

IN THE COURT OF APPEALS OF IOWA

No. 0-149 / 10-0066
Filed March 24, 2010

**IN THE INTEREST OF A.W.-C.,
Minor Child,**

**A.W., Mother,
Appellant.**

Appeal from the Iowa District Court for Black Hawk County, Daniel L. Block, Associate Juvenile Judge.

A mother appeals from the juvenile court order terminating her parental rights. **AFFIRMED.**

Tammy L. Banning of Tammy L. Banning, P.L.C., Waterloo, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kathleen A. Hahn, Assistant County Attorney, for appellee.

Andrew Abbott of Abbott Law Office, P.C., Waterloo, for father.

Matthew M. Craft of Dutton, Braun, Staack & Hellman, P.L.C., Waterloo for intervenors.

Michael Lanigan, Waterloo, attorney and guardian ad litem for minor child.

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

SACKETT, C.J.

A mother appeals from the juvenile court order terminating her parental rights to her child. She contends the court “erred in concluding that sufficient grounds existed to terminate [her] parental rights.” We affirm.

Background. The child, born in Texas in September of 2007, tested positive for methamphetamine at birth. The Texas Department of Child Protective Services became involved. The mother brought the child to Iowa in 2008. He was removed from his mother’s care in August of 2008 based on allegations of denial of critical care resulting from the mother’s intravenous use of methamphetamine and lack of housing. The child tested positive for high levels of methamphetamine at the time of the removal. The child was placed in foster care. In February of 2009 the maternal grandmother intervened and sought consideration as a placement for the child.

From well before the child’s birth the mother has struggled with substance abuse, reporting use of illegal drugs from age thirteen. During the pendency of this case she finally was able to complete substance abuse treatment successfully for the first time in June of 2009. She testified she was maintaining her sobriety, but did not comply with any of the twenty-five random drug test requests.¹ Her attendance at Narcotics Anonymous meetings, which had been at least daily immediately following her treatment, had become sporadic. By the

¹ The court made specific observations concerning the mother and her credibility: Upon observing [the mother] during the course of the hearing and reviewing the documents admitted the court cannot find [the mother] credible. During the first day of evidence the court observed the mother to fall asleep on several occasions. [The mother] appeared disheveled and apathetic to the nature of the proceedings.

time of the continuation of the termination hearing, she had not attended a meeting for more than two weeks. Her treatment history reflects repeated unsuccessful attempts at treatment followed by relapse and failure to follow through with aftercare. She has had diagnoses of Oppositional Defiant Disorder, depression, Bipolar Disorder, and polysubstance dependence.

The worker who supervised visitation testified the mother attended forty-one of ninety-one visitations. Her notes show the mother at least once fell asleep during the three-hour visitation. When asked about visitation, the mother testified:

I mean, I've attended a lot of them. The times whenever I didn't attend them was either just me not being responsible, I guess, and waking up on my own. I know there is a few times when I know I just, I guess, I was being selfish but it hurt to see him so.

The termination hearings occurred on June 9 and September 21, 2009. A number of the missed visits occurred between the hearings.

By the time of the continued hearing in September, the mother was unemployed. She testified variously that she had "quit" her bartending job "about a week and a half ago" and "he fired me." She had obtained an apartment with her father's financial help. The next rent was due in two weeks and she did not have money to pay the rent. She testified she was looking for work and that two other bars had called her about working for them.

In addition to the mother's substance abuse and mental health issues, she has a history of unstable or violent relationships with men. Her boyfriend at the time of the termination hearings was a drug user and had assaulted her in March of 2009, leaving bite marks, bruises, and possibly broken ribs. She named one

man as the child's father on the birth certificate. Genetic testing excluded him as the father. During the course of these proceedings she also named three other men as possible fathers, including one named just before the second termination hearing. Genetic testing excluded the first two from being the child's father. When the mother made a motion at the start of the second termination hearing to continue the hearing to allow for genetic testing of the newest putative father, the court denied the motion, finding it was not in the child's interest to delay the proceedings.

