

IN THE COURT OF APPEALS OF IOWA

No. 0-107 / 10-0067
Filed March 10, 2010

**IN THE INTEREST OF M.M.,
Minor Child,**

**D.M.L., Mother,
Appellant.**

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

A mother appeals the termination of her parental rights to her daughter.

AFFIRMED.

Lynn C.H. Poschner of Borseth Law Office, Altoona, for appellant mother.

Pamela Vandell, Des Moines, for appellee father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, John P. Sarcone, County Attorney, and Jennifer Galloway, Assistant County Attorney, for appellee State.

Charles Fuson of Youth Law Center, Des Moines, for minor child.

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

POTTERFIELD, J.

A mother appeals the termination of her parental rights to her daughter.

The standard of review for all termination decisions is de novo. *In re P.L.*, ___ N.W.2d ___, ___ (Iowa 2010).

On our de novo review, we find M.M. was born in November 2006 to Danielle and Michael. In August 2008 a temporary order was entered by the district court in a proceeding concerning custody: Danielle was awarded physical care of M.M. and Michael was awarded visitation. On March 18, 2009, M.M. was removed from Danielle's care upon testing positive for exposure to methamphetamine.

On March 27, 2009, the juvenile court held a removal hearing. Both parents accused the other of being the source of M.M.'s exposure to the drug. The juvenile court ordered M.M. placed in foster care pending drug testing of both parents.

On April 22, 2009, M.M. was adjudicated a child in need of assistance (CINA) and placed in Michael's custody. Danielle had tested positive for methamphetamine, Michael had not.

On May 20, the juvenile court held a dispositional review and continued custody with Michael. In August 2009, in the separate custody proceeding the district court awarded physical care of M.M. to Michael. Danielle's visitation was to be determined in juvenile court.

Danielle received numerous services during the course of the CINA proceedings, including family safety, risk, and permanency services, family time, a parent partner, AA, NA, Moms Off Meth, parenting classes, and supervised

visitation. She received substance abuse evaluations and participated in treatment. However, she did not successfully complete any of the five treatment programs she entered. At a September 2009 supervised visit with M.M., Danielle became incoherent and unable to care for M.M. She informed her visit supervisor that she had taken an overdose of prescription medication. Danielle tested positive for methamphetamine in November and December 2009.

A petition to terminate her parental rights was filed on October 27. On December 21, a combined review and termination hearing was held. The juvenile court filed an order on December 30 terminating Danielle's parental rights pursuant to Iowa Code section 232.116(1)(d) (2009) (CINA adjudication, parent was offered services to correct the circumstance which led to the adjudication, and the circumstance continues), (e) (CINA adjudication, child removed from the physical custody of parent for period of at least six months, parent has not maintained significant and meaningful contact), (h) (child is three years or younger, adjudicated CINA, child removed from parent's custody for at least six of last twelve months, cannot be returned to custody of parent at the present time), and (l) (CINA adjudication, parent has a severe, chronic substance abuse problem, and parent's prognosis indicates child will not be able to be returned to parent's custody within a reasonable period of time).

Danielle now appeals.

To terminate a parent's parental rights under chapter 232, the court must first determine if one of the grounds enumerated in section 232.116(1) exists. If a ground exists, the court may terminate a parent's parental rights. See *generally In re P.L.*, ___ N.W.2d at ___.

Danielle argues that the statutory requirements of section 232.116(e) and (f) were not met. However, we need not discuss her statutory arguments because she does not dispute the existence of the grounds under sections 232.116(1)(d) and (h). See *id.* at ____; *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996) (noting that when the court terminates parental rights on more than one statutory ground, we only need to find grounds exist to terminate parental rights under one of the sections cited by the district court in order to affirm).

In determining whether to terminate a parent's parental rights when statutory grounds to do so exist, the juvenile court must apply section 232.116(2). *In re P.L.*, ____ N.W.2d at ____.

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. The 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. at ____.

Danielle conceded at the termination hearing that M.M. cannot be returned to her custody at this time due to her unresolved drug abuse issues. M.M.'s placement with Michael provides for M.M.'s safety, physical, mental, and emotional condition, and is the best placement for furthering her long-term nurturing and growth. Thus, section 232.116(2) supports termination of the mother's parental rights.

Finally, Danielle argues that two factors permit the court not to terminate her parental rights, despite proof of statutory grounds and the best interests of the child. See Iowa Code § 232.116(3) ("The court need not terminate the

relationship between parent and child if the court finds any of the following: (a) “A relative has legal custody of the child.” . . . (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.”).

Danielle first contends that because M.M. remains in her father’s custody, Danielle’s rights need not be terminated. The juvenile court specifically considered this factor:

The over arching goal[s] for children in the juvenile court are safety and permanency. . . . [M.M.] cannot be safe in her mother’s custody at this time. I do not believe her childhood would ever experience the kind of permanency mandated by law if Danielle’s parental rights are not terminated. This case presented in the posture of a custody battle as much as a CINA case. Initially the parents were more concerned about making each other look bad than they were with M.M.’s issues. That posture has ameliorated during the course of this case. I have no doubt the conflict would rear its head again if court supervision ends and Danielle is free to litigate without end the issue of custody in family court.

Our de novo review leads us to the same conclusion. Terminating the mother’s parental rights allows the child to be permanently placed with her father—where she is thriving—without concern of continued or renewed dispute. *Cf. In re N.M.*, 491 N.W.2d 153, 156 (Iowa 1992) (upholding termination of noncustodial parent’s rights even though custodial parent has legal custody).

We also reject Danielle’s claim that the closeness of her relationship with M.M. weighs against termination. We recognize there is a bond between mother and daughter, but the record does not support a finding of such a close relationship that termination will be detrimental to M.M.

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

AFFIRMED.