

IN THE COURT OF APPEALS OF IOWA

No. 0-046 / 09-1770
Filed February 10, 2010

**IN THE INTEREST OF G.L.A.D.H.,
Minor Child,**

**L.A.H., Mother,
Appellant.**

Appeal from the Iowa District Court for Sac County, James A. McGlynn,
Associate Juvenile Judge.

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

Charles Schulte of Schulte & Graven Law Firm, P.C., Sac City, for
appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Earl Hardisty, County Attorney, and Tina Meth-Farrington, Assistant
County Attorney, for appellee State.

Bruce Becker of Vest, Becker & Murray, Sac City, for minor child.

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

DANILSON, J.

A mother appeals the termination of her parental rights to her six-year-old son, G.L.A.D.H. We affirm.

I. Background Facts and Proceedings.

G.L.A.D.H. was born five weeks premature in August 2003 and tested positive for drugs at birth.¹ At the time of the child's birth, the mother was incarcerated at the Oakdale Classifications Center. She was later placed at the Iowa Correctional Institution for Women in Mitchellville. Due to her incarceration, the mother signed a voluntary foster care arrangement for the child on August 8, 2003. Upon the mother's release from prison, she went to the House of Mercy program in Des Moines. The court entered an order for temporary custody of the child on November 18, 2003, prior to her release, and authorized the child being placed with her at House of Mercy on an extended visit.

The child was initially adjudicated a child in need of assistance (CINA) on February 26, 2004, due to the child not receiving adequate care as a result of the mother's drug and alcohol abuse. The court placed custody of the child with the Iowa Department of Human Services (DHS), but continued to authorize an extended visit with the mother so long as she totally abstained from the use and possession of any drugs or alcohol, and fully and timely participated in the House of Mercy program.² DHS believed the mother was successful at House of Mercy,

¹ The child's father is unknown, and his parental rights were also terminated.

² The House of Mercy program allows mothers to address their substance abuse issues, mental health issues, parenting issues, and other matters while having their children live with them.

and on November 29, 2004, the court closed the CINA case upon the State's request.

DHS later realized, however, that the mother's involvement at House of Mercy had not been as successful as originally thought. The mother and the child continued to reside at House of Mercy until August 2005, when they moved to their permanent housing program. On July 12, 2007, they were readmitted to halfway programming due to a relapse by the mother. On December 24, 2007, the mother relapsed again and went absent without leave from the program. On January 9, 2008, she was discharged from the program due to her absence and relapses.

DHS soon learned of the mother's relapse and discharge from House of Mercy. The mother moved to Council Bluffs and stayed at an apartment rented by a male friend. She also spent some nights at her father's home. G.L.A.D.H. lived with her, and at some point, G.L.A.D.H.'s fourteen-year-old half-sister, S.H., also began living with the mother.³

On March 3, 2008, S.H. was taken into protective custody by Sac City police due to allegations of physical abuse and drug usage by the mother. This resulted in the emergency removal of G.L.A.D.H., and initiation of a second CINA case for the child. G.L.A.D.H. was adjudicated CINA on April 2, 2008.⁴ The record shows the mother had relapsed around this time and was drinking frequently. On March 4, 2008, the mother tested positive for amphetamines and

³ S.H. had lived with her older half-sister for most of her life, but had recently been kicked out due to her behavioral problems.

⁴ S.H. was also adjudicated CINA at this time. The status of the mother's parental rights with regard to the S.H., however, was not made a part of the record in these proceedings.

benzodiazepines. The mother admitted to taking several different prescription drugs. She reported a history of methamphetamine usage and problems with alcoholism.

On May 25, 2008, the mother was readmitted to House of Mercy, and the plan was to stabilize her and move her to independent housing with the goal of obtaining housing by August 1, 2008. A dispositional hearing took place on August 4, 2008. At that time, the mother had entered an outpatient program operated by House of Mercy, had obtained employment, and was renting a three-bedroom home. She appeared to be maintaining sobriety. The mother signed a contract of expectations, and requested custody be returned to her. The court declined to return custody to the mother at that time and set another hearing for September 3, 2008.

Immediately after the hearing, the mother left House of Mercy and relapsed. She admitted that she drank alcohol at a bar on August 4, 2008. A blood test taken on August 5, 2008 showed an alcohol content of .235. At the dispositional hearing on September 3, 2008, the mother admitted she was unable to resume custody of the child.

