

IN THE COURT OF APPEALS OF IOWA

No. 17-1439
Filed November 22, 2017

**IN THE INTEREST OF L.B.,
Minor Child,**

S.B., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Rachael E. Seymour,
District Associate Judge.

Mother appeals from an order terminating her parental rights in her child
pursuant to Iowa Code chapter 232 (2017). **AFFIRMED.**

Eric W. Manning of Manning Law Office, P.L.L.C., Urbandale, for appellant.

Thomas J. Miller, Attorney General, and Kathryn K. Lang, Assistant
Attorney General, for appellee.

Nicole Garbis Nolan of Youth Law Center, Des Moines, guardian ad litem
for minor child.

Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ.

MCDONALD, Judge.

Shawna, the mother, appeals from an order terminating her parental rights in her child pursuant to Iowa Code section 232.116(1)(e) and (f) (2017). This is the second time this matter has been before the court. In a prior appeal, we affirmed the adjudication and disposition orders involving this same family. See *In re L.B.*, No. 16-1520, 2016 WL 6664987, at *2 (Iowa Ct. App. Nov. 9, 2016).

The court reviews proceedings terminating parental rights de novo. See *In re A.M.*, 843 N.W.2d 100, 110 (Iowa 2014). To terminate a parent's rights, the State must first prove a statutory ground authorizing termination of a parent's rights. See Iowa Code § 232.116(1); *In re M.W.*, 876 N.W.2d 212, 219 (Iowa 2016). Next, the State must prove termination of a parent's rights is in the child's best interest. *M.W.*, 876 N.W.2d at 219–20. Finally, the court decides whether permissive considerations in section 232.116(3) should preclude termination of a parent's rights. *Id.* at 220.

By way of background, Shawna is the mother of L.B., a child born in 2004. The family came to the attention of the Iowa Department of Human Services (IDHS) in March 2016. There was a report Shawna and her husband, Jason, who is not L.B.'s father, had used methamphetamine in the home while the child was present. There was also a report L.B. had been sexually assaulted by an acquaintance of the couple. When asked about the allegations, L.B. confirmed them. L.B. described drug paraphernalia. The child reported a sexual assault. L.B. also reported a spanking by Jason with a belt, which left lasting bruises. The child was removed from the home and placed with an adult sibling.

A contested adjudication hearing took place in May and June 2016. Shawna and Jason were homeless and living with a registered sex offender. Neither Shawna nor Jason was employed. Before becoming homeless, they had operated a "street ministry." As part of their ministry, they brought homeless individuals into their home. This included the alleged perpetrator of the sexual assault on L.B. The district court noted indicators of methamphetamine abuse by Shawna and Jason, although they continued to deny use. Shawna had missed multiple visits with L.B. and struggled with being appropriate during visits. She often told L.B. information inappropriate for a child. The court found L.B. to be a child in need of assistance (CINA) and ordered Shawna provide drug screens and undergo a mental-health evaluation and substance-abuse evaluation.

By the time of the dispositional hearing and review hearing, Shawna had not progressed significantly. She had obtained a stable residence with her mother. However, she had missed nine drug screens, had not started therapy, and despite her assurances to the contrary, appeared to still be in a relationship with Jason. Shawna had not progressed in her relationship with L.B. Shawna was unpredictable and inappropriate around the child.

At the June 2017 termination hearing, the court heard extensive evidence about the relationship between Shawna and L.B. L.B.'s therapist testified about the child's repeated statements expressing a desire to live with the adult sibling and not with Shawna. The therapist also raised concerns about Shawna harming L.B.'s mental health with her unpredictability and inappropriate comments about things such as L.B.'s weight. Shawna, through her testimony, continued to minimize the issues that led to L.B.'s removal. While Shawna made progress from

April to June, she acknowledged that she “changed [her] attitude late.” Other testimony highlighted missed visits, L.B.’s anxiety over visitation, missed drug screens, and Shawna’s frequent excuses for failing to complete IDHS case plan objectives. The court ordered Shawna’s parental rights in L.B. be terminated.

Shawna first challenges the sufficiency of the evidence supporting the grounds for termination of her parental rights. The State must prove each ground by clear and convincing evidence. See Iowa Code § 232.96(2); *In re L.G.*, 532 N.W.2d 478, 481 (Iowa Ct. App. 1995). When “the juvenile court terminates parental rights on more than one statutory ground, we may affirm the juvenile court’s order on any ground we find supported by the record.” *In re A.B.*, 815 N.W.2d 764, 774 (Iowa 2012).

We choose to address the sufficiency of the evidence presented in support of section 232.116(1)(f). At issue is whether the State proved by “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.” Iowa Code § 232.116(1)(f)(4). A child cannot be returned to the custody of the parent if the child would either remain a child in need of assistance or be exposed to harm amounting to a new child in need of assistance adjudication. See *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992). “We have interpreted this to require clear and convincing evidence the child[] would be exposed to an appreciable risk of adjudicatory harm if returned to the parent’s custody at the time of the termination hearing.” *In re Z.R.*, No. 17-1004, 2017 WL 4050989, at *2 (Iowa Ct. App. Sept. 13, 2017) (quoting *In re E.H.*, No. 17-0615, 2017 WL 2684420, at *1 (Iowa Ct. App. June 21, 2017)).

