IN THE COURT OF APPEALS OF IOWA

No. 1-225 / 00-1978
Filed April 27, 2001

IN THE INTEREST OF
D.A., and R.P.,
Minor Children,

L.A., Mother,
Appellant.

FILED
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CLERK SUPREME COURT

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

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

Jennifer A. Clemens-Conlon of Reynolds & Kenline, Dubuque, for appellant.

Thomas J. Miller, Attorney General, M. Elise Pippin, Assistant Attorney General, and Jean Becker, Assistant County Attorney, for appellee-State.

Patricia M. Reisen, Dubuque, attorney and guardian ad litem for the minor children.

Heard by Vogel, P.J., and Zimmer and Hecht, JJ.

ZIMMER, J.

A mother appeals from a district court order terminating her parental rights to her two children. She claims the juvenile court erred in concluding there was clear and convincing evidence to terminate her parental rights. We affirm.

I. Background Facts and Proceedings. LeToya is the mother of Diamond born in January 1999. At the time of Diamond's birth, LeToya was living with Santurn who was her boyfriend and Diamond's father. In February of 1999, Santurn became frustrated with Diamond. He violently shook her and slammed her head into his knee eight to ten times. As a result of this abuse, Diamond suffered a fractured skull and subdermal hematoma. She was airlifted to the University of Iowa Hospitals for emergency brain surgery and required two weeks of hospitalization.

After a hearing in juvenile court, Diamond was adjudicated a child in need of assistance (CINA). Because LeToya was in the bathtub at the time of the abuse by Santurn and because she was cooperative with services, Diamond was returned to her care. Santurn was criminally charged and was ordered to have no contact with Diamond.

Initially, LeToya was compliant with services. She resided at the YWCA Women's Shelter until she located an apartment of her own. She obtained employment. LeToya was also cooperative with the no-contact order against Santurn.

Over time, LeToya's cooperation with services deteriorated. LeToya took Diamond for an unauthorized extended stay with her maternal grandmother in Indiana. She began missing her scheduled appointments with service providers.

LeToya also continued her relationship with Santurn and became pregnant with a second child.

In January of 2000, LeToya gave birth to Royale. She and her children then moved into the same apartment building in which Santurn resided. In March of 2000, LeToya's neighbors reported that she was leaving the children alone in her apartment while she was in Santurn's apartment. LeToya also reportedly left her children alone while she went to a fast food restaurant. Additionally, LeToya admitted to allowing Santurn to have contact with Diamond despite the no-contact order. As a result of the founded and confirmed report of denial of critical care and failure to provide proper supervision of Diamond and Royale, the children were removed from LeToya's care on March 13, 2000. The juvenile court allowed LeToya supervised visitation at the discretion of the Department of Human Services, so long as she complied with court-ordered services and found a new apartment.

From April 1 to May 4 of 2000, LeToya missed seven visits with the children. Additionally, she was late for two visits and left three visits early. Between May 11 and May 22 LeToya made no attempts to visit the children or contact service providers. The service providers eventually reduced the number of visitations to prevent disruption in the lives of the children.

LeToya failed to pay the rent on her apartment and was evicted. She then began residing in Santurn's apartment. Because she was not to be in the apartment building, LeToya would not leave Santurn's apartment for fear of being seen. As a result, she missed several days of work and was terminated from her employment. DHS offered to assist LeToya with rent if she could find a new

apartment and maintain employment. However, LeToya did not take advantage of this assistance.

In June of 2000, LeToya failed to appear for a joint hearing regarding Royale and Diamond. The court found LeToya placed the children at imminent risk by leaving them unsupervised and leaving them unsupervised with Santurn. The court also found LeToya was inconsistent with her visitation and treatment, and that she put her relationship with Santurn above her children. The juvenile court ordered Diamond to continue to be adjudicated a CINA and adjudicated Royale a CINA.

Between June 17 and July 26, 2000, LeToya missed eight of twelve visits with the children. She also failed to attend individual counseling sessions, had not obtained employment and continued to reside with Santurn. LeToya has not had contact with the children since July 18, 2000.

On September 25, a petition to terminate LeToya's parental rights was filed. LeToya failed to appear at a permanency hearing on September 27. A hearing on the petition to terminate parental rights was held on November 9 and LeToya was absent yet again. LeToya and Santurn's parental rights to Diamond and Royale were subsequently terminated pursuant to Iowa Code section 232.116(1)(g) (1999).

On appeal, LeToya contends the court erred in concluding there was clear and convincing evidence the children could not be returned to her care. In particular, she argues the DHS order requiring her to terminate her lease agreement was the most significant factor contributing to her homelessness and inability to care for her children. Santurn did not appeal.

II. Scope of Review. We review proceedings to terminate a parent-child relationship de novo. *In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa Ct. App. 1998). Our primary concern is the best interests of the child. *Id.* We look at both the child's long-range and immediate interests in making this determination. *Id.* We necessarily consider what the future likely holds for the child if returned to his or her parent. *In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1989) (citation omitted). "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 that parent is capable of providing." *Id.* (citation omitted). The grounds for termination must be shown by clear and convincing evidence. *Id.*

III. Sufficiency of the Evidence. LeToya contends the State failed to meet its burden. The juvenile court terminated her parental rights pursuant to Iowa Code section 232.116(1)(g). Section 232.116(1)(g) provides for termination of parental rights if:

> (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.

LeToya argues the last element of the section has not been met.

Under Iowa Code section 232.102(5), custody of a child should not be transferred to a parent when the child cannot be protected from some harm that would justify a CINA adjudication. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). The threat of such harm will justify a termination under Iowa Code section

232.116(1)(g). *Id.* This harm need not be the same harm that led to the child's initial out-of-home placement, so long as the threat of harm is proved by clear and convincing evidence. *Id.*

We find clear and convincing proof that both Diamond and Royale would be subjected to harm if they were returned to LeToya's care. LeToya has continued to maintain a relationship with Santurn despite his life-threatening abuse of Diamond. She became pregnant with their second child only a couple of months after the abuse took place. She left an apartment she had been renting to move into an apartment in the same building where Santurn resided. While living there, she left the children alone on multiple occasions to be with Santurn. She also left the children unsupervised on at least one occasion in order to go to a fast food restaurant. Additionally, she allowed Santurn to have contact with Diamond in spite of a no-contact order. LeToya's past neglect of her children is evidence of the quality of her future care. *See K.F.*, 437 N.W.2d at 560.

After the children were removed from LeToya's care, she continued to prioritize her relationship with Santurn above her children. She left one visitation early in order to meet him. She also failed to find a new apartment, despite DHS's offers of assistance, and eventually moved in with Santurn after losing her own apartment. LeToya did not cooperate with services, eventually abandoning them altogether. She failed to appear at the last three hearings regarding her children and made no attempts to get in contact with any of her service providers to let them know of her whereabouts or to request visitation with the children.

LeToya argues her difficulties began only after she was ordered to relocate. She argues this requirement was inappropriate and unnecessary and that it was a contributing factor to her homelessness. A challenge to the sufficiency of services should be raised at the removal or review hearing or when the services are offered. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994). There is no evidence in the record that LeToya challenged this requirement at the appropriate times. Therefore, we decline to address this issue.

We affirm the decision of the juvenile court terminating LeToya's parental rights to Diamond and Royale.

AFFIRMED.