IN THE COURT OF APPEALS OF IOWA

No. 3-423 / 13-0129
Filed May 15, 2013

IN THE INTEREST OF C.W.,
Minor Child,

L.W., Mother,
Appellant,

S.T.W., Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Louise Jacobs, District Associate Judge.

A mother appeals the termination of her parental rights to her child. **AFFIRMED.**

John Audlehelm of Audlehelm Law Office, Des Moines, for appellant-mother.

Tod Beavers of Tod J. Beavers, P.C., Des Moines, for appellant-father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, John Sarcone, County Attorney, and Faye Jenkins, Assistant County Attorney, for appellee.

Jamie Hagemeier of Williams & Hagemeier, P.L.C.,, Des Moines, attorney for minor child.

Jared Harmon of Carr & Wright Law Firm, guardian ad litem for minor child.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

TABOR, J.

By her own account, Lindsey started abusing methamphetamine when she was twenty-two years old. Now at age thirty-five, still struggling with drug addiction, she seeks to reverse the termination of her parental rights to her eleven-year-old son, C.W. She contends the juvenile court should have ordered "another planned permanent living arrangement" (APPLA) under Iowa Code section 232.104(2)(d) (2011).

Lindsey makes no case for returning C.W. to her care. Because her request for APPLA in place of termination is not appropriate, we affirm the juvenile court ruling.

I. Background Facts and Proceedings

Authorities removed C.W. from the custody of his parents, Lindsey and Steven, in early April 2011 because they were abusing drugs. C.W. has not been home since. The juvenile court adjudicated him as a child in need of assistance (CINA) on April 22, 2011.

Steven started serving a six-year federal prison sentence in December 2011. Lindsey also was arrested on drug charges that month, which is the last time she had a visit with her son. She admittedly used drugs through most of the CINA case. She successfully completed residential drug treatment at MECCA in February and March of 2012, but did not follow through with outpatient treatment after her discharge.

On March 14, 2012, the juvenile court entered an order under Iowa Code section 232.104(2)(b) allowing Lindsey an additional six months to regain

custody of her son, finding compelling grounds, based on C.W.'s age and his bond with his mother, not to terminate parents rights. The court order required Lindsey to comply with the following provisions: "[M]other to commit to sobriety and demonstrate such, clarify position in regards to father, demonstrate supportive posture to concurrent planning, supportive of foster parents in parental roles."

Lindsey did not make good use of the six months. She was evicted from her home in May 2012 and moved into Beacon of Life, but left that program in June. She tested positive for methamphetamine in May and for marijuana in June 2012. She was arrested for theft and a probation violation in August 2012.

On September 4, 2012, the court entered another permanency review order, modifying the permanency goal and directing the State to file a petition for termination of parental rights. The State filed that petition on November 19, 2012, alleging the following statutory grounds for termination: Iowa Code sections 232.116(1)(b), (d), (e), (f), (i) and (*l*).

The juvenile court heard evidence on December 13, 2012. On January 4, 2013, the court issued its order terminating the parental rights of both the mother and father on all grounds alleged by the State. This appeal addresses only the rights of the mother.[1]

II. Scope and Standards of Review

We review the juvenile court's termination-of-parental-rights order de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). To the extent the mother's

[1] The Iowa Supreme Court dismissed the father's appeal on April 17, 2013, because no amended notice of appeal was filed with the father's signature.

claim calls for interpretation of section 232.104(2)(d), our review is for legal error. *See In re A.H.B.*, 791 N.W.2d 687, 689 (Iowa 2010).

III. Analysis

Lindsey does not challenge the State's proof of the statutory grounds for termination under Iowa Code section 232.116(1). She does not invoke the best-interest provision at Iowa Code section 232.116(2) or any permissive factors allowing a court to forego termination under section 232.116(3). She only argues that because she addressed the specific concerns outlined by the juvenile court in its March 14, 2012 order, the court should have set the permanency goal as another planned permanent living arrangement (APPLA) pursuant to Iowa Code section 232.104(2)(d).[2]

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[2] Under Iowa Code section 232.117(5), if a court does not order termination, it may enter an order in accordance with section 232.104. Section 232.104 provides in pertinent part:

