IN THE COURT OF APPEALS OF IOWA

No. 0-70 / 99-1678
Filed April 12, 2000

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CLERK SUPREME COURT

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

N.T., Mother,
Appellant.

Appeal from the Iowa District Court for Scott County, Nancy S. Tabor, Judge.

Mother appeals from the termination of her parental rights to her son. **AFFIRMED.**

Cheryl J. Newport and Stephen W. Newport of Newport & Newport, P.L.C., Davenport, for appellant.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and Gerda Lane, Assistant County Attorney, for appellee-State.

Penelope Souhrada, Davenport, guardian ad litem for minor child.

Heard by Huitink, P.J., and Streit and Miller, JJ.

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STREIT, J.

Nydia appeals the termination of her parental rights claiming procedural errors, the State failed to provide reasonable services, and the statutory elements for termination were met by clear and convincing evidence. We affirm finding no merit to her claims.

I. Background Facts & Proceedings.

Brian was born in late June of 1998 to Nydia and Jason, who was believed to be the father. Brian was delivered cesarean. After the birth, the hospital staff became increasingly worried about Nydia's ability to care for her newborn son. Nydia refused to wash and tend to her incision from the cesarean, would not take the prescribed antibiotics, was reluctant to hold the child, had an extended history of psychological placement as a juvenile, and was extremely low functioning due to her limited mental capacity. Within a few days of the birth Nydia checked herself out of the hospital against medical advice. Brian remained in the hospital, and the State procured an order for temporary removal based on the legitimate fear Nydia would be unable to care for him. Three days after checking herself out of the hospital, Nydia was readmitted when her incision became severely infected. Nydia had not cleaned the incision or filled her prescription for antibiotics. Due to the severity of the infection, Nydia was placed on intravenous medication, was continually bathed by the hospital staff, and placed in isolation. The department of human services (DHS) initiated a dependent adult abuse investigation to seek civil commitment. Before the

investigation reached its conclusion, however, Nydia again fled the hospital against medical advice.

Brian was placed in foster care, parenting services were initiated for Nydia, and the court adjudicated Brian a child in need of assistance (CINA). Initially Nydia was eager to cooperate with services and was receptive to the parenting instruction she was receiving. In October of 1998 Nydia had a falling out with her boyfriend, Jason, and began to regress. Nydia's living situation became transitory, with her staying on and off at a number of different places, and her interaction with Brian became increasingly inappropriate. She would place Brian on her shoulders even though he was unable to support his own head. She tried to feed him solid food like chocolate chip cookies despite his inability to process such foods. She attempted to feed him Kool-Aid rather than formula, and when redirected by a service provider, she tried to feed him old formula in a moldy bottle. These clearly inappropriate parenting behaviors culminated in her rather harshly spanking Brian for grabbing her eyeglasses. When told by service providers that Brian was too young to understand his actions or her discipline, Nydia insisted he understood and she was his mother. Nydia also became increasingly hostile with service providers. She yelled and screamed at providers and refused to leave when requested to do so. After the spanking incident, Nydia became extremely hostile with the visitation staff and was told visitation was suspended until Nydia received further notice. Later that day Nydia's friend called regarding the case. The provider told the friend to have Nydia contact her directly. DHS sent a letter to Nydia informing her of a staffing

where they would discuss visitation. Nydia did not contact the service provider or DHS, and she failed to appear at the staffing.

The case was set for dispositional review in April of 1999. Two days prior to the review the State filed a petition to terminate Nydia's parental rights. The dispositional review was continued to June of 1999. During the prehearing conference on the termination proceedings the dispositional review hearing was cancelled. The court held the termination proceedings in July and September of 1999. At the time of the court's ruling, Nydia had not made any inquiry into additional services or the reinitiation of visitation—she had not seen Brian for eight months. The court terminated Nydia's parental rights under a host of statutory authority, Iowa Code sections 232.116(1)(c), (d), (g), and (j) (1999).

Nydia claims the trial court erred in continuing the dispositional review hearing, in counting the number of days whereby termination can proceed under Iowa Code section 232.116(1)(g), and in finding each statutory provision for termination was met by clear and convincing evidence. She further alleges the State did not provide her with adequate services.

