IN THE COURT OF APPEALS OF IOWA

No. 7-165 / 07-0135
Filed March 28, 2007

IN THE INTEREST OF C.M.T.,
Minor Child,

M.L.T., Mother,
Appellant.

Appeal from the Iowa District Court for Linn County, Susan Flaherty, Associate Juvenile Judge.

Mother appeals from the order terminating her parental rights to C.M.T. **AFFIRMED.**

Dawn Wilson, Cedar Rapids, for appellant mother.

A.J. Thomas, Anamosa, for intervenors/grandparents.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Harold Denton, County Attorney, and Kelly Kaufman, Assistant County Attorney, for appellee State.

Ellen R. Ramsey-Kacena, Iowa City, for minor child.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

HUITINK, J.

Caitlin was born in February 2002 and came to the attention of the Iowa Department of Human Services (DHS) in February 2004 when allegations surfaced that her mother, Megan, was abusing illegal substances. Caitlin was voluntarily placed in her grandparents' care after a hair stat test revealed methamphetamine in her system. She has remained in her grandparents' care ever since. She was adjudicated a child in need of assistance in March 2004.

Megan's progress towards reunification has been sporadic. Megan made significant improvements in her parenting skills and lifestyle choices until her second child, Tyler, was born in July 2004. DHS advised Megan to end her association with Tyler's father because he was abusing illegal substances and he was verbally and physically abusive in front of Caitlin. Megan lied about their relationship and continued to make decisions that placed her wants and needs above the needs of her children. Tyler was eventually adjudicated a child in need of assistance, but was allowed to remain in Megan's care.

While Megan did successfully complete substance abuse treatment, defiant behavior towards service providers and concerns about the cleanliness of her apartment impeded reunification. At one point, Caitlin cut herself while playing with a razor. Despite repeated warnings by the service provider, it took weeks for Megan to move the razors to an area inaccessible to Caitlin.

In August 2005 the State filed a petition to terminate her parental rights with regards to Caitlin. Megan responded by becoming more cooperative with her providers. DHS acknowledged her willingness to improve her parental skills

and made arrangements for a trial home placement. The State also dismissed the petition to terminate her parental rights. However, in December, during one of Caitlin's overnight visits, Megan was arrested for public intoxication and spent the night in jail. Fortunately, Megan had arranged for a baby sitter. The next day a concerned neighbor contacted authorities when she saw Caitlin cutting through the screen window in Megan's second floor apartment. Caitlin managed to cut a two-foot-by-three-quarter-foot hole in the screen while Megan took a nap—apparently recovering from the previous night in jail. DHS cancelled the upcoming trial home placement and restricted Megan to supervised visitations. Megan became very uncooperative with DHS and in March made an unannounced trip to Cancun and left Tyler with unknown caretakers. Megan did not inform her family or DHS that she was leaving the country and missed her scheduled visitation with Caitlin. As a result of this trip and other uncooperative behavior, Tyler was removed and placed in foster care.

The State reinstated its petition to terminate her parental rights to Caitlin and on January 12, 2007, the juvenile court entered an order terminating Megan's parental rights pursuant to Iowa Code sections 232.116(1)(f) (2005). Megan filed this timely appeal.[1]

We review the termination of parental rights de novo. *In re L.E.H.*, 696 N.W.2d 617, 618 (Iowa Ct. App. 2005). The State must prove the circumstances for termination by clear and convincing evidence. *Id.* Our primary concern is the best interests of the child. *Id.*

[1] The father's parental rights were also terminated, but he is not a party to this appeal.

Megan first raises the issue of whether the State proved by clear and convincing evidence that Caitlin could not be returned to her care. She also claims she has made "tremendous" progress during the eight-month delay between the termination hearing and the order terminating her parental rights. Because her alleged progress happened after the termination hearing and is not documented in the record, we do not consider it on appeal. *In re Estate of Kelly*, 558 N.W.2d 719, 722 (Iowa Ct. App. 1996) (stating appellate courts must accept the record made by parties and cannot consider matters outside of the record).

The record reveals that, when faced with legal proceedings that will affect her custody and contact with Caitlin, Megan makes efforts to demonstrate her ability to provide for Caitlin's basic needs. However, once given more responsibility and visitation, Megan does not sustain her efforts, and the care for Caitlin diminishes. As a result, after more than two years of services, Megan has not progressed to the point where a trial home placement would be appropriate. While the law demands a full measure of patience with troubled parents who attempt to remedy a lack of parenting skills, a child need not endlessly await the maturity of his or her parents, especially once the statutory period has elapsed. *In re A.C.*, 415 N.W.2d 609, 613-14 (Iowa 1987). Upon our de novo review of the record, we find clear and convincing evidence Caitlin cannot be returned to her mother's care and conclude the State has established statutory grounds for termination of her parental rights pursuant to Iowa Code section 232.116(1)(f).[2]

[2] At the time of termination, Caitlin was at least four years of age; she had been adjudicated a child in need of assistance; she had been removed from Megan's physical custody for at least twelve consecutive months, any trial period at home had been less

Megan also contends DHS did not make reasonable efforts to return Caitlin to her care. While the State bears the obligation to offer reasonable services, the parent has the responsibility to object to the services provided. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994). There is no evidence Megan has previously challenged DHS's efforts towards reunification or that she requested any specific services to facilitate the reunification process. The time to request additional services has passed. *See id.* (stating parents have a responsibility to demand services prior to the termination hearing). We will not consider this argument now, for the first time, on appeal.

Megan also claims termination is not in Caitlin's best interests. To determine Caitlin's best interests we evaluate her long-range as well as immediate interests. *L.E.H,* 696 N.W.2d at 618. Despite numerous services offered through DHS, Megan's ability to provide for the day-to-day needs of Caitlin remains virtually unchanged. The record indicates Caitlin's behavior and mental health has suffered as a result of the frequent changes in Megan's visitation privileges. Caitlin needs a permanent family to love and care for her, and her grandparents are ready to adopt her. Caitlin has already waited more than two years; she cannot wait any longer for Megan to provide the stability she needs. *See In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J. concurring) ("A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests."); *In re L.L.,* 459 N.W.2d 489,

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than thirty days; and there was clear and convincing evidence that Caitlin could not be returned to her care.

495 (Iowa 1990) ("Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable.").

We find the record contains clear and convincing evidence that Caitlin cannot be returned to Megan and that termination of Megan's parental rights is in Caitlin's best interests. We therefore affirm the termination order.

AFFIRMED.