**IN THE COURT OF APPEALS OF IOWA** 000027

No. 7-439 / 97-0345

FILED
OCT 29 1997
CLERK SUPREME COURT

**IN THE INTEREST OF D.D.B., Minor Child,**

**M.B., Mother,**
Appellant.

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Appeal from the Iowa District Court for Appanoose County, Gene W. Glenn, Associate Juvenile Judge.

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

R. T. Starken of Alexander & Starken, Ottumwa, for appellant.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General, and Mark Kruse, County Attorney, for appellee State.

Jonathan Willier, Centerville, for minor child.

Considered by Sackett, P.J., and Streit and Vogel, JJ.

**VOGEL, J.**

A mother appeals the decision of the juvenile court terminating her parental rights to her child. We affirm.

Marsha is the mother of Dakota, who was born on July 20, 1992. The father of Dakota has not been involved in his life and is not involved in this case. Marsha has continuing problems with mental illness. She has been diagnosed with bipolar affective disorder and borderline personality disorder.

Marsha began receiving family centered services in November 1993, after she was released from a psychiatric hospital. Dakota was placed in foster care on June 30, 1994, when Marsha was again hospitalized. After Marsha was released, in July 1994, she resumed a relationship with Dan, who has been convicted of sexual abuse of a child.

On July 22, 1994, Dakota was adjudicated a child in need of assistance. The juvenile court ordered Marsha to receive in-home treatment services, including family therapy and parent skill development instruction. Marsha was also ordered to participate in individual counseling and mental health treatment. The court determined Marsha could have supervised visitation as appropriate.

Marsha's condition began to improve, and in August 1995, she started to have unsupervised visitation with Dakota. In December 1995, however, Dakota returned from visitation with two small bruises. Marsha admitted she had used physical

discipline with Dakota, and she had allowed her brother to spank him. DHS determined Marsha should have only supervised visitation.

Marsha's last visit with Dakota was on August 29, 1996. Marsha was admitted to the hospital on September 4, 1996, because she attempted to commit suicide by taking an overdose of medication. She was committed to a mental health facility. Marsha had been brought to the hospital by Dan, who she had continued to see even though she had assured service workers she no longer had a relationship with him.

Marsha was discharged from the mental health facility in December 1996. She inquired about resuming visitation. DHS did not permit any further visitation due to concerns about Marsha's emotional stability. In addition, Dakota's therapist did not recommend visitation. Dakota has an adjustment disorder, and impulsive and hyperactive behavior. His therapist believed his symptoms reflected the confusion and rejection he found in his relationship with his mother.

On November 22, 1996, the State filed a petition to terminate Marsha's parental rights. At the termination hearing Marsha testified she was mentally sane and did not need psychiatric treatment. The juvenile court found Dakota could not be safely returned to Marsha's care. The court terminated Marsha's parental rights pursuant to Iowa Code section 232.116(1)(e). Marsha has appealed.

**I.** The scope of review in termination cases is de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1994). The grounds for termination must be proven by clear and convincing evidence. *In re R.K.K.*, 544 N.W.2d 274, 277 (Iowa App. 1995). Our

primary concern is the best interests of the child. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

**II.** Marsha contends DHS did not engage in reasonable efforts to reunite her with Dakota. In particular, she claims DHS should not have suspended her visitation with him. She believes the suspension of her visits denied her the opportunity to show she was now able to care for her son.

We determine Marsha has not preserved error on this issue. Parents should demand services prior to the termination hearing. *In re C.D.*, 508 N.W.2d 997, 101 (Iowa App. 1993). Challenges to services should be made when the case plan is entered. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994).

Even if we found Marsha had preserved error, we do not accept her claim she did not receive reasonable services. Reasonable efforts must be provided to attempt to reunite a family before the State can terminate parental rights. *Id.* 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 App. 1996). The nature and extent of visitation is controlled by the best interests of the child. *Id.* We determine visitation with Marsha would not be in Dakota's best interests. Interaction with Marsha caused Dakota to have impulsive and hyperactive behavior.

**III.** Marsha asserts Dakota should have been placed in the care of the maternal grandmother, Elba. Elba testified at the termination hearing that she would be willing to care for Dakota. Section 232.117(3) grants grandparents the legal right to be considered as guardians and custodians. *In re A.G.,* 558 N.W.2d 400, 403 (Iowa 1997). There is no statutory preference for a relative. *In re R.J.,* 495 N.W.2d 114, 117 (Iowa App. 1992).

The juvenile court considered Elba, but rejected her as a suitable caretaker for Dakota. Elba also had a history of mental illness. She admitted she would allow Marsha to have continuing access to Dakota. Furthermore, Elba was more than sixty years old and her husband was seventy. It is unlikely they would be able to deal with the challenges presented by Dakota's impulsive and hyperactive behavior.

We affirm the decision of the juvenile court terminating Marsha's parental rights to Dakota. We find this termination is in Dakota's best interests.

**AFFIRMED.**

Streit, J., concurs; Sackett, P.J., specially concurs without opinion.