

IN THE COURT OF APPEALS OF IOWA

No. 9-574 / 09-0778
Filed August 6, 2009

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

**H.J.P., Mother,
Appellant.**

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

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Mary Beth Fleming, Dubuque, for appellant mother.

Leslie Blair, Dubuque, for father.

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

Natalia H. Blaskovich of Reynolds & Kenline, L.L.P., Dubuque, for minor child.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

DOYLE, J.

A mother appeals from the order terminating her parental rights. Upon our de novo review, we affirm.

I. Background Facts and Proceedings.

H.P. is the mother and C.H. is the father of S.H., born in December 2007.¹ H.P. was seventeen at the time of S.H.'s birth. Through psychological testing, H.P. was diagnosed with Attention-Deficit/Hyperactivity Disorder. H.P.'s full-scale I.Q. was established to be sixty-nine, which places her in the category of mild mental retardation.

S.H. came to the attention of the Iowa Department of Human Services (Department) in January 2008. At that time, C.H., H.P., and S.H. lived with H.P.'s mother and step-father. It was reported to the Department that H.P.'s mother dropped S.H. onto the floor due to her being intoxicated, and safety services were started. Although the Department ultimately determined the abuse report was unfounded, the Department became concerned during its investigation that C.H. and H.P. were unable to properly care for S.H. Additionally, it was reported that C.H. and H.P.'s bedroom was filthy and not suitable for S.H.

On March 3, 2008, the State filed a petition alleging S.H. to be a child in need of assistance (CINA). At that time, C.H. and S.H. had moved into C.H.'s mother and step-father's home and S.H. was in C.H.'s custody. On March 19, 2008, the court entered an order setting the matter for a prehearing conference.

¹ C.H. voluntarily consented to termination of his parental rights and does not appeal.

The court further ordered permanency services be initiated and visitation for H.P. at the Department's discretion.

Due to ongoing conflict between H.P.'s mother and step-father, H.P. was placed in a foster home. On April 16, 2008, S.H. was adjudicated CINA. S.H.'s care, custody, and control were placed with the Department, and S.H. was placed in the same foster home as H.P. The permanency goal was for S.H. to remain in S.H.'s parents' custody.

H.P. twice ran away from her and S.H.'s foster home and then moved back in with her parents on April 30, 2008. S.H. remained in the foster home, and H.P. was given supervised visits with S.H. two to three times per week for one and a half to two hours. In July 2008, H.P. moved in with her boyfriend after turning eighteen. H.P. continued to receive supervised visits with S.H. In August 2008, the visits became partially supervised due to H.P.'s progress. However, concerns were raised thereafter regarding the cleanliness of H.P. and her boyfriend's residence. One case worker observed the home to have dirty floors, dishes stacked up, small items on the floor, and unsafe items within S.H.'s reach. The worker encouraged the mother to maintain a healthy, safe, and clean home environment, but concerns continued regarding the cleanliness of the home throughout the pendency of the case.

In addition to supervised visitation, H.P. received services including a psychological evaluation, counseling at Hillcrest Mental Health Center, and assistance in and from Parents As Teachers and the Visiting Nurses Association (V.N.A.). H.P. cancelled some counseling and medical appointments, but generally participated in the services. Although it was recommended that H.P.

be medicated for her psychological condition, H.P. was unable to take the prescribed medication after she became pregnant.

A review hearing was held on October 22, 2008. Although the Department recommended that services continue to be provided to the parents, the Department recommended that a permanency hearing be set given S.H.'s age and the parents' lack of progress. The court ordered that services continue, that H.P. follow through with her mental health counseling and her counselor's recommendations, and that H.P. continue cooperating with permanency services. Visitations between S.H. and H.P. were to continue at the discretion of the Department.

On December 10, 2008, the State filed its petition to terminate the parents' parental rights. Among other things, the petition stated the Department's worker did not believe that H.P. had made significant progress over the course of the case and that H.P. would require full-time support and supervision of a competent adult in order to parent S.H. safely. H.P. then filed her motion for an extension of time to pursue reunification with S.H.

Following a hearing on the petition, the juvenile court on January 12, 2009, entered its order granting H.P.'s petition for additional time and continuing the hearing on the State's petition for termination for three months. The court found:

Although [H.P.'s] progress was realized at a very gradual pace, there was progress nonetheless and the mutual bond between [H.P.] and [S.H.] was not disputed. At this time however, the court is unable to determine if mother is capable of further progress regarding her parental skills which would allow her to parent [S.H.] full time, or if she has reached the limits of her abilities. The court

believes a reasonable extension of time with continued services will be determinative of this issue.

The court then set forth seven conditions H.P. was to substantially comply with until the time of the next court hearing: (1) keep her home clean and appropriate for a one-year-old child at all times; (2) pursue community-based assistance regarding food, housing, heating, etc.; (3) seek employment; (4) continue to meet consistently with her counselor; (5) continue to consistently work with Parents As Teachers and the V.N.A.; (6) make and keep any necessary medical appointments for [S.H.] as needed; and (7) demonstrate an ability to understand and respond to [S.H.'s] developmental needs.

