

IN THE COURT OF APPEALS OF IOWA

No. 1-793 / 11-1402
Filed November 9, 2011

**IN THE INTEREST OF C.B.S. and K.M.B.,
Minor Children,**

S.B., Mother,
Appellant.

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

A mother appeals the juvenile court's ruling terminating her parental rights to her two children. **AFFIRMED.**

Rachel Antonuccio of Cole & Vondra, L.L.P., Iowa City, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Janet M. Lyness, County Attorney, and Emily Voss, Assistant County Attorney, for appellee State.

Maurine A. Braddock, Iowa City, attorney for minor children and guardian ad litem for C.B.S.

Anthony A. Haughton of Linn County Advocate, Inc., Cedar Rapids, guardian ad litem for K.M.B.

Considered by Sackett, C.J., and Vogel and Eisenhauer, JJ.

VOGEL, J.

Sharvez appeals the termination of her parental rights to her two children, K.B., born November 2009, and C.S., born May 2007. In August 2011, the juvenile court ordered the termination of Sharvez's parental rights under Iowa Code section 232.116(1)(h) (2011) (child three or younger, adjudicated CINA, removed from parent's custody at least six of last twelve months or for at least six consecutive months and trial period at home less than thirty days, and child cannot be returned to parent's custody). We affirm.¹

The Iowa Department of Human Services (DHS) became involved with this family in July 2007, after an incident of domestic abuse between Sharvez and C.S.'s father, Anthony, in June 2007. C.S. was removed from the home and adjudicated a child in need of assistance (CINA) on November 1, 2007. Following an April 2, 2008 dispositional hearing, the district court authorized a trial home placement of C.S. with Sharvez, where he remained until an April 1, 2009 in-court review, which ordered C.S. be removed from Sharvez's custody "based upon her failure to cooperate with services, failure to appear, failure to permit [DHS] to inspect [her] home and [the] potential for harm to the child." The State filed an application to waive reasonable efforts, and on June 1, 2009, the

¹ C.S.'s father, Anthony, had his parental rights terminated on March 31, 2010 under Iowa Code sections 232.116(1)(b) (child abandoned or deserted) and (h) (child three or younger, adjudicated CINA, removed from parents custody at least six of last twelve months or for at least six consecutive months and trial period at home less than thirty days, and child cannot be returned to parent's custody). K.B.'s putative father, Michael, had his parental rights terminated on August 15, 2011 under Iowa Code sections 232.116(1)(b) and (h). Neither appeals.

district court ordered the waiver of reasonable efforts pursuant to Iowa Code section 232.102(12)(a) and (b) (2009).²

Sharvez gave birth to a second child, K.B., in November 2009. On November 17, 2009, University of Iowa Hospitals and Clinics contacted DHS, concerned that the mother had an open case with DHS and that the mother seemed unprepared for K.B.'s birth or care. On November 17, 2009, Sharvez signed a voluntary placement agreement, which placed K.B. with his putative paternal grandparents. In December 2009, K.B. was transferred to foster care. On January 20, 2010, K.B. was adjudicated CINA, and returned to Sharvez for a trial home placement on February 1, 2010. A March 17, 2010 disposition hearing returned custody of K.B. to Sharvez.

On March 31, 2010, the district court terminated Anthony's parental rights to C.S. With respect to Sharvez's parental rights, the district court found that since giving birth to her second child, Sharvez had "begun to demonstrate that she is capable of providing a safe, nurturing home to C.S. as she has for K.B." and that she was now "older and seems to have learned the need to stabilize her life for the benefit of her children." The district court therefore determined that:

Pursuant to the provisions of Iowa Code section 232.104(2)(b), the child's placement shall continue for an additional six months to permit the child's mother to seek reunification with the child. The child's mother will be expected to demonstrate that she can maintain stable housing, comply with Case Plan requirements, continue to be employed, utilize protective daycare and provide for C.S.'s safety, health, and emotional welfare.

² Sharvez appealed the order waiving reasonable efforts on June 15, 2009. On July 30, 2009, our supreme court determined this adjudicatory order was not a final, appealable order, and treated the notice of appeal and petition on appeal as a request for interlocutory appeal. The request for interlocutory appeal was denied.

At an in-court review on April 14, 2010, the court again authorized a trial home placement of C.S. with Sharvez; the record, however, is unclear regarding whether a trial home placement actually occurred. Beginning in May 2010, Sharvez missed visits with C.S., did not open her door to allow providers inside her home, and was not meeting with providers regularly. DHS Social Worker Katie Kelly met with Sharvez and laid out clear expectations regarding what Sharvez needed to do in order to cooperate with DHS and the court. On May 27, 2010, DHS was informed that Sharvez was using marijuana in K.B.'s presence. On May 28, 2010, Sharvez was asked to provide a urinalysis (UA). A DHS affidavit dated June 4, 2010, states that the UA provided by Sharvez on May 28, 2010, came back "positive for [marijuana] with a level of 691, which is 13 times the cutoff range for a positive UA." On June 11, 2010, the district court ordered temporary removal of K.B. from Sharvez's custody. On June 22, 2010, Sharvez admitted to a DHS case worker that she had also used marijuana on two days in the beginning of May 2010, while K.B. was at daycare, to relieve her stress. A DHS case plan dated July 13, 2010, also contained information stating that Sharvez reported using marijuana to cope with stress, suggesting it was more than a one-time occurrence.

