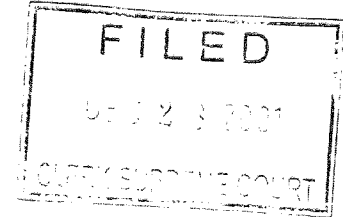


IN THE COURT OF APPEALS OF IOWA

No. 1-719 / 01-0195
Filed December 28, 2001



IN THE INTEREST OF A.H., Minor Child,

T.B., Mother,
Appellant.

Appeal from the Iowa District Court for Johnson County, Stephen C. Gerard, II, District Associate Judge.

The mother appeals from a juvenile court order terminating her parental rights. **AFFIRMED.**

Maurine A. Braddock, Iowa City, for appellant.

Thomas J. Miller, Attorney General, and M. Elise Pippin, Assistant Attorney General, and Deborah Farmer-Minot, Assistant County Attorney, for appellee-State.

Kathy E. Moreland, Iowa City, guardian ad litem for minor child.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

EISENHAUER, J.

A mother appeals a juvenile court order terminating her parental rights. She contends (1) the district court erred in finding clear and convincing evidence for termination under Iowa Code section 232.116(1)(b) (1999), (2) the district court failed to properly protect her parental rights, and (3) the department of human services (DHS) did not satisfy its obligation to make reasonable efforts to reunify her and the child. We affirm.

1. Background Facts and Proceedings. Tiffany and Larry are the parents of Ariel, born September 30, 1998. Tiffany was sixteen years old and Larry was nineteen. They were not married. Tiffany lived with her mother and her grandparents and Larry was incarcerated.

Tiffany moved in with Larry's mother and Larry joined them on release from prison in May of 1999. Tiffany and Ariel moved out of the home in October after a fight with Larry. They stayed with a friend and then moved into a motel. On October 21, DHS received a report of suspected child abuse, alleging Ariel was in Tiffany's care in a motel room with no means to feed her or provide her with a stable home. Ariel was removed from Tiffany's care on October 25, 1999. She has since remained in foster care.

On December 2, 1999, the parties stipulated that Ariel was a child in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(c)(2). On January 28, 2000, the dispositional order confirmed Ariel to be a child in need of assistance and continued her in foster care.

Tiffany was pregnant again and claimed Larry was the father. When the child, Elijah, was born in May of 2000, it was obvious Larry was not the father because Elijah was of mixed racial heritage. Tiffany then claimed a man named Ryan was Elijah's father, and "gave" Elijah to Ryan and his wife, presumably for the purpose of adoption. DHS removed Elijah and placed him in foster care. Tiffany later admitted that Elijah's father is a man named Scott.

In August 2000, the State filed a petition seeking the termination of Tiffany and Larry's rights to Ariel. The juvenile court terminated both parents' rights pursuant to Iowa Code sections 232.116(1)(b), (d), (g) and (h). Tiffany appeals, claiming the State failed to prove by clear and convincing evidence that her parental rights should be terminated. She also alleges the court failed to protect her constitutional rights, and that DHS failed to make reasonable efforts to reunite her with Ariel.

II. Scope of Review. We review proceedings to terminate a parent-child relationship de novo. *In re M.T.*, 613 N.W.2d 690, 691 (Iowa Ct. App. 2000). 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 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). "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. *In re S.J.*, 620 N.W.2d 522, 524 (Iowa Ct. App.

2000).

III. Sufficiency of the Evidence. Tiffany contends the State failed to meet its burden of proof. The district court terminated her parental rights pursuant to Iowa Code sections 232.116(1)(b), (d), (g) and (h). The State concedes the district court erred in terminating under sections 232.116(1)(b), (d) and (h), but contends termination was appropriate under 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.

There is no dispute that the first three elements of this section have been met. Therefore, our inquiry focuses on whether there is clear and convincing evidence Ariel could not be returned to Tiffany's custody.

Custody of a child should not be returned to a parent when the child cannot be protected from some harm that would justify a CINA adjudication. Iowa Code § 232.102(5)(b). The threat of such harm will justify a termination under Iowa Code section 232.116(1)(g). *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). 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 Ariel would be subjected to harm if returned to Tiffany's care. Tiffany has been involved on and off with Larry and the relationship has been marked by a pattern of domestic abuse. Tiffany has also been involved in a series of sexual relationships with men who have criminal records, or are substance abusers or drug dealers. Tiffany's involvement with men of this ilk has put both her and Ariel at risk. For example, Tiffany was raped by one of these acquaintances while Ariel was in a playpen in the same room.

Tiffany has also been unable to demonstrate she can provide stability to Ariel. She did not consistently participate in services, including visits with her children. During the pendency of this case, Tiffany resided in five different places and changed jobs five times. Tiffany has a history of suicide attempts and overdosed on prescription medication in August 2000 after having an argument with Larry. This overdose caused her to again miss visitation with the children.

Finally, Tiffany has not demonstrated that she can act in the best interests of her children. At the time of the hearing on the termination, the court noted Tiffany was living in a trailer park in a rural area, isolated from services, shopping or neighborhood resources. Tiffany had no transportation and there was nothing within walking distance. She has also demonstrated bad judgment in "giving" Elijah to a couple she knew very little about. Her claim that she did so because she believed DHS would remove him from her care and the couple would allow her to have more contact with him than DHS would allow demonstrates her poor judgment. This past neglect of her children is evidence of the quality of Tiffany's future care. See *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

We find placing Ariel in Tiffany's care would subject her to the type of harm that would justify a CINA adjudication. Therefore, termination was proper under Iowa Code section 232.116(1)(g).

IV. Constitutional Rights. Tiffany next contends the State failed to protect her parental rights. She claims the State pursued termination before providing a suitable opportunity for her to resume care of Ariel. We reject her claim.

While the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," this patience has been built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). Children should not be forced to endlessly await the maturity of a natural parent. *Id.* At some point, the rights and needs of the child rise above the rights and needs of the parent. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997).

Iowa Code section 232.116(1)(g) allows for termination of parental rights when the child has been out of the home for at least six months. Tiffany was given almost a year to remedy the problems that led to the CINA adjudication. While she made improvements, Tiffany failed to show an overall ability to care for Ariel. We find Tiffany's constitutional rights were not violated when the court terminated the parent-child relationship.

V. Reasonable Efforts. Finally, Tiffany argues the department of human services did not make reasonable efforts to reunify her with her daughter.

Iowa Code section 232.102(7) requires DHS to make reasonable efforts to return a child to their parent. Services are to be offered to improve parenting skills. *C.B.*, 611 N.W.2d at 493. A challenge to the sufficiency of such services should be raised when the services are offered. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994).

Tiffany does not suggest that she could have been reunited with Ariel if only DHS had provided more services. Instead, she complains that the requirements of her case plan were overly burdensome. Tiffany does argue that DHS should have put Ariel in family placement. Without addressing the feasibility of such an arrangement, we note Tiffany complains of this failure only because it could possibly have eliminated the six month period before termination could be pursued, not because it would have made her a better parent.

The reasonable efforts requirement is not a strict substantive requirement for termination. *C.B.*, 611 N.W.2d at 493. Instead, the services provided by DHS to reunify parent and child after removal impacts the State's burden of proving the child cannot be safely returned to the care of a parent. *Id.*

We find the State met its burden of proving Ariel could not be returned to Tiffany's care. DHS offered reasonable services to reunite mother and daughter. Tiffany chose not to participate regularly in those services. We do not believe offering any additional services would have remedied the problems in this case.

AFFIRMED.