

IN THE COURT OF APPEALS OF IOWA

No. 8-953 / 08-1601
Filed December 17, 2008

**IN THE INTEREST OF H.G.,
Minor Child,**

A.G., Mother,
Appellant.

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A mother appeals from the district court's order terminating her parental rights to her son. **AFFIRMED.**

Steven Drahozal, Dubuque, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Ralph Potter, County Attorney, and Jean Becker, Assistant County Attorney, for appellee State.

Mary Kelley, Assistant Public Defender, Dubuque, for minor child.

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

VOGEL, P.J.

Angelica appeals from the district court's order terminating her parental rights to H.G.¹ (born May 2003). She challenges the sufficiency of the evidence and the sufficiency of the services. We affirm.

We review termination of parental rights cases de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Grounds for termination must be proven by clear and convincing evidence and our primary concern is the child's best interests. *Id.* H.G. came to the attention of the Iowa Department of Human Services (DHS) in 2005 upon Angelica's admittance to the hospital for hallucinations and depression. This incident followed a pattern of difficult occurrences in Angelica's life. She came to the United States as an illegal immigrant and worked in a role that could be closely described as an indentured servant, or what professionals working with Angelica called "economic slavery." Her mental health has been an ongoing struggle. She was diagnosed with major depression recurrent with psychotic features and posttraumatic stress.

Upon Angelica's admittance to the hospital, suspicious burns were observed on H.G.'s hands, which led to an investigation resulting in a founded child abuse report for denial of critical care for failure to supervise. On April 27, 2005, H.G. was adjudicated a child in need of assistance (CINA) pursuant to 232.2(6)(n), and placed in foster care. Thereafter, Angelica was able to make progress with her parenting skills, gain employment, and utilize a support system, which allowed H.G. to be returned to her care and the CINA case to be closed.

¹ H.G.'s father's parental rights were also terminated, but are not at issue in this appeal.

H.G. again came to the attention of DHS in July 2007, when Angelica's mental health became a challenge and she was again hospitalized. H.G. was placed in foster care where he remained through termination. Angelica was offered numerous services: family, safety, risk, and permanency services; mental health treatment; immigration outreach; language skills; and counseling services. She was also assisted in finding places to live, including the Teresa Shelter, Maria House, and Manessah House. However, her participation was inconsistent and sporadic. In July 2008, the district court terminated Angelica's parental rights to H.G. pursuant to Iowa Code section 232.116(1)(f).

Under 232.116(1)(f), a parent's rights may be terminated if the court finds by clear and convincing evidence (1) the child is four years or older, (2) the child has been adjudicated in need of assistance, (3) the child has been removed from the home for at least twelve of the last eighteen months, and (4) the child cannot be returned home at the present time. The first three elements are not in dispute; the only question is whether H.G. could have been returned to Angelica's care at the time of the termination hearing.

Angelica claims that there was not clear and convincing evidence that H.G. could not be returned to her care.² Although Angelica was diagnosed with serious mental health issues, she resisted taking her medication and failed to address these ongoing issues. Case workers testified that although she has shown improvement in her language skills, there continue to be barriers to

² Angelica also claims that due to her illegal immigrant status, she was not able to work, and reasonable efforts were not made to remedy that situation. She did not preserve error on this issue, but even if she had, the record refutes her assertions. DHS records were adequate in detailing the amount of services she received, including translation services.

reunification, as she is “barely able to care for herself, making appointments, financially, and following through. It would be difficult for [H.G.] to live with this kind of instability.” Aside from her ongoing mental health challenges, Angelica does not have a stable environment to offer H.G. Unfortunately, she has made very little progress with the many services offered to her, and her visits with H.G. have not progressed past supervised. To the contrary, her visits have been reduced in length, and she has never requested additional time.

Angelica asserts that she has recovered from depression with psychotic symptoms, and that her mental health issues were caused by or contributed to by her thyroid condition. While she has made efforts to improve, we agree with DHS and the district court that her mental health issues remain a major concern to H.G.’s safety. H.G. has been out of Angelica’s care since July 2007. See *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997) (“At some point, the rights and needs of the [child] rise above the rights and needs of the parents.”). He is in need of a safe and permanent home. *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially) (stating children’s safety and their need for a permanent home are the defining elements in determining a child’s best interests). He has done well in foster care, where his foster parents have attended to his special needs: including speech therapy, dental, and eye care. Upon our de novo review of the record, we agree with the district court that termination of Angelica’s parental rights to H.G. was proved by clear and convincing evidence and in his best interests.

AFFIRMED.