Since that time, the mother has exhibited short periods of sobriety, but has consistently relapsed into longer periods of substance abuse. She has not had custody of the child since March 12, 2008, and has not seen him since July 1, 2009. There have been no trial home visits. The record shows the mother stopped participating in services and continued to refuse to address her substance abuse issues. The mother remained unemployed and without her

own residence. In short, the mother openly refused to comply with the DHS case plan, but yet demanded that the child be returned to her care.

On September 17, 2009, the State filed a termination petition. On November 13, 2009, after the contested hearing, the court terminated the mother's parental rights to the child pursuant to Iowa Code sections 232.116(1)(e), and (f) (2009). The mother now appeals.

II. Scope and Standard of Review.

We review termination of parental rights de novo. *In re Z.H.*, 740 N.W.2d 648, 650-51 (Iowa Ct. App. 2007). Grounds for termination under section 232.116(1) must be proved by clear and convincing evidence. *In re P.L.*, ___ N.W.2d ___, ___ (Iowa 2010); *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). If a ground exists, the court may terminate a parent's parental rights. *P.L.*, ___ N.W.2d at ___. In determining whether to terminate, our primary considerations are the child's safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child. *Id.*, ___ N.W.2d at ___; § 232.116(2). We also consider whether any of the exceptions contained in section 232.116(3) allow the court not to terminate. *Id.*, ___ N.W.2d at ___; § 232.116(3).

III. Merits.

A. Clear and Convincing Evidence under section 232.116(1).

The mother argues the State failed to prove the grounds for termination by clear and convincing evidence. Under section 232.116(1)(f), parental rights may be terminated if the court finds by clear and convincing evidence (1) the child is

age four or older, (2) the child has been adjudicated in need of assistance, (3) the child has been removed from the home for a period of at least twelve of the last eighteen months, and (4) the child cannot be returned to parents at the time of hearing. The mother contends the State failed to prove by clear and convincing evidence that the child would suffer adjudicatory harm if returned to her care.

The mother first became involved with DHS in August 2003, when she was incarcerated and G.L.A.D.H. tested positive for drugs at his birth. She has received extensive services to help her become a fit mother and to eliminate the adjudicatory harms present in her home. Although the mother has showed periods of progress over the years, she has consistently relapsed to periods of abusing drugs and alcohol, which have led to her association with suspect company, unemployment, and inability to maintain her own home. Even after the juvenile court entered a permanency order in March 2009 allowing the mother six additional months to gain reunification with G.L.A.D.H., she failed to show adequate progress, and the child was unable to return to her care. As the juvenile court stated:

Unfortunately, the mother did not take advantage of additional time to gain reunification. She relapsed into substance abuse again, continued to drink excessively, and refused to participate in treatment. Although the mother calls the child regularly, she has not seen the child since July 1, 2009. The child has now been removed from the mother's custody since March 12, 2008, and there have been no trial home visits. The mother is refusing to participate in services or to address her substance abuse issues or to comply with the contract of expectations which was developed. The mother is not employed and has no residence of her own. Nevertheless, the mother demands that the CINA adjudication be dismissed at this time, that the termination of

parental rights petition be dismissed, and that the child be returned to her custody at this time. The State and the guardian ad litem argue that the child continues to be a child in need of assistance, that reunification with the mother has proven to be a hopeless and unattainable goal because of the mother's substance abuse and mental health issues, and that termination of the mother's parental rights [is] in the best interest of the child so that he may obtain a safe, stable, and secure home through adoption.

Although the mother has been very motivated at times to be a good mother, she has not consistently improved her parenting skills or maintained a safe living environment for the child. To her credit, the mother has at times admitted she is unable to care for the child. However, there continue to be major concerns about the mother's mental health, instability, parenting skills, substance abuse, and lack of responsibility for the risk of harm she places on the child. The child has been out of her care for nearly two years. The mother has not consistently accessed services offered to her and has openly refused to be involved with additional services recommended to her. Most important, the mother continues to relapse into her dangerous lifestyle, has not demonstrated significant improvement over several years of services, and has proved she is unable to change. We find clear and convincing evidence supports termination of the mother's parental rights.⁵

⁵ The mother further argues the State failed to prove the grounds for termination under section 232.116(1)(e). We have already determined that clear and convincing evidence supports termination of the mother's parental rights under section 232.116(1)(f). Because we find statutory grounds for termination under section 232.116(1)(f), we need not address the arguments pertaining to the other statutory ground supporting termination by the juvenile court or by the mother on appeal. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) ("When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm."). We therefore decline to address this issue and affirm the juvenile court.

