

IN THE COURT OF APPEALS OF IOWA

No. 17-1631
Filed December 20, 2017

**IN THE INTEREST OF A.R.,
Minor Child,**

A.R., Mother,
Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Charles D. Fagan, District Associate Judge.

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

Amanda J. Heims, Council Bluffs, for appellant mother.

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

Roberta J. Megel of State Public Defender Office, Council Bluffs, guardian ad litem for minor child.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

VOGEL, Presiding Judge.

The mother appeals the termination of her parental rights to her daughter, A.R. She asserts the State did not establish the statutory elements by clear and convincing evidence, termination was not in the best interest of the child, and the court erred in not granting a continuance. We conclude the State proved the elements for termination, including that A.R. had been out of the mother's care for more than six months and could not be returned to the mother's care at the time of the termination hearing. The mother has been unable to put A.R.'s needs before her own, and any bond she has with the child does not override the need for termination. Additionally, the court did not err in denying the motion to continue because A.R. needs permanency and stability in her life without further delay. Consequently, we affirm the order of the district court.¹

I. Background Facts and Proceedings

A.R. was born November 2015 while the mother was incarcerated on a drug-related conviction. The mother has a history with illegal drugs and allegedly allowed people with felony warrants to stay at her home to evade law enforcement. While incarcerated the mother was allowed to keep A.R. with her until the mother's release and subsequent probation. A.R. then came to the attention of the Iowa Department of Human Services (DHS) in November 2016 after she had ingested an unknown substance and began to have seizures. She tested positive for methamphetamine in her system. On November 10, 2016, the juvenile court held a removal hearing and a removal order was entered, placing A.R. with the child's

¹ The juvenile court also terminated the father's parental rights. The father is not a party to this appeal.

maternal aunt. On November 22, the mother was arrested by federal authorities for the distribution of methamphetamine.

On February 15, 2017, A.R. was adjudicated as a child in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(c)(2), (n), and (o) (2016). On March 7, the court entered a dispositional order allowing the aunt continued custody of A.R., ordering the mother to undergo further substance-abuse treatment, and adopting the permanency goal of reunification, concurrent with adoption. On August 2, a review order was entered changing the permanency goal to termination.

On August 4, the State filed a petition for termination of parental rights. The mother filed a motion to continue, indicating federal sentencing on her drug distribution charge had not occurred and would impact the juvenile court's ruling in the termination. The juvenile court denied the mother's motion.

On September 6, the State filed trial informations against the mother accusing her of (1) child endangerment causing bodily injury and neglect or abandonment of a dependent person in relation to A.R., and (2) assault causing bodily injury or mental illness while she was incarcerated following her arrest for distribution of methamphetamine.

On September 26, the juvenile court entered an order terminating the mother's rights to A.R. pursuant to Iowa Code section 232.116(1)(d), (e), (h), and (j). The juvenile court found:

To return the child to her [mother's] custody would subject [the child] to adjudicatory harms of abuse or neglect. The same problems that precipitated the child's removal from her [mother's] care—untreated chemical dependency, lack of appropriate housing and employment, minimal compliance, incarceration due to criminal activity and lack of

verification or commitment—exist after months of services. The [mother has] shown that [she is] not prepared to care for [her] child. There was no evidence that giving [her] additional time to address [her] problems would be fruitful in the near future. There is no bond between this child and the [mother] that would warrant the court allowing for more time to reunify.

The mother appeals.

II. Standard of Review

We review termination proceedings de novo. *In re A.B.*, 815 N.W.2d 764, 773 (Iowa 2012). The grounds for termination must be proved by clear and convincing evidence. *In re M.W.*, 876 N.W.2d 212, 219 (Iowa 2016). When the court terminates parental rights on more than one statutory ground, we only need to find grounds to terminate under one of the sections cited by the court to affirm. *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010). “We review a motion for continuance under an abuse of discretion standard and will only reverse if injustice will result to the party desiring the continuance.” *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996).

III. Discussion

We review termination orders using the following three-step analysis:

The first step is to determine whether any ground for termination under section 232.116(1) has been established. If we find that a ground for termination has been established, then we determine whether the best-interest framework as laid out in section 232.116(2) supports the termination of parental rights. Finally, if we do find that the statutory best-interest framework supports the termination of parental rights, we consider whether any [permissive factors] in section 232.116(3) apply to preclude termination of parental rights.

M.W., 876 N.W.2d at 219–20.

a. Statutory Grounds

The mother contends the State failed to establish by clear and convincing evidence any of the statutory grounds plead for termination. The State asserts all statutory grounds were proven, including that termination was appropriate under section 232.116(1)(h) because A.R. could not be returned to the mother's care at the time of termination and had been out of the mother's care for over six months. We agree with the State. See *D.W.*, 791 N.W.2d at 707 (allowing for termination to be affirmed under one paragraph when the court terminates on more than one statutory ground).