Following two hearings and the admission of multiple exhibits, the court issued its order terminating the mother's parental rights in late December of 2009. The court denied the mother's request for an additional six months of services and terminated her parental rights under Iowa Code sections 232.116(1)(e), (h), and (l) (2009). The court also denied the grandmother's request for placement of the child with her in Texas.²

Scope and Standards of Review. “[T]he proper standard of review for all termination decisions should be de novo.” *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We give weight to the fact findings of the juvenile court, “especially when considering the credibility of witnesses,” but are not bound by them. Iowa R. App. P. 6.904(3)(g). The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978); *Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35 (1972). The State has the burden of proving the grounds for

² The court terminated all putative and unknown fathers' rights. None has appealed.

termination by clear and convincing evidence. *In re T.A.L.*, 505 N.W.2d 480, 483 (Iowa 1993). When the juvenile court terminates a parent's rights on more than one statutory ground we may affirm if we find clear and convincing evidence to support any of the grounds cited by the court. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

Merits. In *In re P.L.*, 778 N.W.2d at 40 the court held:

Section 232.116 requires the juvenile court to make various decisions in the process of terminating a parent's parental rights. First, the court must determine if the evidence proves one of the enumerated grounds for termination in section 232.116(1). If a ground is proven, the court may order the termination. Iowa Code § 232.116(1). Next, the court must consider whether to terminate by applying the factors in section 232.116(2). *Id.* § 232.116(2). Finally, if the factors require termination, the court must then determine if an exception under section 232.116(3) exists so the court need not terminate. *Id.* § 232.116(3).

Our analysis on de novo review, follows the same pattern.

The mother contends the juvenile court erred in finding "sufficient grounds" to terminate the mother's parental rights under sections 232.116(1)(e), (h), and (l). She argues she maintained significant and meaningful contact, the child could be returned to her care at the time of the termination, and the child could be returned to her care "within a reasonable time." She further argues the court should not have terminated her parental rights because a relative was available for the child's placement and "the child's best interest was to maintain a bond with [the mother] or other family member."

To the mother's credit, she completed substance abuse treatment, participated in some visitation, and demonstrated parenting skills during some visits. However, based on the facts noted previously, especially concerning the

mother's prior failures to overcome her substance abuse, we find clear and convincing evidence the child could not be returned to the mother's care at the time of the termination without being subject to adjudicatory harm as defined in section 232.2(6). See Iowa Code § 232.116(1)(h); see also *In re J.K.*, 495 N.W.2d 108, 113 (Iowa 1993) (noting parents with chronic, unresolved substance abuse issued present a danger to their children); *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998) (considering the treatment history of a parent). Having found grounds for termination, we must consider whether to terminate by applying the factors in section 232.116(2). See *P.L.*, 778 N.W.2d at 37.

Giving appropriate deference to the juvenile court's explicit assessment of credibility, and giving primary consideration to the child's safety, we find the mother's custody is not "the best placement for furthering the long-term nurturing and growth of the child" nor the placement that will meet "the physical, mental, and emotional condition and needs of the child." Iowa Code § 232.116(2). Having found the factors require termination, we next consider whether any exceptions to termination apply. See *id.* § 232.116(3).

The mother attempts to raise two exceptions from section 232.116(3). She argues a suitable relative is available as a placement and the child's best interest was to maintain a bond with the mother or other family member. Section 232.116(3)(a) allows the court not to terminate if "[a] relative has legal custody of the child." Although the maternal grandmother intervened and sought custody of

the child, she did not have custody of the child.³ This exception does not apply. Section 232.116(3)(c) allows the court not to terminate if “termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.” While there is evidence of some bond between the mother and the child, we do not find clear and convincing evidence that terminating that bond would be detrimental to the child due to the closeness of the bond.

We find clear and convincing evidence supports termination of the mother’s parental rights under section 232.116(1)(h). Considering whether to terminate, by considering the factors in section 232.116(2), we find termination required. As no exceptions in section 232.116(3) apply, we affirm the juvenile court’s order terminating the mother’s parental rights.

AFFIRMED.

³ We note the concerns expressed at the hearings whether the grandmother even would be an appropriate placement for the child. The court considered and rejected placing the child in her custody.