IN THE COURT OF APPEALS OF IOWA

No. 9-876 / 09-1398
Filed November 12, 2009

IN THE INTEREST OF D.P.,
Minor Child,

B.M., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Joe E. Smith, District Associate Judge.

A mother appeals the termination of her parental rights to her child, contending (1) the State failed to prove the grounds for termination and (2) termination was not in the child's best interests. **AFFIRMED.**

Alexandra Nelissen of Nelissen & Juckette, P.C., Des Moines, for appellant mother.

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

Barbara Davis, West Des Moines, for minor child.

Considered by Sackett, C.J., Vaitheswaran and Danilson, JJ.

VAITHESWARAN, J.

Brandi appeals the termination of her parental rights to her child, born in 2004. She contends (1) the State failed to prove the grounds for termination and (2) termination was not in the child's best interests.

On the first issue, Brandi stipulated that she would not be asking for custody of the child. Her attorney stated,

> There's no denying that my client is not in a position to resume custody of the child today, nor in the near future. We're not disputing that fact, nor offering any evidence to that issue . . . . The question, however, in front of this Court is what's in [the child's] best interest.

Brandi confirmed her attorney's representation:

> Q. Do you understand that we have the option to request that [the child] be returned to you today? A. Yes.
> Q. And you instructed me not to litigate or to argue that; correct? A. Right.
> Q. Why? A. Because I know I can't handle him full time.

Based on this record, we conclude Brandi has not preserved error on her challenge to the grounds for termination. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.").

Turning to the second issue, Brandi is correct that the ultimate consideration in this type of proceeding is the best interests of the child. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). Brandi argues that a guardianship would best serve those interests. On our de novo review, we disagree.

Brandi has a mental illness that prevents her from safely parenting the child if she is not in a highly structured environment or appropriately medicated.

She received a battery of services in connection with a proceeding involving another child, but those services proved insufficient to permit reunification, and her rights to that child were terminated.

In 2004, after this child was born, the department again became involved with the family and again provided a host of services, including placement of Brandi in a supervised apartment. Brandi left that apartment against the recommendation of service providers. The child was placed with a foster family that Brandi knew and trusted.

Brandi made strides towards meeting department expectations but testified that she expected her child to remain with the foster family until adulthood. Her sole reason for seeking a guardianship is to maintain her close bond with him.

There is no question the two share a bond and that severance of the bond would prove harmful to the child. However, a guardianship is not the answer given Brandi's admission that she would never be in a position to assume custody of the child and the concern for the child's safety. The best interests of the child, particularly the child's safety, outweigh the desire to preserve the parent-child bond.

It is also possible that the connection between mother and child may continue even after the termination. The foster mother testified that she is willing to allow weekly visits, notwithstanding the absence of a legal obligation to do so. Her openness to these contacts is based on her longstanding relationship with Brandi and her recognition that the child will suffer if visits are curtailed. While the department expressed some concern about continued contact at a hearing

preceding the termination hearing, no similar objections were voiced at the termination hearing. Indeed, prior to the hearing, the department facilitated two or three unsupervised visits per week for six or seven months. Notably, there was some indication that the child would continue to receive services after the termination, affording the department a means to monitor his welfare.

We agree with the district court that a guardianship is not in the child's best interests. We affirm the termination of Brandi's parental rights to her child, born in 2004.

AFFIRMED.