> 2. After a permanency hearing the court shall do one of the following:
>
> a. Enter an order pursuant to section 232.102 to return the child to the child's home.
>
> b. Enter an order pursuant to section 232.102 to continue placement of the child for an additional six months at which time the court shall hold a hearing to consider modification of its permanency order. An order entered under this paragraph shall enumerate the specific factors, conditions, or expected behavioral changes which comprise the basis for the determination that the need for removal of the child from the child's home will no longer exist at the end of the additional six-month period.
>
> c. Direct the county attorney or the attorney for the child to institute proceedings to terminate the parent-child relationship.
>
> d. Enter an order, pursuant to findings required by subsection 3, to do one of the following:
>
> (1) Transfer guardianship and custody of the child to a suitable person.
>
> (2) Transfer sole custody of the child from one parent to another parent.
>
> (3) Transfer custody of the child to a suitable person for the purpose of long-term care.
>
> (4) If the department has documented to the court's satisfaction a compelling reason for determining that an order under the other subparagraphs of this paragraph would not be in the child's best

Lindsey's petition on appeal places the cart before the horse. She urges APPLA as an alternative placement following the termination hearing under sections 232.117(5) and 232.104(2)(d) without first establishing a basis for the juvenile court to decline termination under sections 232.116(2) and (3). *See In re P.L.*, 778 N.W.2d 33, 35–38 (Iowa 2010) (describing analytical framework for termination cases). But even if we overlook the gap in her analysis, the record does not support Lindsey's argument that she adequately addressed the court's concerns about her ongoing substance abuse. Moreover, section 232.104(2)(d)(4) indicates the department, not the parent, must document for the court that a placement other than APPLA would not be in the child's best interest.

Iowa's child welfare statutes recognize five acceptable permanency placements: (1) reunification, (2) adoption, (3) legal guardianship, (4) long-term placement with a suitable caregiver, and (5) APPLA. *See* Iowa Code § 232.104(2). Where children cannot be reunified with their birth parents, termination of parental rights followed by adoption is the favored placement option. *See In re C.K.*, 558 N.W.2d 170, 174 (Iowa 1997) ("An appropriate

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> interest, order another planned permanent living arrangement for the child.
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> 3. Prior to entering a permanency order pursuant to subsection 2, paragraph "d", convincing evidence must exist showing that all of the following apply:
>
> a. A termination of the parent-child relationship would not be in the best interest of the child.
>
> b. Services were offered to the child's family to correct the situation which led to the child's removal from the home.
>
> c. The child cannot be returned to the child's home.

determination to terminate a parent-child relationship is not to be countermanded by the ability and willingness of a family relative to take the child.").

Child welfare experts advise that the next preference goes to guardianships and long-term placements, which provide children with less consistency and continuity than adoption, but more than foster care, and may involve ongoing contact with the birth parents. *See* Andrea Khoury, *Legal Permanency Planning Options for Adolescents*, *in* Achieving Permanency for Adolescents in Foster Care: A Guide for Legal Professionals, 15 (Claire Sandt Chiamulera & Sally Small Inada eds., American Bar Association 2006).

"APPLA is the least preferred permanency plan because it is the least stable and permanent." *Id*. Experts caution against using APPLA as "a fallback when no other permanency plan is appropriate." *Id*.

In this case, the record supported the juvenile court's decision to terminate Lindsey's parental rights so that C.W. can be eligible for adoption. The State offered evidence that C.W.'s life with his foster family was "very consistent, very stable." The testimony also revealed that C.W. worried about his mother's ability to reach the department's goals for reunification and often assumed an unhealthy parental role in their relationship.

We appreciate C.W. does not favor termination of his mother's parental rights. He did not want to testify, but asked his attorney to tell the court that "he really, really, really wants to go home and live with his mom." His attorney has joined Lindsey's position on appeal. But C.W.'s guardian ad litem supports the termination petition.

From our independent review of the record, we conclude C.W.'s welfare is best served by termination and progress toward adoption. We are particularly persuaded by the opinion of Jonah Parks, the family safety, risk and permanency (FSRP) worker. He testified he did not think a guardianship or APPLA would provide C.W. the long-term stability he needed. The worker believed so long as C.W. "holds onto that hope that he'll return to Mom or Dad" it would be difficult for him to fully accept a more stable life with his foster parents.

Lindsey contends the "genuine progress" she has made toward substance abuse recovery warrants APPLA as a permanency goal. We disagree. Under section 232.104(2)(d)(4), a juvenile court may only order an APPLA if "the department has documented to the court's satisfaction a compelling reason" for not making another placement decision. The department attempted no such documentation here. The grounds for termination are unchallenged. The record shows the permanence offered by adoption would contribute to C.W.'s long-term emotional growth and well-being. Our law does not allow us to deprive a child of permanency "by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child." *P.L.*, 778 N.W.2d at 41.

AFFIRMED.