house and she resumed monthly supervised visitation with Tyler. Per the agreement of the parties, Tyler remained in the foster home. Tyler made significant advancements in his development while in foster care.

As noted above, Patricia had a visit with Tyler in August 1999. She missed her visit for September 1999. In October 1999, she refused to get out of bed to answer the telephone to schedule a visit, but did have a visit later that month. Thereafter, visitation became more regular. Patricia obtained employment. She lives in an efficiency unit in a boardinghouse that is not suitable for children. Patricia was hospitalized for stress in August 2000. She was placed on medication for her condition.

In August 2000, the State filed a petition to terminate the parental rights of Patricia and Robert to Tyler. Robert agreed to the termination of his parental rights. The juvenile court terminated Patricia's parental rights under section 232.116(1)(e). The court found Patricia had not been honest concerning her employment, residence, or stability. The court concluded she was not prepared to be a full-time parent. Patricia appeals.

I. SCOPE OF REVIEW

The scope of review in termination cases is de novo. *In re J.LW.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). The grounds for termination must be proven by clear and convincing evidence. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Our primary concern is the best interests of the child. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

II. REASONABLE EFFORTS

Patricia contends the State did not provide her with reasonable services. She asserts DHS should have offered her family counseling or parenting skill development. She also asserts her requests for additional visitation should have been granted.

Reasonable services must be provided to attempt to reunite a family before the State can terminate parental rights. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1997). While the State has an obligation to make reasonable efforts, it is a parent's responsibility to demand services if they are not offered prior to the termination hearing. *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa Ct. App. 1997). Patricia did not appeal or object to the permanency order which eliminated the State's obligation to provide her with services. There is no evidence in the record to show she requested family counseling or parenting skill development, and thus, this issue has not been preserved for our review.

Patricia did request additional visitation with Tyler. The reasonable efforts concept would broadly include a visitation arrangement designed to facilitate reunification while protecting the child from the harm responsible for the removal. *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996). The nature and extent of

visitation is controlled by the best interests of the child. *Id.* Again, Patricia did not appeal the 1996 permanency order which limited her to one visit per month. However, even if this were not an impediment to Patricia's requests for additional visitation, we find the State acted reasonably in limiting Patricia's contact with Tyler. Patricia abducted Tyler during an unsupervised visit and took him to Missouri, although he was quite ill with a respiratory infection at the time. Patricia and Tyler do not have a close bond. Tyler showed no emotions about going to visits, and he never spoke of Patricia.

III. BEST INTERESTS

Patricia claims termination of her parental rights was not in Tyler's best interests. She states she has improved her life since her release from prison.

Even if the statutory requirements for termination of parental rights are met, the decision to terminate must still be in the best interests of the child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). In determining the best interests of a child, the court looks to the child's long-range and immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). The court must consider the physical, mental, and emotional condition and needs of the child in deciding to terminate parental rights. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa Ct. App. 1996).

We determine termination of Patricia's parental rights is in Tyler's best interests. Patricia had not put Tyler's needs above her own throughout his life. Patricia did not meet Tyler's medical needs while he was in her care. As noted above, Patricia abducted Tyler during an unsupervised visit. Tyler is developmentally delayed and needs a higher level of care than Patricia can

provide. In addition, there is little bonding between Patricia and Tyler. For all of these reasons, we conclude Patricia's parental rights were properly terminated.

IV. BURDEN OF PROOF

Patricia contends the juvenile court improperly placed the burden on her to establish a substantial change in circumstances indicating a return of Tyler to her care would be in the child's best interests. She points out the State has the burden of proving the allegations in the termination petition by clear and convincing evidence.

In the present case, Patricia did not formally ask for a change in the permanency order. Therefore, the issue of modifying the permanency order was not before the court. If her testimony is seen as raising such an issue, then the juvenile court correctly applied the burden of proof. Under section 232.104(5), Patricia would have the burden to show by a preponderance of the evidence it would be in the child's best interests to be returned to her care. Iowa Code § 232.104(5).

On the issue of termination of Patricia's parental rights, the juvenile court correctly required the State to show the elements of section 232.116(1)(e) by clear and convincing evidence. The juvenile court did not apply an improper burden of proof. On our de novo review, we find there is clear and convincing evidence to show Tyler could not be returned to Patricia's care at the present time, and termination under section 232.116(1)(e) was proper.

We affirm the decision of the juvenile court terminating Patricia's parental rights to Tyler.

AFFIRMED.