At the time of the termination hearing, the mother was incarcerated in county jail awaiting sentencing on a federal distribution charge. The juvenile court noted "she could be facing ten years to life in federal prison, although her attorney reports the judge could sentence her to less time." In addition, the mother faces new charges pertaining to A.R. for child endangerment causing bodily injury and neglect of a dependent person, as well as an assault charge against a fellow inmate during her current incarceration. It is uncertain when those cases will be resolved. Thus, it is clear A.R. could not be returned to the mother's care at the time of the termination hearing. Additionally, approximately eleven months had passed since A.R. was removed from the mother's care in November 2016, well past the six-month threshold contained in section 232.116(1)(h). We agree with the district court that A.R. could not be returned to the mother's care at the time of the termination hearing and affirm the statutory findings under section 232.116(1)(h).

b. Best Interests

The mother next asserts that termination is not in the best interests of A.R. because of the strong bond she has with her. This argument is misplaced because that is a consideration under section 232.116(3), before we consider the bond, we examine subsection (2). Under subsection (2), the juvenile court must 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.”

Here, there is very little evidence to support a conclusion that remaining with the mother is in A.R.’s best interests. Given the mother’s potential sentences on the federal charges, the state charges, her propensity to reoffend even when in jail, and her dealings with methamphetamine, the mother seems to be unable to put A.R.’s needs first. We agree with the district court—it is in the best interests of the child’s long-term growth and safety to terminate the mother’s parental rights.

c. Permissive Factors

The mother re-asserts the juvenile court should not have terminated her parental rights because she had a strong bond with A.R. and because A.R. was placed with a relative. Iowa Code section 232.116(3)(c) allows the court to decline termination if termination “would be detrimental to the child at the time due to the closeness of the parent-child relationship.” Section 232.116(3)(a) allows the court to decline termination if “a relative has legal custody of the child.” “The court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply the factors in this section to save the parent-child relationship.” *In re D.S.*, 806 N.W.2d 458, 475 (Iowa Ct. App. 2011).

As the district court found, the alleged bond between the mother and A.R. in this situation does not override the need for termination. We agree. Shortly after A.R. was removed from the mother's care in November 2016, the mother was incarcerated and remained so at the time of the termination hearing. The parental bond was substantially weakened by the mother's own criminal activities, which resulted in her physical and emotional absence from her child.

In addition, the court found that A.R.'s aunt does not yet have legal custody but is willing and able to adopt A.R. and provide permanency in her life. The mother asserts A.R.'s aunt should be given a guardianship over A.R. until the mother is released. However, we agree with the juvenile court that a guardianship is not appropriate because the mother's prior acts and behavior do not demonstrate she can effectively parent A.R. and A.R. needs permanency in her life. See *A.B.*, 815 N.W.2d at 778 ("Insight for the determination of the child's long-range best interests can be gleaned from 'evidence of the parent's past performance for that performance may be indicative of the quality of the future care that parent is capable of providing.'" (citation omitted)); *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990) ("Children simply cannot wait for responsible parenting. Parenting . . . must be constant, responsible, and reliable."). We find no error in the juvenile court's reluctance to apply these permissive factors, and we affirm the juvenile court's termination of the mother's parental rights.

IV. Motion to Continue

The mother also asserts the juvenile court erred in denying her motion to continue the termination hearing.

“A sense of urgency exists in termination cases due to the importance of stability in a child’s life. Due to this urgency, the trial court is not obligated to grant a parent’s motion for continuance because ‘children simply cannot wait for responsible parenting.’” *C.W.*, 554 N.W.2d at 281 (citation omitted).

The initial termination hearing was scheduled for September 8, 2017. The mother filed a motion to continue due to the uncertainty as to when her federal sentencing would occur and as to what the sentence would be. The mother argued the termination hearing should be continued until these uncertainties were resolved.² The court denied the motion; however, the court eventually continued the hearing to September 20, where the mother reiterated her same argument for a continuance. The court again denied her motion, and held:

This child deserves a permanent solution, so I’m going to deny your motion on those grounds. I believe it’s appropriate to move forward. We don’t know the nature or circumstances of what her sentence would be, but if it is going to be a federal sentence of some kind, and we cannot wait on the whims of the federal court, and this child should not have to wait on the whims of the federal court as to when it should have a permanent solution as to its situation.

Since it is in the court’s discretion whether to grant a parent’s motion to continue and the court placed A.R.’s wellbeing and permanency at the forefront of

² On appeal the mother asserts for the first time her due process rights were violated because she was not afforded the opportunity to be present at the hearing either in person, telephonically, or through deposition. The mother has waived this issue because “[a]s a general rule, an issue not presented in juvenile court may not be raised for the first time on appeal.” *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994).

its decision, the conclude court did not abuse its discretion in denying the mother's motion.

V. Conclusion

Clear and convincing evidence supports termination under Iowa Code section 232.116(1)(h) and termination is in A.R.'s best interests because the mother has been unable to avoid a life of crime and is potentially facing a lengthy term in prison on multiple pending charges. There are no permissive factors that preclude termination, and the court did not abuse its discretion denying the mother's motion to continue.

AFFIRMED.