

IN THE COURT OF APPEALS OF IOWA

No. 0-075 / 09-1878
Filed February 24, 2010

**IN THE INTEREST OF I.J.S.,
Minor Child,**

**C.K.S., Mother,
Appellant.**

Appeal from the Iowa District Court for Mahaska County, Lucy J. Gamon,
District Associate Judge.

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

Jeffrey A. Smith, Oskaloosa, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Rose Anne Mefford, County Attorney, and Misty White-Reinier,
Assistant County Attorney, for appellee State.

Amber Thompson, Oskaloosa, guardian ad litem for minor child.

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

POTTERFIELD, J.**I. Background Facts and Proceedings**

Crystal gave birth to Isaiah in November 2008. Isaiah was adjudicated a child in need of assistance on January 8, 2009, because of Crystal's mental health issues that impaired her ability to provide adequate care for him. Pursuant to a dispositional order entered March 5, 2009, Isaiah remained in Crystal's custody under the supervision of the Iowa Department of Human Services (DHS).

On March 30, 2009, Crystal was arrested for three counts of second-degree sexual abuse. At that time, Crystal signed a voluntary agreement with DHS placing Isaiah in a foster care home in which his half-brother, Charles, resided. Crystal's parental rights to Charles had been terminated before Isaiah was born.

On April 16, 2009, Crystal secured a pretrial release, a term of which prohibited her from having contact with anyone under the age of eighteen. Crystal immediately contacted DHS and asked that Isaiah be returned to her care. DHS filed a request for change in disposition, asking that Isaiah be placed in the custody of DHS. On April 17, 2009, the juvenile court placed legal custody of Isaiah with DHS for purposes of placement in foster family care. Crystal made no efforts to modify her contract with the Department of Corrections to allow her to have supervised visits with Isaiah.

Crystal was reincarcerated on July 2, 2009, for violating the terms of her pretrial release by having contact with her nephew, who was under the age of eighteen. Crystal remained incarcerated through the date of trial in this matter.

On September 29, 2009, the State filed a petition to terminate Crystal's parental rights. After trial on November 19, 2009, the juvenile court terminated Crystal's parental rights pursuant to Iowa Code section 232.116(1)(d), (e), (g), (h), and (i) (2009). Crystal appeals, arguing: (1) termination of her parental rights is not in Isaiah's best interests given their bond; and (2) the State did not use reasonable efforts to reunite her with Isaiah.

II. Best Interests of the Child

Crystal argues that termination of her parental rights is not in Isaiah's best interests because of their close bond. Because this argument was not raised before or decided by the juvenile court, we agree with the State that Crystal has not preserved error on this issue. See *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003) (an issue not presented to and passed on by the juvenile court may not be raised for the first time on appeal).

Even if error had been preserved, we would conclude a termination of Crystal's parental rights is in Isaiah's best interests, as determined by Iowa Code section 232.116(2). Crystal's ability to provide for Isaiah is affected by her ongoing mental health issues. See Iowa Code § 232.116(2)(a). Isaiah has become integrated into and bonded with his foster family, which includes his half-brother. See Iowa Code § 232.116(2)(b). Isaiah's foster parents have provided him with a stable environment and have expressed an interest in adopting him. See *id.* Using the framework provided in section 232.116(2), we conclude a termination of Crystal's parental rights best provides for Isaiah's safety, long-term growth, and physical, mental, and emotional needs.

However, a juvenile court need not terminate if the court finds “termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.” Iowa Code § 232.116(3)(c). The factors in section 232.116(3)(c) are permissive. See *In re P.L.*, ___N.W.2d___, ___ (Iowa 2010) (“[T]he court need not terminate a parent’s parental rights if any of the circumstances contained in section 232.116(3) exist.”). Isaiah has not been in his mother’s care since her arrest on March 30, 2009, when he was just four months old. We find no abuse of discretion in the circumstances before us.

III. Reasonable Efforts

Crystal also argues the State did not use reasonable efforts to reunite her with her child. Specifically, Crystal asserts that the State denied her the opportunity to work toward reunification, which she would have been able to do on November 20, 2009, the day after the termination hearing, when she expected to be released from custody.

Throughout the life of this case, DHS offered Crystal a wide array of services including: placement with suitable others, mental health services, Heartland Area Education Agency Early Access, parenting education, supervised visits, Parents as Teachers services, and Family Permanency Risk and Safety services. However, Crystal did not benefit from the extensive services provided by DHS because she failed to cooperate fully or to put forth the effort necessary to make progress. Further, Crystal was incarcerated for several months. Crystal “cannot fault DHS for being unable to provide [her] additional services when [her] own actions prevented [her] from taking advantage of them.” *In re M.T.*, 613 N.W.2d 690, 692 (Iowa Ct. App. 2000). “A parent cannot wait until the eve of

termination . . . to begin to express an interest in parenting.” *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000).

Upon our de novo review, we affirm the juvenile court’s order terminating Crystal’s parental rights to Isaiah.

AFFIRMED.