Hearing on the State's petition for termination resumed April 30, 2009. Following the hearing, the juvenile court on May 12, 2009, entered its order terminating the parents' parental rights. The court noted that in addition to stating the expectations in its prior January 2009 court order, the Department case worker sent H.P. a letter that not only provided further explanation of the expectations, but also included resources H.P. could contact in order to fulfill the expectations. Nevertheless, the court found that there was little to no progress in all but one of the seven expectations set forth in January and that some areas actually deteriorated from that time. The court found that H.P. did consistently work with Parents As Teachers and the V.N.A. as expected. However, the court found that although there were some days in which H.P.'s home was clean, H.P. continued to struggle greatly to keep the home safe and appropriate for a one-year-old child and noted that H.P. offered no explanation as to why she could not keep the home clean despite being home by herself all day long. Additionally,

the court noted that H.P. testified she did not qualify for any assistance because her boyfriend made too much money; yet, when the service provider arrived at the home on March 27, 2009 with S.H. for a visit, there was no heat and it was fifty-eight degrees in the home. H.P. made no other attempts to contact community resources and request further heating assistance. The court further noted that H.P. was unemployed at the time of the termination hearing and although she had sent out some job applications, she had not followed through with contacting Promise Jobs or vocational rehab as suggested by the Department in its case worker's letter regarding the court's expectations. Although H.P. attended the majority of her appointments with her counselor, her counselor reported that H.P. needs consistent support to make sure she follows through on everything she needs to, but is resentful when someone tells her what to do and will shut down altogether. The counselor indicated that H.P.'s course of treatment will likely be indefinite and that she continues to struggle with her problem-solving abilities. The court found that H.P. had poor follow-through in making and keeping necessary medical appointments for S.H. and only attended two out of five appointments that were scheduled. H.P. was also to make a dental appointment for S.H. and failed to do so. The court found that H.P. continued to struggle in establishing a routine for S.H. regarding naps and noted there were concerns regarding the amount of food she feeds S.H. despite assistance with these issues by the service providers. The foster parents observed that when S.H. returns from visits, he is exhausted and extremely hungry, resulting in a disruption in his routine. Additionally, the court noted concerns regarding inconsistencies with H.P.'s visits with S.H. H.P. was required

to contact the service provider by 5:00 p.m. the day before a visit or else the visit would not take place, and several visits were missed due to H.P.'s failure to call by 5:00 p.m., despite her being home by herself. Since the January termination proceeding, H.P. had missed fifteen of forty-six possible visits. The court also noted that there was significant concern with H.P.'s inability to fully understand S.H.'s skin allergies. H.P. put new, unwashed clothes on S.H. on three separate occasions causing S.H. to break out into a rash. Although H.P. testified the rash "really didn't bother [S.H.]," the foster parents indicated that the skin rash caused S.H. extreme agony. The court concluded:

Such a complete lack of insight into [S.H.'s] medical needs, along with all the other noted concerns, establishes that [S.H.] cannot be returned to [H.P.'s] care at the present time without risk of abuse or neglect. [H.P.] was previously granted an extension of time in which no progress was made. Therefore, the court finds that no additional extension of time would alleviate the concerns raised and that termination is in the best interests of the child.

[S.H.] has done very well in the foster home. [S.H.] is now walking and running around with typical toddler energy. [S.H.'s] vocabulary continues to increase and the foster parents have been addressing [S.H.'s] medical needs.

H.P. appeals.

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). Although we give weight to the juvenile court's findings of fact, we are not bound by them. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001).

III. Discussion.

On appeal, H.P. contends the court erred in determining termination was in S.H.'s best interests. We disagree.

Our primary concern in termination cases is the best interests of the child. *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007). “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 J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially). Those best interests are to be determined by looking at the child’s long-range as well as immediate interests. We are to consider what the future likely holds for the child if that child is returned to his or her parents. Insight for that determination is to be gained from evidence of the parent’s past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493-94 (Iowa 1990); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

There is no dispute that H.P. loves S.H. and that H.P. has made a sincere effort to facilitate S.H.’s return to her home. Unfortunately, even after being provided months of services and an extension of time, serious concerns persisted. We agree that H.P. made little to no progress in all but one of the seven expectations set forth by the juvenile court in extending the time for reunification. Although any one of the expectations would not ordinarily, by itself, be sufficient to justify termination, the overall combination of failure to meet the majority of these expectations in the additional time offered supports termination. See *In re C.D.*, 524 N.W.2d 432, 435 (Iowa Ct. App. 1994) (recognizing the law demands patience to allow parents to remedy their deficiencies, but that time must be limited because the delay may be translated into intolerable hardship for the child). Although we commend H.P.’s efforts, our overriding concern in reaching our decision is the best interests of the child, not the parent. See *In re*

M.S., 519 N.W.2d 398, 400 (Iowa 1994) (“Even if the statutory requirements for termination are met, the decision to terminate must still be in the best interest of the children.”).

S.H. has thrived in his pre-adoptive foster home. He has developed a bond with the foster family. From our *de novo* review of the record, we agree with the juvenile court’s thorough and well-reasoned ruling concluding that the evidence was clear and convincing that termination of parental rights was in S.H.’s best interests. See *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997) (“In assessing the best interests of the child, we evaluate the child’s long-range as well as immediate best interests.”). The court correctly determined that no reasonable extension of time would alleviate the concerns noted. Accordingly, we affirm the juvenile court’s decision to terminate the parental rights of H.P.

IV. Conclusion.

Because we agree with the court’s finding that the evidence was clear and convincing that termination of parental rights was in S.H.’s best interests and the court correctly determined that no reasonable extension of time would alleviate the concerns noted, we accordingly affirm the juvenile court’s decision to terminate the parental rights of H.P.

AFFIRMED.