

IN THE COURT OF APPEALS OF IOWA

No. 23-1942
Filed March 6, 2024

**IN THE INTEREST OF F.F.,
Minor Child,**

**H.M., Mother,
Appellant.**

Appeal from the Iowa District Court for Warren County, Brendan E. Greiner,
District Associate Judge.

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

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

Brenna Bird, Attorney General, and Lisa Jeanes, Assistant Attorney
General, for appellee State.

Yvonne Naanep, Des Moines, attorney and guardian ad litem for minor
child.

Considered by Bower, C.J., and Greer and Chicchelly, JJ.

GREER, Judge.

The juvenile court terminated the mother's parental rights to F.F., born in 2022, pursuant to Iowa Code section 232.116(1)(h) (2023). On appeal, the mother challenges the statutory ground for termination, argues the Iowa Department of Health and Human Services failed to make reasonable efforts to reunify her with the child, and contends termination is not in the child's best interests. Alternatively, the mother maintains she should have been given more time to work toward reunification. The mother also raises claims outside of our typical three-step review, asserting F.F. should have been immediately returned to her care after she decided she wanted to parent and the court erred in terminating her rights while leaving intact the rights of a possible biological father.

I. Background Facts and Proceedings.

F.F. was born prematurely in July 2022. When she was a month old, the department received notice that F.F.—who remained in the hospital—had a broken leg; it was unknown how the injury occurred.¹ During the investigation that followed, the department learned the mother did not wish to parent F.F.; she planned to have Michael and Lindsay—a couple from Missouri—adopt the child. Michael is a registered sex offender in Missouri, which the mother knew.

While still a patient in the hospital, F.F. was removed from the mother's custody in September.

¹ The department was never able to determine how the injury took place. The mother is not suspected of causing the injury—there is no record evidence that contradicts the mother's claim she did not visit the child in the hospital before the injury occurred.

At the child-in-need-of-assistance hearing in October, the mother testified that even though Michael pled guilty to statutory sodomy in the first degree involving a thirteen-year-old girl, she was not concerned about him adopting F.F. because she knew he was “wrongfully convicted.” She did not plan to raise F.F. and had not seen the child since giving birth to her, but she wanted to have the chance to decide who would adopt her. When asked, the mother testified she received Social Security disability and had been previously diagnosed with ADHD and bipolar disorder but could not remember all of her diagnoses; she was not seeing a doctor or taking any medications.

The juvenile court adjudicated F.F. in need of assistance, concluding the mother “abandoned or deserted the child,” Iowa Code § 232.96A(1), and “for good cause desire[d] to be relieved of the child’s care and custody.” *Id.* § 232.96A(11).

When F.F. was finally discharged from the hospital in late October, she was placed in the care of a foster family.

In November, the mother reported to the department that she would like to keep F.F. in her care and stated her intention to work with the department to make that possible. But at times, she became irate and threatened various individuals associated with the department and the foster family, suggesting F.F. was being wrongly kept from her.

At the disposition hearing in December, the mother confirmed her position that she no longer wanted F.F. to be adopted; she wanted to maintain the child in her care. However, during her testimony, she admitted she needed to move to a new home before F.F. could be placed in her custody. The mother completed a mental-health evaluation the previous day and had just started having visits with

F.F. two weeks before the hearing. The mental-health counselor who completed the evaluation emailed the department, stating the mother appeared to have a mood disorder and would retain her prior ADHD diagnosis. The counselor opined the mother did not meet the criteria for a diagnosis of bipolar disorder. As part of closing argument, the mother asked the court to return F.F. to her care immediately.

In the order that followed, the court denied the mother's request to have F.F. immediately returned to her, noting she admitted her apartment was not safe for the child and there were ongoing concerns about the mother's mental health, which she only started addressing.

The court held a permanency hearing in March 2023; it concluded the need for removal would no longer exist in six months because the mother would "participate in services and demonstrate that she can provide a safe, stable home for the child." The mother was given additional time to work toward reunification.