Following her testing positive for marijuana use, Sharvez was evasive about providing further drug screens but continued to have supervised visits with both children every three to four days.³ During these visits Sharvez

³ On June 22, 2010, Sharvez's DHS caseworker instructed her to drop a UA the following day; Sharvez said she would, but did not actually drop the UA sample until June 25; it came back negative. Similarly, on August 20, 2010, Sharvez was instructed to drop a UA test that same day; she reports that she complied. The testing service,

demonstrated an ability to spend time interacting with both children and also provided age appropriate snacks and toys for the children. The home environment was also observed as clean and free of any safety hazards.

Despite this progress, Sharvez began cancelling a number of visitation appointments with the children. From July 30, 2010, to March 25, 2011, Sharvez cancelled approximately fifteen of the sixty-five scheduled visits with the children, for reasons including a messy house, a dental appointment, work, and because the water to her apartment was shut off. In addition, despite her social worker requesting that UA samples be provided on a regular basis from June 2010 to December 2010, Sharvez last provided a UA in July 2010. Her interest in cooperating with services offered waned.

On December 8, 2010, the district court found that reasonable progress had not been made in achieving the permanency goal of family reunification, and reasonable efforts were again waived under Iowa Code section 232.102(12)(a) and (b) as Sharvez had made little or no progress towards reunification. A termination hearing was held on April 4–5, 2011, and resumed on May 31, 2011. On the last day of the hearing Sharvez reported she was again pregnant—due in January 2012, and that the third child had a different father than the previous two children. The district court's August 15, 2011 order terminated Sharvez's parental rights under Iowa Code section 232.116(1)(h) (2011).

Our review of termination of parental rights cases is de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We will uphold an order terminating parental

however, has no record of this drop. At the termination hearing, DHS social worker Katie Kelly testified that despite requesting that Sharvez provide a UA on a regular basis up until December 2010, July 2010 was the last time she received a UA from Sharvez.

rights if there is clear and convincing evidence of grounds for termination under Iowa Code section 232.116. *Id.*

On appeal Sharvez asserts the State did not meet its burden of proof under Iowa Code section 232.116(h) with respect to the allegation that the children could not be safely returned to her custody. The State responds by arguing that although Sharvez alleges it failed to meet its burden of proof, “she does not specifically argue that the children could be returned to her care at the present time.”

Iowa Code section 232.116(h) states there are grounds for termination if the court finds each of the following elements are satisfied:

- (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.

While the State has the burden of proving each of the above elements was satisfied by “clear and convincing evidence,” we, like the State, also recognize that Sharvez sets forth no reason regarding why the district court was incorrect in finding that the children could not be returned to Sharvez’s custody. *Id.* at 707 (stating grounds for termination must be supported by clear and convincing evidence). In its termination ruling, the district court noted

To her credit, Sharvez did regain control of her life [after K.B.’s birth] and began to make significant progress, so much so that she regained the care and custody of her son, K.B. However, Sharvez again lost control of her life, tested positive for THC at a

very high level and K.B. was removed as a result of significant safety concerns.

Neither K.B. nor C.S. ha[s] been returned to Sharvez's care for a Trial Home Placement in over a year.

On the eve of the Trial on the State's Petitions for Termination, Sharvez lost her housing and employment[.]

At this point it is clear that Sharvez is unable to maintain housing, or employment for any significant period of time. She lacks insight into how her instability affects her ability to provide a safe home for her children. She is presently unemployed and has not housing of her own. It is highly unlikely that Sharvez can make the necessary changes in her life in the reasonably foreseeable future to be able to provide a safe home for her children.

Sharvez was previously given an additional six months to reunite with C.S. at the time the [c]ourt terminated the parental rights of C.S.'s father. She was unable to succeed in reunifying with C.S.

Like the district court, we recognize that Sharvez has made progress with respect to parenting her children, which correlates with our State's goal in CINA proceedings to "improve parenting skills and maintain the parent-child relationship." *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997).

At the time of her termination hearing, Sharvez had been involved with DHS for over three years. During that time she had the opportunity to receive and participate in a variety of services, which could have equipped her to succeed with family reunification. While Sharvez displayed some progress during this period, her admission to and testing positive for marijuana use, sporadic compliance with services, and inability to hold a job and maintain housing have compromised her ability to provide a safe environment in which the children can live.

Moreover, because our primary concern in termination proceedings is the best interests of the child, we agree with the district court's ruling that termination is in the best interests of C.S. and K.B. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa

2000). Our determination regarding the best interests of the child takes into consideration “the child’s safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child.” *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010) (citation omitted); see also Iowa Code § 232.116(2). We also consider a parent’s past performance in making this determination, “because it may indicate the quality of care the parent is capable of providing in the future.” *In re T.P.*, 757 N.W.2d 267, 269–70 (Iowa Ct. App. 2008).

We note that returning the boys to Sharvez’s care is hindered by her lack of housing, unemployment, drug use, and inability to manage a trial placement with the boys for over one year. Further, because Sharvez has had over three years to utilize DHS services but has exhibited a lack of commitment, especially during the most recent stage in the process, we find that her parenting skills will not be remedied in a reasonable amount of time to warrant the children’s return to her care.

Because we find that the best interests of the children will be best served if they are not returned to Sharvez’s care, we affirm the district court’s order terminating Sharvez’s parental rights.

AFFIRMED.