On de novo review, we conclude there was clear and convincing evidence establishing this ground for termination of Shawna's parental rights. Shawna largely failed to engage with services from March 2016 until April 2017. See *In re T.S.*, 868 N.W.2d 425, 437 (Iowa Ct. App. 2015) (affirming termination when mother failed to make genuine effort to comply with the case plan). Her housing was often unstable or unsafe. See *In re M.C.*, No. 17-1184, 2017 WL 4315079, at *2 (Iowa Ct. App. Sept. 27, 2017) (noting unstable housing is a factor in deciding whether a child could safely be returned home). She missed at least ten drug tests despite some clean results. See *In re K.W.*, No. 14-1303, 2014 WL 4930676, at *1 (Iowa Ct. App. Oct. 1, 2014) (affirming termination noting missed drug tests as a factor, even with some clean tests). The district court observed behavior consistent with methamphetamine use. Shawna was frequently dishonest about her relationship with Jason, who physically abused L.B. See *In re C.M.*, No. 10-1627, 2011 WL 1376618, at *4 (Iowa Ct. App. Apr. 13, 2011) (affirming termination when a mother was dishonest about continuing a relationship with a harmful spouse and noting "[t]he court is familiar with how often parents disclaim 'relationships' by just defining the word in a distorted manner and [the mother] participated in some of such word games. [She] was often told of the concerns of others about an ongoing relationship with [the father]; she had the opportunity to clearly understand the concerns."). She was at times inconsistent and inappropriate during visits, contributing to L.B.'s mental-health issues. See *In re K.A.*, 516 N.W.2d 35, 37 (Iowa Ct. App. 1994) (affirming termination when mother "ha[d] attended visitations inconsistently, made inappropriate comments during visitations, [and] brought unexpected individuals to visitations" among other

things). Lastly, Shawna still externalizes blame for her conduct and does not understand why L.B. was removed from the home. See *In re C.F.*, No. 99-2017, 2000 WL 1724591, at *5 (Iowa Ct. App. Nov. 20, 2000) (“The children’s mother refuses to accept responsibility for the placement of her children with relatives outside her home. She instead externalizes blame to the children, the department, and the system. She is unwilling to accept that she may have made past mistakes in parenting and supervising her children and thus is unable to learn from those mistakes and parent appropriately now.”).

Taken together these facts provide more than sufficient evidence to terminate Shawna’s parental rights pursuant to section 232.116(1)(f). L.B. would face an appreciable risk of adjudicatory harm if returned to Shawna’s home, including potential: physical abuse by Jason, exposure to drug use, inappropriate and harmful comments, inappropriate supervision, and inadequate housing, among other risks.

Shawna argues IDHS failed to make reasonable efforts towards reunification. As part of its ultimate proof the child could not be returned to the home, the State must establish it made reasonable efforts to return the child to the child’s home. See Iowa Code § 232.102(9) (providing department of human services must make “every reasonable effort to return the child to the child’s home as quickly as possible consistent with the best interests of the child”). IDHS must “facilitate reunification while protecting the child from the harm responsible for the removal.” See *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996).

Shawna’s challenge to the efforts made toward reunification does not entitle her to any relief. First, Shawna has not preserved error on the issue. It is a parent’s

responsibility to request additional or different services if they are dissatisfied. See *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). If a parent does not object during the pendency of the case, error is not preserved on appeal. *Id.*; *In re C.H.*, 652 N.W.2d 144, 148 (Iowa 2002). In this case, Shawna never requested any specific services from IDHS or the juvenile court. Second, even if error were preserved, we conclude IDHS made reasonable efforts. Shawna was provided with numerous services, including: drug screens; relative placement; individual therapy; IDHS case management; visitation; Family Safety, Risk, and Permanency services; transportation assistance; substance-abuse evaluation; medication management; Easter Seals services for L.B.; mental-health evaluation; and psychosocial evaluation; among others.

Shawna next contends her request to defer permanency for six months should have been granted. Iowa Code section 232.104(2)(b) provides the court may enter an order deferring permanency for six months upon a finding the need for the child's removal will no longer exist at the end of the additional six-month period. The court must "enumerate the specific factors, conditions, or expected behavioral changes which comprise the basis for the determination" the need for removal will no longer exist at the end the extension. Iowa Code § 232.104(2)(b).

We cannot conclude the need for removal will no longer exist at the end of the proposed extension. Shawna was offered a wide variety of services over a lengthy period of time. She failed to take advantage of those services until immediately prior to the termination hearing. Her last-minute push does not create any confidence in the sincerity of her efforts to address the concerns giving rise to removal and reunite with her child. See *In re A.D.*, No. 15-1508, 2016 WL 902953,

at *2 (Iowa Ct. App. Mar. 9, 2016) (“Iowa courts look skeptically at ‘last-minute’ attempts to address longstanding issues, finding them inadequate to preclude termination of parental rights.”). We find more telling her behavior in the long time between removal and the termination hearing. Shawna refused mental-health, substance-abuse, and therapeutic services. She was dishonest with her service providers and the juvenile court regarding the status of her relationship with Jason. She denied methamphetamine use but refused drug tests. During the course of these proceedings, she was in the vehicle with Jason when he was arrested with drug paraphernalia. Shawna’s behavior poses a risk of harm to her child.

Finally, Shawna argues termination would be detrimental to L.B. given the close bond between mother and child pursuant to Iowa Code section 232.116(3)(c). The factors outlined in section 232.116(3)(c) are permissive, not mandatory. See *In re D.S.*, 806 N.W.2d 458, 474–75 (Iowa Ct. App. 2011).

While Shawna and L.B. are bonded, it is not clear that the parent-child bond is healthy for L.B. Shawna repeatedly makes inappropriate comments to L.B. She shares information that is not age-appropriate. The record reflects that L.B. does not want to live with Shawna. L.B. often did not even want to attend visits due to the anxiety caused by being with Shawna. L.B. also had serious concerns about the relationship between Jason and Shawna, which strained the relationship between mother and child. Any detriment to L.B. is outweighed by the benefits of being in a safe environment with proper care and supervision.

For the foregoing reasons, we affirm the termination of Shawna’s parental rights.

AFFIRMED.