But then, between the permanency hearing and the termination trial in October, the mother continued to send emails and voice messages where she threatened physical violence toward department workers. And the mother pled guilty to third-degree harassment after sending a threatening email to the foster family;² she served two days in jail and a no-contact order was entered with the

² According to the criminal complaint, on July 25, 2023, the mother sent an email to the foster parents that stated:

Just because my rights are going to be terminated [does] not mean you will ever be her mother, I gave birth to her you can't have kids, she will always be my daughter and if anything I mean anything ever happens to her I will find you and your bitch wife and I will make you regret the day you ever took her from the hospital, be careful I'm everywhere and I will always watch over her.

foster parents and F.F. listed as protected parties. The mother and several successive appointed attorneys experienced a breakdown in communication, and the mother asked to represent herself. She filed numerous pro se filings with the juvenile court, claiming the department kidnapped F.F. from her and was lying to the court in its filings.

The mother represented herself at the termination trial.³ While being questioned by the county attorney, the mother admitted making a number of threats to various individuals involved with the case. She seemed to justify her actions, testifying, “You stole my child from me, and you refuse to give her back and that’s okay? It is not your child.” The mother admitted she had not moved past the initial issues that were brought up in the investigative report—about F.F.’s broken leg and the mother’s decision to give a registered sex offender access to the child—and was “still struggling with the reasons why [F.F.] came before” the court. The mother was questioned why she asked one of her former attorneys to request an interstate compact so the maternal grandfather, who lives in Florida, could be considered as a placement when the mother had already reported that the grandfather may have sexually abused her when she was a child; she seemed unable to provide a cogent answer. When asked about many of her actions and responses during the year-long case, the mother continued to reference having a diagnosis of bipolar disorder—it is unclear whether the mother actually has this diagnosis since her first therapist repudiated it and the second therapist’s evaluation was not shared with the department or court. The mother testified that

³ The mother was appointed standby counsel, who was present at the trial.

her current therapist—who she began seeing in February 2023—recommended she seek a doctor who could prescribe mental-health medications if needed. The mother followed up and was given a prescription, but she decided not to take it; she testified she “had taken it before. . . . [A]nd it actually gave me more anxiety and depression.” (From the record, it is not clear what the doctor prescribed or intended to treat.)

The mother’s current therapist testified at trial and identified her concerns related to emotional regulation of the mother, trust issues, and setting boundaries. The therapist opined that there were times since the mother started seeing her when the mother engaged in unstable behavior but, more recently, that the behaviors were less intense and had decreased. She testified, “At this time on today’s date, I would not say [the mother is] mentally unstable right now.” The therapist opined that the mother being jailed because of her threats to the foster family and resulting third-degree-harassment conviction had caused the mother to be more aware that she needed to take care with her words. When asked more questions about the mother progress, the therapist testified:

She has made more significant progress more recently, but I would say in most mental health situations, progress is very nonlinear, so there are two steps forward and one step back, so it is hard to say. It has been up and down as far as how progress goes, but that’s pretty typical.

But most telling, the therapist opined that the mother was not yet “willing to open up the boundaries of communication so that assistance can be made in regards to reunification.” And associated with the trust issues, the therapist testified the mother had completed a psychosocial evaluation with her, but the mother voided

her release that allowed the therapist to share information with the department after the evaluation was completed, so it had not been shared.

The family centered services (FCS) worker testified about supervising interactions between the mother and F.F.; she described the mother's mounting hostility toward the worker, which sometimes resulted in the mother yelling and cursing at her. The mother would also talk to the toddler to say things she wanted to say to the FCS worker, telling F.F., "They're going to steal me from you. They don't care about me and you. They only care about money." Yet the mother was adamant F.F. would end up in her care: "She has said in so many different ways that she would get her child back even if she had to go take her." The FCS worker also described a recent physical-therapy appointment for F.F. where the mother attended and was disruptive, interfering with the physical therapist's efforts and failing to respond to redirection. As a result, the physical therapist suggested that the mother should not come to future appointments. The FCS worker explained her concerns about F.F. being returned to the mother's custody centered on the mother's inability to regulate her own emotions and to respond appropriately rather than lashing out, blaming others, and refusing to take accountability; the mother had not shown she could consistently focus on what is good or necessary for F.F. rather than focusing on her own feelings.

