IN THE COURT OF APPEALS OF IOWA

No. 9-248 / 09-0238
Filed April 8, 2009

IN THE INTEREST OF M.B. and A.S.,
Minor Children,

A.L.D., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Constance Cohen, Associate Juvenile Judge.

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

Nancy L. Pietz, Des Moines, for appellant mother.

Roscoe Ries of Ries Law Firm, Des Moines, for father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Stephanie Brown, Assistant County Attorney, for appellee State.

Michael Sorci of Youth Law Center, Des Moines, for minor children.

Considered by Sackett, C.J., and Potterfield and Mansfield, JJ.

POTTERFIELD, J.

Andrea appeals the termination of her parental rights to her two children, M.B. born in 2003, and A.S. born in 2007. This is the second time in four years that Andrea has been involved with the Iowa Department of Human Services (DHS) and the court system regarding the safety of her children and her history of becoming involved in physically abusive relationships.

M.B. (whose biological father physically abused her and had his parental rights subsequently terminated) was removed from Andrea's care on October 4, 2007. Andrea was then living with Shane, who had a criminal history including drug and alcohol offenses, domestic violence, and sexual abuse. M.B.'s removal followed an incident in which Shane assaulted Andrea while he was intoxicated and in the presence of M.B. At that time, Andrea was pregnant with A.S.; Shane is A.S.'s biological father.[1] M.B.'s removal was confirmed on October 12, 2007, at which time Andrea was ordered to complete a substance abuse evaluation, to comply with in-home services, to drop UA's, and to comply with pre-natal care. Andrea was also ordered to attend counseling. A.S. was born days after the removal hearing and removed from his parents' custody the day after his birth. M.B. and A.S. were adjudicated children in need of assistance (CINA) on October 31, 2007. Prior orders regarding services were confirmed. In addition, Andrea was to complete a psychosocial evaluation and complete domestic abuse counseling.

The children were returned to Andrea in July 2008 when Shane was incarcerated and a safety plan (agreed to by Andrea) required that he not be

[1] The termination of parental rights of A.S.'s father is not before us.

allowed to live at her residence. Contrary to that plan, however, when Shane was released from Mt. Pleasant in September 2008, Andrea allowed him to move back in with her and then lied to DHS workers about Shane's presence in the home. The children were again removed from Andrea's care on September 29, 2008. Andrea began attending therapy with Raygena Curry in November 2008. According to Ms. Curry, Andrea does understand the cycle of domestic abuse. Andrea admitted that she lied to everyone about Shane living with her after he was discharged from Mt. Pleasant, but promised that it would be different this time if her children were returned to her custody because the second removal of A.S. got her attention.

Shane was arrested in October in 2008 for probation violations and was incarcerated. He was released just days before the termination hearing.

At the January 21, 2009 hearing, Shane testified that he had spent his first night out of prison at Andrea's home with the children, but moved in with friends the next day. Shane testified that he anticipated moving back in with Andrea and maintaining a relationship with her. He had not completed a batterer's education program, even though court-ordered, and was not in a substance abuse program. Further testimony established that Andrea—not Shane—had investigated substance abuse and domestic violence services and housing for Shane upon his release. Andrea was currently pregnant with another child fathered by Shane and had no desire to end her relationship with him.

Andrea appeals the termination of her parental rights to M.B., born in 2003, and A.S., born in 2007. She argues that the juvenile court erred in concluding the statutory requirements for termination had been met. She also

contends the court erred in concluding that the termination of her parental rights was in the children's best interests. In the alternative, Andrea asserts the court erred in not granting a six-month extension. On our de novo review of the record, we disagree with her contentions.

The court terminated the mother's parental rights pursuant to sections 232.116(1)(d), (f), (g), and (h) (2009). We need only find termination proper under one ground to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

With respect to M.B., the record contains clear and convincing evidence to support termination under section 232.116(1)(f) (child is four years or older, has been adjudicated CINA, has been removed from parent's custody for at least twelve of eighteen months, and cannot be returned to custody of parent). With respect to A.S., the record contains clear and convincing evidence to support termination under section 232.116(1)(h) (child is three years or younger, has been adjudicated CINA, has been removed from parent's custody for at least six of twelve months, and cannot be returned to custody of parent). Andrea challenges the sufficiency of the termination grounds, arguing the children could be safely returned to her immediate care and custody.

We acknowledge that Andrea has demonstrated an ability to parent her children when Shane is incarcerated and has gained some insight into her enabling personality characteristics. Yet, both Andrea and Shane testified that they intended their relationship to continue: a relationship that puts the children at risk of exposure to inadequately addressed and inadequately treated substance abuse and domestic violence. Andrea has allowed her children to be removed twice from her custody rather than agree to live apart from Shane. She

continues to exhibit an inability to put her children's safety first and foremost. Andrea's recently acquired appreciation for the seriousness of the situation comes too late. *See In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) ("A parent cannot wait until the eve of termination, after the statutory time periods for reunification have expired, to begin to express an interest in parenting.")

> Once the limitation period lapses, termination proceedings must be viewed with a sense of urgency. *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). Insight for the determination of the child's long-range best interests can be gleaned from "evidence of the parent's past performance for that performance may be indicative of the quality of the future care that parent is capable of providing." *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

Id.

For the following reasons succinctly stated by the juvenile court, we reject Andrea's contentions that termination should not occur even if the grounds for termination are sufficiently established.

> The State is unable to document and the Court is unable to find compelling reasons to maintain the parent/child relationships at this time. The primary concern of the Court is the children's immediate and long term best interest. Even though the permanency plan is for family members to adopt the children, given their ages and need for permanency, termination of parental rights would be less detrimental than the harm that would be caused by continuing the parent-child relationships. It is time to give [M.B.] and [A.S.] the safety, stability, and predictability that they need and deserve. Sadly, the parents' love for their children is overshadowed by their addictions, their toxic relationship, and their prioritization of that relationship over the well-being of their children.

We affirm the juvenile court's termination of Andrea's parental rights to her two children.

Andrea has filed a motion to exclude the State's response to this appeal as untimely. Andrea's appeal was served by mail on March 3, 2009, and a

response was due within fifteen days. *See* Iowa R. App. P. 6.202(2) (2009). However, three days are added because service of the appeal was by mail. *See* Rule 6.701(6) ("Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon that party and the paper is served by mail, e-mail, or fax transmission three days shall be added to the prescribed period."). The resulting deadline, March 21, 2009, fell on a Saturday, which is extended by statute to the next date the clerk's office was open for receiving filings—Monday March 23, 2009. *See* Iowa Code § 4.1(34) (when date of filing falls on Saturday, time is extended). The State's response was timely filed on March 23 and the motion is therefore denied.

AFFIRMED.