IN THE COURT OF APPEALS OF IOWA

No. 9-725 / 09-1017
Filed September 17, 2009

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

M.L.S., Mother,
Appellant.

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

A mother appeals from the order terminating her parental rights. **AFFIRMED.**

Kara McFadden, Cedar Rapids, for appellant mother.

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

Judith Hoover, Cedar Rapids, for minor children.

Considered by Vogel, P.J., and Vaitheswaran and Mansfield, JJ.

MANSFIELD, J.

M.L.S. appeals from the juvenile court's order terminating her parental rights to her daughter, C.C. (born 2003), pursuant to Iowa Code section 232.116(1)(f) (2007).[1] On appeal, M.L.S. asserts the State failed to prove by clear and convincing evidence that the child could not be returned to her custody at the present time and that termination of her parental rights was not in the best interests of the child. We affirm.

C.C. was first referred to the Iowa Department of Human Services (DHS) on October 18, 2005, when M.L.S. requested voluntary foster care placement. At the time, M.L.S. was without housing and recognized that she needed help in providing adequate care for C.C.

On November 9, 2005, DHS filed a child-in-need-of-assistance (CINA) petition. Proceedings were initially continued when M.L.S. obtained housing, cooperated with parenting services, and participated in a psychological evaluation. As a result of the evaluation, anger management therapy was recommended for M.L.S. CINA proceedings were reinstated when M.L.S. terminated the voluntary placement.

On May 26, 2006, C.C. was adjudicated to be a CINA pursuant to Iowa Code sections 232.2(6)(c)(2), (6)(e), (6)(g), and (6)(n). At a hearing held on June 29, 2006, the juvenile court determined that C.C. should remain in M.L.S.'s custody under the protective supervision of DHS.

[1] C.C.'s father's parental rights were also terminated by a signed "Release of Custody and Consent to Termination of Parent/Child Relationship" pursuant to Iowa Code section 232.116(1)(a), and are not at issue in this appeal.

During this time, DHS offered services to alleviate concerns with M.L.S.'s parenting techniques and lifestyle, anger management issues, and substance abuse. However, M.L.S. had inconsistent attendance at therapy sessions, and only completed one drug test. In addition, on December 10, 2006, Cedar Rapids police responded to a report of illegal drug use within an apartment complex. When they arrived, M.L.S. was one of the people identified, and was seen spraying air freshener into the air. Once inside, the police could smell an odor of marijuana and observed C.C. sleeping on the couch.

Following the incident, DHS interviewed M.L.S where she admitted to using marijuana, said there was nothing DHS could do about it, and made threats of leaving Cedar Rapids to avoid DHS intervention. As a result, DHS requested a court order to remove C.C. from M.L.S.'s custody. On February 28, 2007, the request was granted, and C.C. was placed in foster care. On May 4, 2007, C.C. was placed with her maternal great-great aunt. In that same month, M.L.S. tested positive for cocaine.[2]

DHS continued to offer services to M.L.S. with the goal of reunification. From October 2007 to January 2008, M.L.S. showed signs of improvement. M.L.S. moved into her own apartment, obtained employment, provided consistent drug tests that showed an absence of illegal drugs, and began to attend and cooperate in parenting and individual therapy sessions. By the permanency hearing on January 18, 2008, M.L.S. had had some overnight visits, and DHS intended to initiate a trial home placement in the near future.

[2] M.L.S. claims she was in a bar and someone put something in her drink.

However, in late January 2008, M.L.S.'s behavior relapsed. She began to miss parenting skills and anger management sessions and was not rescheduling. Her level of cooperation also decreased to the point where she refused to work with her providers and became hostile and increasingly threatening. For example, M.L.S. told a service provider and a DHS worker, "All you mother_____ have another thing coming. This is not over. One day when you least expect it, it will hit you in your ass." M.L.S. also mentioned that she felt like taking C.C. to Mexico. It was also reported that M.L.S. had failed to authorize necessary dental care for C.C. This was of great importance, because C.C. was born with a cleft lip, which required follow-up evaluations to monitor her development. In addition, M.L.S. lost her employment and was in danger of being evicted for failure to pay her rent. M.L.S. has still never completed an anger management program. Despite these concerns, it is generally conceded that M.L.S. and C.C. are strongly bonded.

By the end of March 2008, DHS reinstated supervised visitation. On May 5, 2008, the State filed a petition for termination of parental rights, and a hearing was held on July 22, 2008. At the hearing, M.L.S. acknowledged that she was not currently engaged in anger management, and denied that she really believed there was a need for it. She also testified that she needed to obtain new housing the following month (although she did not believe it would be difficult to do). M.L.S. also implicitly acknowledged that she was not ready to take home C.C. immediately:

> Q. Are you asking that [C.C.] be returned to you today?
> A. I have never asked for [C.C.] to be returned to me today.

On June 19, 2009, the juvenile court entered an order terminating M.L.S.'s parental rights.[3] M.L.S. has appealed.

The scope of review in termination of parental rights cases is de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We give weight to the juvenile court's factual findings, but are not bound by them. *Id.*; Iowa R. App. P. 6.904(2)(*g*).

M.L.S. first argues that the State failed to prove that the child at the present time could not be returned to her custody. *See* Iowa Code § 232.116(1)(f)(4). The State must prove the grounds for termination by clear and convincing evidence. *In re T.P.*, 757 N.W.2d 267, 269 (Iowa Ct. App. 2008). Several unanswered concerns remain about M.L.S.'s ability to provide for C.C.'s needs. M.L.S.'s participation in services provided by DHS has been sporadic, most notably her failure to complete anger management therapy. Further, M.L.S. continues to be unable to maintain consistent housing and employment. M.L.S. has also been unable to consistently provide for C.C.'s medical needs regarding her cleft lip. Finally, M.L.S. acknowledged at the hearing to some extent that she was not ready to have C.C. returned to her. Thus, the record shows clear and convincing evidence that the child cannot presently be returned to M.L.S.'s custody.

In addition, M.L.S. argues that termination is not in C.C.'s best interests. *See In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994) (noting that even when the statutory grounds for termination are met, the decision to terminate parental rights must reflect the child's best interests). While we agree that there is a bond

[3] From the record before us, it is not clear why there was a hiatus between the July 22, 2008 termination hearing and the June 19, 2009 termination order.

between M.L.S. and C.C., this consideration does not outweigh a child's need for a safe and permanent home. *J.E.*, 723 N.W.2d at 801 (Cady, J., concurring specially) (stating "a child's safety and . . . need for a permanent home [are] the defining elements in a child's best interests"). At the time of the hearing, C.C. was nearly five years old and had been out of M.L.S.'s care for over fifteen months. When a parent is incapable of changing to allow the children to return home, termination is necessary. *In re T.T.*, 541 N.W.2d 552, 557 (Iowa Ct. App. 1995); *see also In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990) (stating "children simply cannot wait for responsible parenting"). We conclude that termination is in C.C.'s best interests.

We affirm the decision of the juvenile court.

AFFIRMED.