

**IN THE COURT OF APPEALS OF IOWA**

No. 8-584 / 08-0701

Filed July 30, 2008

**IN THE INTEREST OF E.M.H.,  
Minor Child,**

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

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

A mother appeals from a juvenile court order terminating her parental rights to one child. **AFFIRMED.**

Lynn Rose of Mears Law Office, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Janet Lynness, County Attorney, and Kristin L. Parks, Assistant County Attorney, for appellee.

Shannon K. Walsh, Iowa City, for father.

Shelly J. Mott, Coralville, guardian ad litem for minor child.

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

**MILLER, J.**

Brandi is the mother of one-year-old Emily. She appeals from an April 2008 juvenile court order terminating her parental rights to Emily.<sup>1</sup> We affirm.

Emily was removed from her mother's care in August 2007 due to allegations that Brandi was exposing her to illegal drugs. At the time of the removal, Brandi and Emily were living with Brandi's mother, Debra, and her mother's boyfriend, Ed. Debra and Ed were caring for Emily one night in August while drinking alcohol at a friend's house. Ed drove himself, Debra, and Emily home late that night. He was stopped by a police officer when he arrived home on suspicion of operating a vehicle while intoxicated. Ed had a blood alcohol content of .086, and Debra had a blood alcohol content of .163.

Brandi came out of the residence and attempted to remove Emily from the vehicle. However, the police observed that Brandi appeared to be under the influence of marijuana. They also discovered a plastic baggy containing marijuana outside the residence. Brandi admitted to recent drug use. Hair stat testing later revealed that Emily had been exposed to cocaine.

Emily was removed from Brandi's physical care and placed in the legal custody of the Iowa Department of Human Services (DHS) for placement in foster care. She has thereafter remained in DHS custody, placed with the same foster care family. She was adjudicated a child in need of assistance (CINA) in October 2007 pursuant to Iowa Code sections 232.2(6)(c)(2) and (n) (2007).

Brandi was on probation for second degree theft when Emily was removed from her care. Her probation officer informed DHS that she was a "highly

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<sup>1</sup> The order also terminated the parental rights of Emily's putative father, Michael. He has not appealed from this order.

troubled” individual with a serious substance abuse problem. Brandi’s parental rights to Emily’s half-sister were terminated in 2005 after she and her mother, Debra, were arrested for manufacturing crack cocaine at their residence while the child was present. In those proceedings, Brandi admitted to ongoing use of cocaine, marijuana, and alcohol since she was sixteen years old. She did not complete recommended inpatient substance abuse treatment and continued to abuse illegal substances throughout those proceedings.

Brandi’s substance abuse problems did not improve following Emily’s removal from her care. Although she initially provided negative drug screens, she tested positive for cocaine at the beginning of November 2007. She had only two visits with Emily during these proceedings. She missed a supervised visit in August 2007, and no visits occurred in September or October. She attended two supervised visits with Emily in November, which went well. However, she was unable to continue visiting with Emily due to her probation being revoked in November 2007 and her subsequent incarceration.

The State filed a petition to terminate parental rights in January 2008. Following a hearing, the juvenile court entered an order terminating Brandi’s parental rights to Emily pursuant to Iowa Code sections 232.116(1)(b), (e), (g), and (h).<sup>2</sup> Brandi appeals.

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court’s findings of fact,

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<sup>2</sup> We note that although the court’s order purports to terminate Brandi’s parental rights under these four statutory grounds, the State’s petition sought termination under only three of those grounds, namely sections 232.116(1)(e), (g), and (h). Brandi, however, does not raise this as an issue on appeal. In addition, when a juvenile court terminates a parent’s rights on more than one statutory ground, we only need to find termination was proper under one ground in order to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

*In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

Brandi claims only that the State did not make reasonable efforts to reunite Emily with her based on DHS's "failure to assign a service provider on the case until October of 2007." She argues this resulted in her inability to visit with Emily during September and October 2007 and prevented her from participating in parenting skill classes. The State acknowledges visits were delayed "due to internal [DHS] issues in adjusting to new services." It argues, however, that Brandi has not preserved error on this issue.

While the State has an obligation to provide reasonable reunification services, the parent has an equal obligation to demand other, different, or additional services prior to the termination hearing. *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). When a parent alleging inadequate services fails to demand services other than those provided, the issue of whether services were adequate is not preserved for appellate review. *Id.*; *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994).

There is no indication in the record that Brandi voiced an objection to the absence of visits in September and October 2007. In orders filed on August 13, 2007, and October 4, 2007, the juvenile court determined reasonable efforts had been made to prevent the need for the child's removal from the home. The court ordered DHS to arrange for visitation between Brandi and Emily and advised

Brandi to file a written request for any additional services within ten days from the date of the October 2007 order. She did not do so.<sup>3</sup>

Even if we were to assume, *arguendo*, that Brandi preserved error on this issue, we would find her claim to be meritless. We initially note that while visitation is “an important ingredient to the goal of reunification,” it is “only one element in what is often a comprehensive, independent approach to reunification.” *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996). The State offered Brandi a wide array of services, which she did not participate in or respond to, beginning in 2005 with her first child. See *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981) (stating evidence of a parent’s past performance may be indicative of the quality of the future care that parent is capable of providing). She likewise failed to take advantage of the services that were offered to her in this case before her incarceration, which included foster care, home studies, visitation, parenting skill sessions, and mental health and substance abuse treatment. In evaluating the reasonableness of the State’s efforts towards reunification, our focus is on the services provided by the State and the parent’s response to those services, not on the services the parent now claims DHS failed to provide. *C.B.*, 611 N.W.2d at 494.

Brandi did not attend her first scheduled visit with Emily in August 2007. Although she participated in a substance abuse evaluation, she did not

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<sup>3</sup> However, following her incarceration in November 2007, Brandi did write several letters to the juvenile court requesting extensions of time to work towards reunification with her daughter. She did not request any visitation or additional services in those letters. Instead, she wanted the “deadline for the termination of my parental rights [extended] until after my release date [from prison].” She does not raise the juvenile court’s denial of her request for an extension of time as an issue on appeal.

subsequently respond to the treatment provider's request to schedule individual counseling sessions. She completed only one parenting skills session before she was incarcerated, and she did not begin participating in substance abuse treatment until after she was incarcerated. However, once incarcerated, Brandi did become involved in a substance abuse treatment program and participated in a parenting class at the prison. She also obtained her GED and maintained a job at the prison facility.

Upon our de novo review of the record, we conclude the State's efforts towards reunification throughout the juvenile court proceedings were reasonable. See *In re S.J.*, 620 N.W.2d 522, 525 (Iowa Ct. App. 2000) ("The services required to be supplied an incarcerated parent, as with any other parent, are only those that are reasonable under the circumstances."). Brandi, however, did not make it a priority to take advantage of the offered services until it was too late.

Our supreme court has recognized that children "should not be forced to endlessly await the maturity of a natural parent." *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). "Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable." *Id.* Emily could not be returned to Brandi's care at the time of the termination hearing due to Brandi's imprisonment, which was expected to continue until November 2009, despite the State's reasonable efforts at reunification. See Iowa Code § 232.116(1)(h); *C.B.*, 611 N.W.2d at 493 (stating the State must show reasonable efforts as part of its ultimate proof the child could not be safely returned to the parent's care). Brandi's incarceration does not excuse her inability to care for Emily. See *S.J.*, 620 N.W.2d at 526.

We conclude, as the juvenile court did, that the State made reasonable efforts towards reunification. We further conclude, as the juvenile court did, that termination of Brandi's parental rights is in Emily's best interests.

**AFFIRMED.**