II. Preservation of Error.

A. The Dispositional Review Hearing. Nydia first claims the trial court erred in continuing and later canceling the dispositional review hearing. In order to properly preserve an issue for appeal, the alleged error must first be raised at trial. *In re C.D.*, 508 N.W.2d 97, 100 (Iowa App. 1993). "This principle acknowledges we are a court of review and provides the needed symmetry in our judicial process by requiring the trial judge to be alerted to the claim of error at

trial and given an opportunity to correct it without an appeal. *State v. Escobedo*, 583 N.W.2d 276, 276-77 (Iowa App. 1997). Failure to alert the court of such error waives claims of even constitutional magnitude. *In re C.D.*, 508 N.W.2d at 100. Nydia did not alert the court to any alleged problems concerning the court's cancellation of the dispositional review hearing or the initiation of termination proceedings. The issue, therefore, is not preserved for review.

B. Adequate Services. Nydia next claims she did not receive adequate services. The trial court in terminating Nydia's parental rights specifically addressed this issue finding a parent has the affirmative duty to demand additional services prior to the termination hearing. *See In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). Nydia did not demand services other than those provided, and for that reason, the issue of whether services were adequate has not been preserved for appellate review. *See In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa App. 1994).

III. Standard of Review.

Appellate review of proceedings to terminate a parent-child relationship is de novo; thus, "it is our duty to review the facts as well as the law and adjudicate rights anew on those propositions properly preserved and presented to us." *In re O'Neal*, 303 N.W.2d 414, 422 (Iowa 1981). We accord weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses whom the court heard and observed firsthand, but we are not bound by those findings. *Long v. Long*, 255 N.W.2d 140, 143 (Iowa 1977).

IV. Clear and Convincing Evidence Supports the Termination.

Nydia claims the State failed to show the statutory elements for termination were met by clear and convincing evidence. Although she professes error as to each statutory ground found by the trial court, "we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm." *In re S.R.*, 600 N.W.2d 63, 64 (Iowa App. 1999) (citation omitted). We will therefore limit our analysis to Iowa Code section 232.116(1)(g).

Iowa Code section 232.116(1)(g) (1999) permits the juvenile court to terminate the parent-child relationship if the court finds all of the following have occurred:

> (1) The child is three years of age or younger.
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
> (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

Nydia does not dispute the first two elements were met. Rather she focuses her attention on the timing in subsection three and the safe return of the child in subsection four.

Nydia claims the six-month time period in Iowa Code section 232.116(1)(g)(3) should run from the time of the disposition not from the transfer of custody. The statute, however, is on its face crystal clear. A plain reading of the statute indicates the six-month time limitation in subsection three begins to run from the time custody is transferred, i.e. the removal. When statutory

language is unambiguous and clear on its face, we need not mire ourselves in the often-speculative exercise of determining legislative intent. *See Branson v. Municipal Fire & Police Retirement Sys.*, 591 N.W.2d 193, 198 (Iowa 1999). The timing of the termination was clearly permissible.

Nydia also disputes the juvenile court's finding that Brian cannot be safely returned to her care under subsection four of Iowa Code section 232.116(1)(g). The court has long recognized there exists a parental interest in the integrity of the family unit, but such interest is not absolute and may be forfeited by certain conduct. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). The State has the duty to see that every child within its borders receives proper care and treatment and must intercede when parents abdicate that responsibility. *In re I.L.G.R.*, 433 N.W.2d 681, 689 (Iowa 1988). The State must act to prevent probable harm to children and need not delay until actual physical harm has occurred. *Id.* The threat of probable harm will justify termination of parental rights, and the perceived harm need not be the one that supports the child's initial removal from the home. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992). Our primary concern in a termination proceeding is the best interests of the child. Iowa R. App. P. 14(f)(15); *In re Dameron*, 306 N.W.2d at 745.

Returning Brian to Nydia would expose him to a threat of identifiable harm. We can gain insight into a child's prospects for remaining safe and healthy by reviewing evidence of the parent's past performances, for it may be indicative of the parent's future capabilities. *See In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1980). Nydia barely possesses the ability to care for herself, let alone a child.

She is low functioning, demonstrates poor anger management, cannot grasp the physical and psychological development of a child, and her living situation is fraught with instability. Her decisions regarding her own health are perhaps the most telling indication of the substantial harm Brian would likely face in Nydia's care. Her anger and mood swings are at times so overwhelming she becomes utterly consumed by emotion rendering her wholly ineffectual as a parent. Finally, she lacks the capacity to understand the long-term needs of her son and cannot maintain stable housing. Although each problematic area outlined above may not be worthy of termination in isolation, in the aggregate the problems were overwhelming and endangered Brian's future health and safety. The juvenile court, based on clear and convincing evidence, correctly terminated Nydia's parental rights under Iowa Code section 232.116(1)(g). The termination is affirmed.

AFFIRMED.