Both the FCS worker and the social work case manager testified that they did not believe the mother would intentionally physically harm F.F. But they questioned whether the mother understood the impact of her actions and how her behavior could affect F.F. And the case manager testified about the mother's difficulty accepting feedback or answers that are different than what she wants—

the worker questioned whether the mother would follow medical advice or listen to other professionals F.F. relied upon if their opinion was at odds with the mother's.

The juvenile court terminated the mother's parental rights under section 232.116(1)(h). The court concluded F.F. could not be placed in the mother's custody, ruling:

[F.F.] has been in foster care her entire life. For the first couple months, [the mother] did not even lay eyes on [F.F.] and then nearly abandoned her for five more months. [The mother] had the intention of giving up [F.F.], but changed her mind at the disposition hearing. [She] has not had meaningful engagement in services. Until recently, all her engagement was met with distrust, anger, and resentment toward her current situation. There was no indication that [she] would do anything substantive toward reunification until she took the stand at this hearing. Even then, she still insisted on dictating the terms for [the department] and court involvement. This indicates a reluctance to improve and evolve into a responsible parent.

Were [the mother] to submit to the psychosocial evaluation, the Court and [the department] would have a better understanding of the sources for [her] issues. Thus, a course of treatment could be given commensurate with her particular issues. While the Court cannot speculate as to her diagnosis, [the mother] superficially suffers from some form of personality disorder and presents unique and long-term issues:

Parents with personality disorders are an example of persons who can be particularly difficult to treat, and who present a type of problem not uncommon to abusive situations. Included with this general diagnostic category are narcissistic, borderline, obsessive-compulsive, and antisocial personalities. With these diagnoses it is common for the parent to lack the ability to recognize and respond to the needs of anyone but themselves. In treatment, they often are unable to see any problem with their behavior, tending to define the problem in terms of failures of others. The same features that make addressing the needs of children difficult for a parent with a personality disorder

tend to make treatment of the same individual both intensive and long term.⁴

Assuming the above is true, then [the mother's] mental progress for reunification is only just beginning now 17 months after [F.F.] was born.

Rather than focusing on making herself better to become the parent [F.F.] deserves, [the mother] instead plays the victim of a system that is trying to separate her and [F.F.] [She] has made notable improvements since this case began: maintaining employment, seeking (limited) mental health therapy, obtaining stable housing. She has aggressively resisted all other offers of services, notably obtaining a psychosocial evaluation from the suggested provider. Visitations, which were originally more frequent, remain fully supervised and only once a week for two hours. As her caseworker says, "[The mother] struggles to put her child's needs above her own."

The mother appeals.

II. Standard of Review.

In termination-of-parental-rights cases, we review the proceedings de novo. *In re Z.K.*, 973 N.W.2d 27, 32 (Iowa 2022). Employing de novo review means we review the facts as well as the law and adjudicate the parent's rights anew. *Id.* That said, we review only those issues that—after being properly preserved—are actually raised and briefed on appeal by the parent challenging termination. See *Hylar v. Garner*, 548 N.W.2d 864, 870 (Iowa 1996).

III. Discussion.

Statutory Ground. The juvenile court terminated the mother's parental rights under Iowa Code section 232.116(1)(h), which allows the court to sever the legal relationship between a parent and child when:

- (1) The child is three years of age or younger.

⁴ Donald N. Duquette et al., *Child Welfare Law and Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect, and Dependency Cases* § 7.5.3 (3rd ed. 2016).

