

IN THE COURT OF APPEALS OF IOWA

No. 7-887 / 07-1722
Filed November 29, 2007

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

K.M.F., Mother
Appellant,

M.B., Father,
Appellant.

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

A mother and father appeal separately from the order terminating their
parental rights. **AFFIRMED.**

Charles Hallberg of Hallberg, Jacobsen, Johnson & Viner, Cedar Rapids,
for appellant mother.

Robert Davison, Cedar Rapids, for appellant father.

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

Jacob Koller, Cedar Rapids, for minor child.

Considered by Vogel, P.J., and Mahan and Zimmer, JJ.

ZIMMER, J.

A mother and father appeal separately from the order terminating their parental rights to their child. We affirm.

I. Background Facts and Proceedings.

Katrina is the mother and Michael is the father of Makayla, born in December 1998.¹

Makayla came to the attention of the Iowa Department of Human Services (Department) in March 2006 because Katrina was using marijuana in the child's presence, and she was allowing a sex offender to have contact with Makayla. Makayla was removed from her mother's custody on April 16, 2006. Since her removal, Makayla has resided continuously with a maternal relative, Penny, and her two half-siblings at Penny's residence.²

Makayla was adjudicated a child in need of assistance (CINA) on April 21, 2006. Following adjudication, her parents were offered or received a variety of services designed to transition Makayla back to a parent's care safely. However, Michael did not accept any of the services, and Katrina continued to test positive for illegal substances through February 2007, despite receiving services.

The State filed a petition to terminate Katrina's and Michael's parental rights on April 19, 2007. The juvenile court held a contested termination hearing on July 9, 2007. At the hearing, the service provider testified that Michael had

¹ Katrina and Michael were dating at the time Makayla was born; however, they never married, and Katrina has been Makayla's primary caretaker.

² Makayla is Katrina's fourth child, and her only child with Michael. Katrina's oldest child died as a result of an asthma attack in 2001. Katrina's next two children are in the guardianship of Penny and have lived with her since 1994.

not participated in any of the services offered by the Department. Additionally, she testified that she was concerned about Katrina's substance abuse problems, her choice of associates, and her mental health. The service provider recommended against returning Makayla to her mother's care. The child's guardian ad litem shared the service provider's concerns regarding Michael's lack of involvement as well as Katrina's substance abuse and mental health problems, and stated that it was in the child's best interests to terminate Katrina's and Michael's parental rights.

In an order filed October 1, 2007, the juvenile court terminated Katrina's parental rights to Makayla pursuant to Iowa Code sections 232.116(1)(f) (2007) (child four or older, child CINA, removed from home for twelve of last eighteen months, and child cannot be returned home) and 232.116(1)(l) (child CINA, parent has substance abuse problem, child cannot be returned within a reasonable time), and Michael's parental rights to Makayla pursuant to sections 232.116(1)(b) (abandonment), 232.116(1)(e) (child CINA, child removed for six months, parent has not maintained significant and meaningful contact with the child), and 232.116(1)(f) (child four or older, child CINA, removed from home for twelve of last eighteen months, and child cannot be returned home). The mother and father have appealed separately.

II. Scope and Standards of Review.

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). The grounds for termination must be supported by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). We are primarily concerned with the child's best interests in termination proceedings. *In*

re J.L.W., 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). Even when the statutory grounds for termination are met, the decision to terminate parental rights must reflect the child's best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). When we consider the child's best interests, we look to her long-range as well as immediate best interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997).

III. Discussion.

A. The Mother's Appeal.

In her appeal, Katrina contends the grounds for termination were not supported by clear and convincing evidence. Upon our review of the record, we find no merit in any of the mother's arguments.

When the juvenile court terminates parental rights on more than one statutory ground, we only need to find grounds to terminate under one of the sections cited by the court in order to affirm the court's ruling. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). In this case, we choose to focus our attention on section 232.116(1)(f) (child CINA, parent has substance abuse problem, child cannot be returned within a reasonable time) as the basis for termination.

Katrina contends the court erred in terminating her parental rights because the State failed to prove by clear and convincing evidence that she had a chronic substance abuse problem. We disagree. Despite a substance abuse evaluation in April 2006, which resulted in a recommendation of intensive outpatient treatment, Katrina refused to attend treatment. During the evaluation, Katrina admitted that she smoked marijuana every two to three days; however, she did not view her use as a problem. She explained that Makayla did not get on her

nerves as much when she was high. She also admitted that Makayla was aware of her marijuana use. Katrina disagreed with the outpatient treatment recommendation because she believed the evaluation was tainted by information provided by the Department.

Between April and October 2006, Katrina tested positive for the presence of marijuana and/or cocaine on six occasions. It was not until October 2006, following a review hearing, that Katrina enrolled in an outpatient treatment program. However, Katrina was unsuccessfully discharged from treatment in early December 2006, after she tested positive for cocaine. She tested positive for illegal substances again in January and February 2007. In February 2007 Katrina began a substance abuse treatment program, which she successfully completed in early March 2007. However, on March 21, 2007, she again tested positive for cocaine.