B. Child's Interests under section 232.116(2).

The mother also argues termination of her parental rights is not in the best interests of the child. In addition to meeting the section 232.116(1) grounds for termination, section 232.116(2) requires us to 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. *P.L.*, ___ N.W.2d at ___; § 232.116(2). Therefore, termination is not mandatory upon finding the requisite statutory elements under section 232.116(1). *P.L.*, ___ N.W.2d at ___; *In re C.W.*, 554 N.W.2d 279, 282 (Iowa Ct. App. 1996).

As our supreme court recently stated:

Rather than a court using its own unstructured best-interest test, the court is required to use the best-interest framework established in section 232.116(2) when it decides what is in the best interest of the child. . . . Accordingly, a court should base its best-interest determination on the legislative requirements contained in section 232.116(2), rather than upon the court's own value system. Additionally, in making this determination the court's decision should contain specific reasons as to why the court made its determination under section 232.116(2). By doing so, we will assure parents that our courts are applying the legislative intent of the statute in termination actions decided under chapter 232.

P.L., ___ N.W.2d at ___. In determining the best placement for the child, the court is to look at the child's long range as well as immediate interests:

The court is to consider what the future likely holds for the child if the child is returned to the parent Insight for that determination is to be gained from evidence of the parent[s] past performance, for that performance may be indicative of the quality of future care the parent [is] capable of providing. Case history records are entitled to much probative force when a parent's record is being examined.

In re S.N., 500 N.W.2d 32, 34 (Iowa 1993).

In this case, the juvenile court's findings include the following:

The evidence shows that the mother is either unable or unwilling to choose this child over mood-altering substances. The mother's substance abuse and mental health issues predate the child's birth. The child has been adversely affected by the mother's substance abuse since he was in her womb. He continues to be adversely affected by the mother's substance abuse. It is true that the child knows his mother and loves her, but he also knows that she has let him down in the past and fears that she will continue to do so into the future. The mother has demonstrated that she is able to maintain sobriety for short periods of time, especially if she is in a structured setting, but she has always relapsed. Now the mother is refusing to participate in any treatment. She has participated in treatment many times before and is probably correct that she could teach the classes, but the mother is now stubbornly refusing to take any action to address her substance abuse issues. The mother has been unable to maintain her own residence or to obtain and maintain employment. She is unable to provide a safe, stable, and secure home for the child now or at any time in the foreseeable future because of her refusal to address her issues. Years of intensive services have been provided to the mother to no avail, and the mother's position now is that efforts to "fix her" should be stopped, the cases should be closed, and the child should just be returned to her. The Court cannot stop the mother from spiraling into a deep hole, but there is no reason to make the child join her.

The record includes abundant evidence supporting these findings of fact, and we adopt them as our own. G.L.A.D.H. has twice been adjudicated a CINA. At the time of the termination hearing, his most recent removal had been for over eighteen months, with only telephone contact with the mother for more than four months. The child needs the safety, security, stability, and permanency the mother has been unable to provide and will be unable to provide in the foreseeable future. We agree with the juvenile court that termination of the mother's parental rights is in G.L.A.D.H.'s best interests.

C. Exceptions under section 232.116(3).

Although we have determined that termination is appropriate under section 232.116(2), we need not terminate the mother's parental rights if any of the circumstances contained in section 232.116(3) exist. See *P.L.*, ___ N.W.2d at ___. Section 232.116(3) provides:

The court need not terminate the relationship between the parent and child if the court finds any of the following:

- a. A relative has legal custody of the child.
- b. The child is over ten years of age and objects to the termination.
- c. There is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.
- d. It is necessary to place the child in a hospital, facility, or institution for care and treatment and the continuation of the parent-child relationship is not preventing a permanent family placement for the child.
- e. The absence of a parent is due to the parent's admission or commitment to any institution, hospital, or health facility or due to active service in the state or federal armed forces.

Id. § 232.116(3). The only exception that can apply to the facts of this case is section 232.116(3)(c).

Although the child knows his mother and loves her, he also knows that she has let him down in the past and fears that she will continue to do so into the future. The child continues to be adversely affected by the mother's substance abuse. The mother openly refuses to comply with the DHS case plan, has stopped participating in services, and refuses to further address her substance abuse issues. The mother has not had custody of the child since March 12, 2008, and has not seen him since July 1, 2009. We do not find a close parent-child relationship and if we are in error in this regard, certainly there is not such a close relationship that termination will be detrimental to the child.

We therefore agree with the juvenile court that clear and convincing evidence supports the termination of the mother's parental rights.

AFFIRMED.