

IN THE COURT OF APPEALS OF IOWA

No. 0-147 / 09-1888
Filed March 24, 2010

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

R.B., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

A mother appeals from the district court's order terminating her parental rights to her son. **AFFIRMED.**

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

Tammi Blackstone, West Des Moines, for appellee father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, John P. Sarcone, County Attorney, and Kevin Brownell, Assistant County Attorney, for appellee State.

Michelle Saveraid of Youth Law Center, Des Moines, for minor child.

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

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

VOGEL, P.J.

Retha appeals the termination of her parental rights to her son, M.W., born in July 2008.¹ She asserts there was not clear and convincing evidence to support the district court findings, and the exception to termination under Iowa Code section 232.116(3)(d) (2009) should have been applied. She also asserts her motion to continue should have been granted. We affirm.

The district court terminated Retha's rights under Iowa Code sections 232.116(1)(d) (adjudicated CINA for physical abuse, circumstances continue despite services); and (h) (child three or younger, adjudicated CINA, removed from home for six of last twelve months, and child cannot be returned home). When the district court terminates parental rights on more than one statutory ground, we only need to find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996).

The Iowa Department of Human Services (DHS) became involved with M.W. in August 2008, when M.W. was brought to the hospital suffering with symptoms of asphyxiation; brain damage resulted. M.W. was in Retha's care at the time of the injury, but it was not possible to determine whether the injury was accidental or intentional. After being discharged, M.W. and Retha lived with Retha's mother. A second incident occurred in October 2008, when bruises were discovered on M.W.'s shoulders and back. The record reveals that Retha admitted to a DHS worker that the bruising was caused by her squeezing M.W. in

¹ The parental rights of M.W.'s biological father were also terminated. He does not appeal.

an attempt to stop his crying. M.W. was placed at ChildServe until being released in March 2009 into Retha's mother's care.² M.W. was removed from that placement in May 2009 and adjudicated a child in need of assistance (CINA) on June 11, 2009. At the time of the termination trial, M.W. resided at ChildServe.

Retha argues the State failed to present clear and convincing evidence that M.W. could not be returned to her custody. Mary Goodrich, a medical social worker at ChildServe testified that M.W. receives "professional nursing services 24 hours a day in addition to therapy, physical therapy, occupational therapy and speech," and it was "extremely unlikely" he could have his needs met outside of the facility. M.W. is fed by a gastrostomy tube, as it is difficult for him to swallow properly, putting him at a higher risk for aspiration. He will likely require a high level of care well into adulthood.

While Retha asserts she learned to respond appropriately to M.W.'s needs, Goodrich testified that Retha has not demonstrated that she is currently in a position to meet M.W.'s needs. She further testified Retha has not been consistent in meeting with M.W., she "has not been available for doctor appointments since early July, and her visits are usually just with her [DHS social] worker." Most of Retha's visits with M.W. were "fairly brief" and the staff at ChildServe were usually unable to reach her by phone. They were unable to count on Retha being a part of M.W.'s doctor's appointments, as "she does not show up."

² ChildServe is an organization for children with special health care needs, specializing in pediatric health care services.

Retha was given unlimited visitation with M.W. at ChildServe, provided weekly transportation for the visits, as well as given bus tokens for other transportation needs. She was offered assistance with parenting skills, mental health therapy, and was included in M.W.'s therapy sessions. While she made progress at times, Retha did not consistently participate in the services offered. We agree with the district court that "[Retha] does not claim that she is able to physically take custody of [M.W.] at this time," and termination was proper under Iowa Code section 232.116(1)(h).

Retha argues M.W.'s placement at ChildServe created an exception to termination of her parental rights. Iowa Code § 232.116(3)(d) ("The court need not terminate the relationship between the parent and child if . . . 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."); *In re P.L.*, 778 N.W.2d 33, 37–38, 41 (Iowa 2010) ("Even though the court may determine that termination is appropriate under section 232.116(2), the court need not terminate a parent's parental rights if any of the circumstances contained in section 232.116(3) exist.").³

Retha has not demonstrated she can provide ongoing support for M.W. The severity of his problems require someone who will be consistently present and have the ability to make the medical decisions necessary for his care. Retha

³ While Retha does not challenge the district court's best interests finding, even if a statutory ground for termination is met, we must consider 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." Iowa Code § 232.116(2); *P.L.*, 778 N.W.2d at 37, 40. We agree with the district court's finding that termination was in M.W.'s best interests and would promote the "delivery of necessary services" due to Retha's unavailability, and would allow the possibility of long-term safe placement or adoption.

has not shown she can do this. Accordingly, we agree with the district court that termination of Retha's parental rights is in M.W.'s best interests as set forth under the factors in section 232.116(2), and no exception under (3) applies.

Finally, Retha asserts the district court erred in denying her motion to continue. We review the court's decision whether to grant or deny additional time for an abuse of discretion. *In Interest of C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996). The day of the hearing, Retha made a motion to continue, claiming she had been out of touch with her attorney and unable to prepare for the hearing. The district court denied the request, stating that it was in M.W.'s best interests to proceed, and Retha losing her cell phone a few weeks prior was not a valid reason to continue the hearing, as "this matter has been set now for much longer than that." We find no abuse of discretion in denying Retha's motion to continue. We affirm the district court's termination of Retha's parental rights.

AFFIRMED.