

IN THE COURT OF APPEALS OF IOWA

No. 0-024 / 09-1685
Filed February 10, 2010

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

A.M.B., Mother,
Appellant.

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

A mother appeals from a juvenile court order terminating her parental rights to a child. **AFFIRMED.**

Erin M. Carr of Carr & Wright, P.L.C., Des Moines, for appellant.

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.

Jane White of Parrish, Kruidenier, Moss, Dunn, Boles, Gribble & Cook, Des Moines, for father.

Charles Fuson, Des Moines, attorney and guardian ad litem for minor child.

Considered by Vogel, P.J., and Eisenhauer, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

MILLER, S.J.

The appellant is the mother of a son (“the child”) who was two and one-half years of age at the time of an October 2009 termination of parental rights hearing. She appeals from an October 2009 juvenile court order terminating her parental rights to the child. (The order also terminated the parental rights of the child’s biological father (hereafter “the father”), and terminated the parental rights of the child’s legal father, the mother’s husband. Neither father has appealed. We affirm.

The mother has an extensive criminal record.¹ In late October or early November 2007, when the child was about six months of age, the mother left the father in St. Louis and returned to Iowa.^{2,3} The mother has thereafter not had physical custody of the child, and has had limited contact with him.

In April 2008 the mother remained incarcerated. The child was then removed from the father because of his drug use and serious mental health problems. The child was adjudicated a child in need of assistance (CINA) in May 2008. Since April 2008 the child has remained in the custody of the Iowa Department of Human Services (DHS), with placement in a pre-adoptive family foster home.

¹ It appears that her most recent convictions are for theft in the first degree, forgery, and identity theft.

² The father has indicated that the mother left the child with him as early as June 2007, when the child was about two months of age.

³ At one point the record indicates she returned to Iowa because she had absconded following a criminal conviction or convictions. At another point it indicates she returned because she was wanted on pending criminal charges.

In November 2008 the mother was paroled on work release to a women's residential correctional facility. She thereafter briefly had some supervised visitations with the child. However, the mother shortly absconded and was subsequently picked up on an interstate highway together with a male parolee whose parole was subsequently revoked. The mother's parole was revoked in January 2009 and she was again incarcerated. Her tentative discharge date is May 2010.

In August 2009 the State filed a petition to terminate parental rights. Following hearing, the juvenile court terminated the mother's parental rights pursuant to Iowa Code sections 232.116(1)(b) (abandonment) and (h) (2009) (child three or younger, adjudicated CINA, removed from physical custody of parents at least six of last twelve months, cannot be returned to parents at present time). The mother appeals.

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

In re C.B., 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

The mother claims the juvenile court erred in finding the State had proved the fourth element of section 232.116(1)(h). That element is proved when the evidence shows the child cannot be returned to the parent without remaining a CINA. *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa Ct. App. 1995). The threat of probable harm will justify termination of parental rights, and the perceived harm

need not be the one that supported the child's removal from the home. *In re M.M.*, 483 N.W.2d 812, 184 (Iowa 1992).

At the time of the October 2009 termination hearing the mother was imprisoned, with a tentative discharge date of May 2010. The State clearly proved the element in question, as the mother was in no position to have physical custody of the child, and the mother's claim to the contrary is entirely without merit.

The mother also claims the juvenile court erred in finding the State had proved abandonment. In order to affirm termination of parental rights when the court terminates on more than one statutory ground, we need only find grounds to terminate under one of the grounds relied on by the court. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Having concluded that the State proved the grounds for termination under section 232.116(1)(h), we need not and do not address the other provision relied on by that court.

At the termination hearing the mother requested "a six-month extension" to allow her to get out of prison, establish a relationship with the child, and allow her to eventually have the child in her care. She now claims on appeal that the juvenile court abused its discretion by terminating her parental rights rather than entering an order pursuant to Iowa Code section 232.104(2)(b), continuing placement of the child for an additional six months. We review a motion such as the one presented to the juvenile court for an abuse of discretion, and will reverse only if injustice will result from a denial. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996).

At the time of the termination hearing the child, then two and one-half years of age, had not been in the mother's physical custody for about two years. The juvenile court had earlier, in March 2009, already once continued placement of the child for an additional six months pursuant to section 232.104(2)(b). In doing so it had hoped that at the end of the six-month continuance the father would be able to resume care of the child. At the end of that six-month continuance the father's circumstances had deteriorated, the mother was imprisoned, and the mother's tentative discharge date was at least seven months away. We find no abuse of discretion under these facts.

The mother's final claim is that the juvenile court erred in finding that termination of her parental rights is in the child's best interest. Even if the statutory grounds for termination are met, a decision to terminate must still be in the best interest of a child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994).

The child has spent the last one and one-half years in the care of a foster family. He is doing well in that home and in that family's care. The family is ready and willing to adopt him.

Generally, once the statutory grounds for termination exist, termination is in a child's best interest even if the child is placed with a relative. *In re L.M.F.*, 490 N.W.2d 66, 68 (Iowa Ct. App. 1992). The primary concern in a termination of parental rights proceeding is the best interest of the child. Iowa R. App. P. 6.904(3)(o); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981); *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa Ct. App. 1995). A child's safety and need for a permanent home are the primary concerns in determining the child's best

interests. *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially). Temporary or long-term foster care is not in a child's best interest, especially when the child is adoptable. *In re T.T.*, 541 N.W.2d 552, 557 (Iowa Ct. App. 1995).

The child has been out of the mother's care for at least the last two years of his two and one-half years of life. Little or no bond can exist between him and the mother. He needs security and permanency, and needs them now rather than at some indefinite time in the future. It will be many months, and perhaps longer, before the mother could even begin to attempt to establish a relationship with the child and work toward having physical custody of him. We readily agree with the juvenile court that termination of the mother's parental rights is in the child's best interest.

AFFIRMED.