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

The mother challenges the evidence supporting only the fourth element—whether F.F. could be returned to her custody at the time of the termination trial. See *In re M.W.*, 876 N.W.2d 212, 223 (Iowa 2016) (interpreting “at the present time” to mean “at the time of the termination hearing”).

The mother highlights the positives, noting she has a home, transportation, and is able to support F.F. financially because of her Social Security disability income. But we cannot say the mother can safely parent F.F. The child has never been in the mother's care—F.F. was formally removed from the mother's custody after the mother essentially abandoned F.F. while she remained in the hospital following her premature birth. We recognize the mother regularly attended visits with F.F. starting in December 2022 through the termination trial in October 2023, but those have remained fully supervised and, in fact, have been reduced in time. While the mother has never physically harmed F.F.—and two witnesses testified they did not think she ever would intentionally do so—the mother has shown an inability to regulate her emotions during the few hours each week she is allowed to spend with F.F. This dysregulation of emotions went beyond her contact with the department and spilled over into important medical interactions involving F.F.'s necessary medical care. Even the mother's current therapist testified that while the mother was not mentally unstable as of the time and date of the termination

trial, “progress is very nonlinear, so there are two steps forward and one step back.” Moreover, at the time of the termination trial, F.F. remained a protected party in a no-contact order with the mother.

The mother also raises a reasonable-efforts challenge, which we consider in conjunction with our review of whether the statutory ground for termination was proved. See *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000) (recognizing the reasonable-efforts requirement, while not “a strict substantive requirement of termination” impacts the State’s “burden of proving those elements of termination which require reunification efforts”); *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa Ct. App. 1997) (“The core of the reasonable efforts mandate is that the [department] must make reasonable efforts to prevent placement or to reunify families in each case.”). She argues “the [d]epartment failed to respond to the mother’s many inquiries for return, services and/or increased visitation.” But to preserve a challenge to reasonable efforts, our case law generally requires that a parent complain to the juvenile court directly—not a social worker or FCS worker—“to demand other, different or additional services.” *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). And then, on appeal, the parent must point this court to places in the record where the parent made the necessary request to the juvenile court and had that request ruled upon.⁵ See Iowa Rs. App. P. 6.201(1)(d) (“The

⁵ In contrast, the mother claims error was preserved because “[t]his issue was contested and preserved for appeal when the Notice of Appeal was filed on November 30, 2023.” This is not a correct statement of law, and it does not aid in our review of the issue. See, e.g., *In re T.G.*, No. 23-0979, 2023 WL 5605625, at *1 n.1 (Iowa Ct. App. Aug. 30, 2023) (“As we have frequently stated—almost seventy times since our published opinion of *State v. Lange*, 831 N.W.2d 844, 846-47 (Iowa Ct. App. 2013)—the filing of a notice of appeal does not preserve error for our review.”).

petition on appeal shall substantially comply with form 5 in rule 6.1401.”), 6.1401-Form 5 (“State the legal issues presented for appeal, including a statement of how the issues arose and how they were preserved for appeal.”). Without citations to the record or a more developed argument by the mother, we are unable to address the merits of this claim.

Because F.F. could not be safely returned to the mother’s custody at the time of the termination trial, the grounds for section 232.116(1)(h) were met.

Best Interests. The mother argues the loss of her rights is not in F.F.’s best interests because “[e]vidence presented supported this child’s placement with her mother” and because F.F.’s relationship with extended maternal family members will be extinguished.

In considering the best interests of the children we “give primary consideration to the child’s safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child.” Iowa Code § 232.116(2). As our case law provides, the defining elements in a child’s best interests are the child’s safety and need for a permanent home. See *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially).

The mother called her brother and father as witnesses at the termination trial; both live outside of Iowa and neither had met F.F. In contrast, F.F. has been in the care of the same foster family since she was discharged from the hospital in October 2022. According to the case manager, while in the care of the foster family, F.F. “has shown growth. She’s making great progress, catching up to her milestones, and meeting the goals that have been set for her.” F.F. continued to

have several medical providers involved in her life, and the foster family ensured F.F. receives the medical attention she needs. Meanwhile, F.F.'s physical therapist asked that the mother not attend appointments because of the mother's disruption that prevented the physical therapist from completing the necessary treatment. And again, we point to the emotional dysregulation that has interfered with the ability to address F.F.'s needs going forward. Termination of the mother's parental rights is in F.F.'s best interests.

