IN THE COURT OF APPEALS OF IOWA

No. 1999-611 (9-872) / 99-1264
Filed February 23, 2000

FILED
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CLERK SUPREME COURT

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

K.T., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, ,Karla J. Fultz, Associate Juvenile Judge.

Mother appeals following the termination of her parental rights to her son.

AFFIRMED.

Jeffrey T. Mains of the Benzoni Law Office, P.L.C., Des Moines, for appellant.

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

Mike Bandstra, Des Moines, guardian ad litem for minor child.

Heard by Mahan, P.J., and Zimmer and Vaitheswaran, JJ.

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MAHAN, P.J.

Mother appeals following the termination of her parental rights to her son. She contends the court erred in (1) failing to make a specific finding of physical or sexual abuse or neglect, (2) finding she had not maintained significant and meaningful contact with BreShawn and had not made reasonable efforts to resume custody of the child, and (3) finding her son could not be returned to her custody. We affirm.

Keishia is the mother of BreShawn who was born on December 31, 1996. BreShawn's father is Delong who voluntarily consented to a termination of his parental rights and does not appeal. BreShawn first came to the attention of the Department of Human Services (DHS) when he was found wandering on Douglas Avenue in Des Moines late at night when he was sixteen months old.[1] Additional investigation found Keishia's home was a health hazard for BreShawn.

A CINA petition was filed on May 11, 1998. The juvenile court ordered family preservation services on May 22, 1998 in an attempt to keep BreShawn in his mother's home. However, an ex parte removal order was entered on June 24, 1998 based on Keishia's noncompliance with services and her failure to properly supervise BreShawn by allowing him to sleep on the top bunk of the bed. BreShawn was given a drug screen following removal and tested positive for cocaine.

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[1] Keishia, who was seventeen at the time, seemed unconcerned. The record indicates there had been three prior occasions when BreShawn was found wandering in the street.

A stipulated CINA adjudication was entered on July 9, 1998 pursuant to Iowa Code section 232.2(6)(c)(2) (1997). BreShawn was placed in the temporary legal custody of DHS for suitable foster care placement. The dispositional order entered on August 21, 1998 continued the foster care placement and ordered Keishia receive services set forth in the case permanency plan.

Keishia successfully complied with the case permanency plan for a period of approximately one month. Thereafter, she stopped attending individual therapy, had contact with her boyfriend in violation of a no-contact order, allowed other people to live in her apartment, failed to follow through with school and job requirements, and changed the locks on her apartment to deter visits from supervisory staff. As a result, she was discharged from the independent living program.

Keishia made no efforts thereafter to follow through with court-ordered services. For a three-month period from September to December, 1998, Keishia failed to have any contact with DHS, failed to notify DHS of her living arrangements, and failed to make herself available for any visits with BreShawn. In addition, she tested positive for cocaine. She did, however, appear for a termination of parental rights hearing which was scheduled for December 22, 1998. As a result, the State moved to dismiss without prejudice. The request was granted and services for Keishia were reinstated.

Keishia was offered parenting classes but failed to participate. She attended only two sessions of individual therapy. She refused to enter a structured living program that was recommended by the therapist. Her

compliance with drug testing was inconsistent. She was receiving one hour of supervised visits with BreShawn each week. Her lack of progress during these visits precluded the worker from recommending unsupervised visits or the possibility of increased supervised visits. A termination of parental rights hearing was conducted for several days and an order terminating Keishia's parental rights was entered on July 2, 1999. At the hearing, Keishia testified she was not prepared to assume custody of BreShawn at that time. She further testified she was willing to have her parental rights terminated if someone she knew could adopt BreShawn. The court terminated Keishia's parental rights pursuant to Iowa Code sections 232.116 (1)(c), (d) and (g). She appeals.

I. **STANDARD OF REVIEW.** Termination proceedings are reviewed de novo. Iowa R. App. P. 4; *In re M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993). Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. Iowa R. App. P. 14(f)(7); *M.M.S.*, 502 N.W.2d at 5. The primary interest in termination proceedings is the best interests of the child. Iowa R. App. P. 14(f)(15); *In re R.K.B.*, 572 N.W.2d

600, 601 (Iowa 1998); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). The State has the burden to prove the allegations of the petition by clear and convincing evidence. Iowa Code § 232.96 (1997).

II. **TERMINATION.** Keishia contends the juvenile court erred in finding the legal grounds for termination had been met under Iowa Code sections 232.116(1)(c), (d) and (g).

A. Iowa Code Section 232.116(1)(c). Keishia argues termination under this section must fail since the CINA adjudication did not include a specific finding BreShawn had been "physically or sexually abused or neglected as the result of the acts or omissions of one or both parents". Iowa Code §232.116(1)(c)(1). The State argues the definition of physical abuse is broad enough to include injury to a child from lack of supervision or denial of critical care. The attorney and guardian ad litem for the child argue the adjudication included neglect. However, all counsel agree the grounds under this section are in need of clarification and invite this court to address the matter. We decline the invitation. It is clear when the juvenile court terminates parental rights on more than one statutory ground, this court can affirm if the grounds for termination have been established under any of the sections by clear and convincing evidence. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996). We conclude grounds for termination were established under the other two sections and, therefore, a discussion of ambiguities under this section are unnecessary.

B. Iowa Code Section 232.116(1)(d). Keishia contends the juvenile court erred in finding she failed to maintain significant and meaningful contact with BreShawn during the previous six consecutive months and made no reasonable efforts to resume care of the child despite being given the opportunity to do so. We disagree.

Keishia did not visit BreShawn from September 15, 1998 through December 22, 1998. She did not contact DHS or inform them of her whereabouts during this period. After dismissal of the first termination hearing, she did not consistently follow through with therapy, parenting classes, or the

other requirements set out for the return of the child to her care. Although visits were reinstated, Keishia was only able to manage supervised visits once each week. We conclude the juvenile court was correct in terminating parental rights pursuant to this section.

C. Iowa Code Section 232.116(1)(g). Keishia argues the juvenile court erred in finding BreShawn could not be returned to her custody as provided in Iowa Code section 232.102. We disagree.

"Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible and reliable." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). Placement of children in temporary or long-term foster homes is not in their best interest. *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). At the time of the hearing, BreShawn was two years old and had been out of Keishia's care for nine months. She had not shown consistent follow through with the services that had been offered. She testified at the hearing she was not prepared for BreShawn's return and would agree to adoption if it involved someone she knew. Keishia was not capable of assuming custody of the child at the time of the hearing. Nor could BreShawn be returned in the foreseeable future. We conclude the juvenile court was correct in terminating parental rights pursuant to this section.

AFFIRMED.