In the four months preceding the termination of Katrina's parental rights, Katrina completed several drug tests and those tests did not show the presence of illegal substances. This four-month period, however, was the longest period of time that Katrina was able to maintain clean drug test results since the inception of this case. Katrina has used illegal substances, and has associated with others who use illegal substances, her entire adult life. We find clear and convincing evidence supports the juvenile court's decision to terminate Katrina's parental rights under section 232.116(1)(f).

B. The Father's Appeal.

Michael appeals separately from Katrina, contending the grounds for terminating his parental rights were not supported by clear and convincing

evidence. Upon our review of the record, we find no merit in any of the father's arguments.

As we have already stated, we only need to find grounds to terminate under one of the sections cited by the juvenile court in order to affirm the court's ruling. *S.R.*, 600 N.W.2d at 64. In this case, we chose to focus our attention on section 232.116(1)(e) (child CINA, child removed for six months, parent has not maintained significant and meaningful contact with the child) as the basis for terminating the father's parental rights.

Michael contends the court erred in terminating his parental rights because the State was unable to prove by clear and convincing evidence that he failed to maintain significant and meaningful contact with Makayla. Upon our review of the record, we disagree. In June 2006, following Makayla's removal from her mother's custody, Michael attended a court hearing and was provided the name and telephone number of the agency available to supervise his visitation. However, Michael never made contact with the agency. Michael has only seen Makayla once since her removal from her mother's custody in April 2006.³ He saw Makayla once in January 2007, and has not seen her since that visit.

At the termination hearing and in his brief on appeal, Michael complained of a lack of services from the Department. However, despite admitting that he knew it was his responsibility to contact the Department regarding visitation, Michael never requested any services from the Department. Therefore, we find

³ At the termination hearing, Michael initially testified that he had ongoing contact with Makayla throughout 2006. However, after further questioning, Michael realized that his visits with Makayla occurred in 2005 rather than in 2006.

no merit in his claim. See *S.R.*, 600 N.W.2d at 65 (holding a failure to demand a service, other than those already provided, waives the issue of whether services were adequate).

Since the inception of this case over nineteen months ago, Michael has spoken with Makayla on the telephone several times and bought her one birthday present. However, he visited her only once and he did not maintain regular contact with her custodians. Michael failed to accept services offered to him by the Department.⁴ We agree with the juvenile court that Michael “has not made effort to assume a place of importance in the life of [Makayla] or to assure that her basic needs are met.” We find clear and convincing evidence supports the juvenile court’s decision to terminate Michael’s parental rights under section 232.116(1)(e).

C. The Child’s Best Interests.

Even when the statutory grounds for termination are met, the decision to terminate parental rights must reflect the child’s best interests. *M.S.*, 519 N.W.2d at 400. Makayla is almost nine years old. She is a personable child and is able to bond well with others. Makayla’s performance and behavior in school has begun to decline. Makayla deserves stability and permanency, which her parents cannot provide. *In re C.D.*, 509 N.W.2d 509, 513 (Iowa Ct. App. 1993).

⁴ While Michael was incarcerated at the time of the termination hearing for a driving violation, he was not incarcerated for the majority of the time following Makayla’s removal from her mother’s custody. However, even if Michael had been incarcerated during the majority of the time since Makayla’s removal, the Department cannot be held accountable for not providing the father with additional services while incarcerated. See *In re M.T.*, 613 N.W.2d 690, 692 (Iowa Ct. App. 2000) (stating an incarcerated parent cannot fault the Department for being unable to provide additional services when the parent’s own actions prevented the parent from taking advantage of services).

Makayla is an adoptable child. She has been living with her maternal relative, Penny, since her removal from her mother's custody in April 2006. Penny would like to have Makayla live with her permanently. Makayla's maternal grandmother, whom Makayla has continued to visit since her removal, would also like to have Makayla live with her. Both women are willing to assume guardianship of Makayla and to adopt her. Because of Makayla's strong bond with her maternal relatives, we agree with the juvenile court that "[c]areful consideration will need to be given regarding the most appropriate permanent placement for this child." Additionally, we agree that "placement of guardianship with the Department of Human Services will allow that careful consideration to occur."

It is apparent that serious concerns still exist regarding Katrina's and Michael's abilities to provide adequate care for their child. The parents have been offered or provided with extensive services since the inception of this case. Despite these services, Katrina has failed to demonstrate a long-term commitment to maintaining a drug-free lifestyle. See *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006) (stating we look to the parent's past performance because it may indicate the quality of care the parent is capable of providing in the future). Additionally, Michael has been unreceptive to the Department's services since the inception of this case, and he is currently imprisoned for driving while barred.⁵ The evidence does not support the conclusion that additional time would allow Makayla to be returned to her parents' care.

⁵ Michael's lengthy criminal record includes convictions for domestic assault, possession of a controlled substance, and harassment.

Makayla should not have to wait any longer for her parents to learn how to become responsible parents. *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). When a parent is incapable of changing to allow the child to return home, termination is necessary. *In re T.T.*, 541 N.W.2d 552, 557 (Iowa Ct. App. 1995). We agree with the juvenile court's finding that termination of Katrina's and Michael's parental rights is in the child's best interests.

IV. Conclusion.

We affirm the juvenile court's decision to terminate Katrina's and Michael's parental rights.

AFFIRMED.