Additional Time. Alternatively, the mother maintains she should have been given additional time to work toward reunification. She argues it is likely F.F. could be returned to her custody within six months. See Iowa Code § 232.104(2)(b). The mother does not recite what will change in six months that will allow F.F. to be safe in her care. And, based on the facts in the record, we cannot say what positive outcomes are likely to occur in that timeframe.

The greatest concern is the mother's mental instability. Due to her refusal to participate in a specific type of evaluation and her revocation of the release for her mental-health therapist to share information with the department, it is unclear exactly what the mother has been diagnosed with, what her treatment plan consists of, and what changes can be reasonably anticipated to take place. And the testimony of the mother's therapist does not help the mother—the therapist shared that the mother has made some positive progress, but she provided no timeline and recognized that progress is often non-linear and regression is to be expected. Likewise, the department identified examples of and many concerns with the mother's untreated mental health. We cannot say the mother would be able to resume custody of F.F. if given additional time to work toward reunification.

Other Claims. The mother raises two other issues: (1) whether F.F. should have been immediately returned once she decided she wanted to parent and (2) whether the court can properly terminate just one parent's rights.

The mother argues F.F. should have been immediately returned to her once she announced in November 2022 that she wanted to parent F.F.—when F.F. was about four months old and after she was formally removed from the mother's custody and adjudicated CINA. This claim is not properly a challenge to the termination order; it is a challenge to the juvenile court's December 2022 disposition order, in which the court denied her request for "immediate" return based on the fact she changed her mind about parenting F.F. The mother did not appeal the disposition order, and she is barred from raising this claim on appeal from the termination order. See *In re D.S.*, 563 N.W.2d 12, 15 (Iowa Ct. App. 1997) (recognizing the principles of res judicata bar a parent's claim when the claim arises from a different order than the one the parent appealed); *In re Marriage of Guyer*, 522 N.W.2d 818, 821 (Iowa 1994) ("Principles of res judicata preclude a court from relitigating an issue or claim that has been previously decided."); *In re A.A.*, No. 10-1102, 2010 WL 3503981, at *2 (Iowa Ct. App. Sept. 9, 2010) ("[A]ny error claimed to have been made at the permanency hearing or within the ruling prior to the termination proceeding was not preserved for our review.").

Second, the mother contends the juvenile court committed legal error by terminating her parental rights while the possible biological father's rights remain intact (due to service issues regarding the possible father). But termination of just one parent's rights is permissible. See *In re C.W.*, 554 N.W.2d 279, 282 (Iowa Ct. App. 1996) ("The Iowa Supreme Court has interpreted the language of Iowa Code

section 232.116 to allow the termination of one parent’s rights.”). The question—whether in proceedings to terminate one or both parent’s rights—is what is in the best interests of the child at issue. See, e.g., *In re L.T.*, 924 N.W.2d 521, 529 (Iowa 2019) (“Our primary concern in termination proceedings has always been the best interests of the child.”). And as we have said before, “we reject the contention that termination of parental rights must be a both-or-neither proposition to serve [the child’s] best interests.” *In re J.D.*, No. 11-0707, 2011 WL 4378213, at *6 (Iowa Ct. App. Sept. 21, 2011); see also *In re R.W.*, No. 18-1409, 2019 WL 719049, at *1 (Iowa Ct. App. Feb. 20, 2019) (declining to impose a higher burden of proof under the best-interest analysis when only one parent’s rights are terminated). The juvenile court was not wrong to terminate the mother’s parental rights without terminating the rights of the putative father.

Following our de novo review, we affirm the termination of the mother’s parental rights.

AFFIRMED.