

IN THE COURT OF APPEALS OF IOWA

No. 0-261 / 10-0275
Filed May 12, 2010

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

**J.E.M., Father,
Appellant,**

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

Appeal from the Iowa District Court for Polk County, Louise Jacobs,
District Associate Judge.

A father and mother appeal separately from the order terminating their
parental rights. **AFFIRMED ON BOTH APPEALS.**

Steve Clarke, Des Moines, for appellant father.

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

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Annette Taylor,
Assistant County Attorney, for appellee State.

Paul White, Des Moines, for minor child.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

DANILSON, J.

A mother and father appeal separately from the juvenile court order terminating their parental rights to their eight-year-old daughter, J.M. The mother contends the court erred in ordering termination because (1) the child was in the custody of her maternal grandparents and termination was not required, (2) the court abused its discretion in denying her motion for continuance, and (3) termination is not in the best interests of the child. The father contends the court erred in ordering termination because (1) clear and convincing evidence does not support the statutory grounds cited by the court and (2) termination is not in the best interests of the child. We affirm on both appeals.

The father and mother were married at the time of J.M.'s birth in June 2001. J.M. previously came to the attention of the Iowa Department of Human Services (DHS) in December 2005 after the mother tested positive for cocaine and the father assaulted J.M.'s half-sister.¹ J.M. was placed in the father's custody, and services were offered to the mother to help her overcome her addiction. The case was closed in January 2007 after the mother failed to access services and the mother and father divorced. J.M. continued placement in the father's custody.

The instant case was initiated in September 2008, when DHS received reports that that the father had lost his job, had no place live, and that he and J.M. had moved in with the mother. J.M. articulately reported the mother's use of illegal substances in the home. On November 10, 2008, J.M. was adjudicated a child in need of assistance (CINA), was removed from the home, and was placed

¹ The father in this action is not the father of J.M.'s half-sister.

in foster care. Since January 2009, J.M. has resided with her maternal grandparents. Extensive services were offered to the parents, but the juvenile court determined that issues remained that made the parents unable to care for the child, and she was not returned to their custody. Parental rights were terminated on January 29, 2010.

We review termination proceedings de novo. *In re Z.H.*, 740 N.W.2d 648, 650-51 (Iowa Ct. App. 2007). Although we are not bound by them, we give weight to the juvenile court's findings of fact, especially when considering credibility of witnesses. Iowa R. App. P. 6.904(3)(g); *In re M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993). 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). The State has the burden of proving the grounds for termination by clear and convincing evidence. *In re P.L.*, 778 N.W.2d 33, 34, 39 (Iowa 2010); *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

Mother. Statutory Grounds. The juvenile court terminated the mother's parental rights pursuant to sections 232.116(1)(b), (d), (e), (f), (i), and (l) (2009). On appeal, the mother does not contest that facts exist to support these grounds for termination of her parental rights.

Best Interests. The mother contends termination is not in the best interests of the child, and was unnecessary because J.M. could have been placed in the guardianship of her grandmother. These claims implicate our analysis under sections 232.116(2) and (3). We consider whether to terminate by applying the factors in section 232.116(2) to determine if termination is in the child's best interests. See *P.L.*, 778 N.W.2d at 40. Then, if the factors require

termination, we must determine if an exception under section 232.116(3) exists so we need not terminate. *See id.*

In considering a child's interests, "the court shall 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." Iowa Code § 232.116(2).

In seeking out those best interests, we look to the child's long-range as well as immediate interests. This requires considering what the future holds for the child if returned to the parents. When making this decision, we look to the parents' past performance because it may indicate the quality of care the parent is capable of providing in the future.

In re J.E., 723 N.W.2d 793, 798 (Iowa 2006) (quoting *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997)).

The mother has been involved with DHS off and on since December 2007. Extensive services have been offered to her, but she has failed to take advantage of these services. Concerns about the mother's illegal drug use have been a major issue throughout these proceedings. The juvenile court found that the mother has abandoned the child, that she has failed to maintain significant and meaningful contact with the child for the previous six months, that the circumstances that led to the adjudication continued to exist, that the child could not be returned to the mother's care at the present time, and that the mother has a severe, chronic substance abuse problem that cannot be resolved within a reasonable period of time. Applying the factors in section 232.116(2), we conclude termination of the mother's parental rights is in the child's best interests. *See P.L.*, 778 N.W.2d at 37 (outlining a best-interests analysis).

Iowa Code section 232.116(3) lists exceptions to termination in certain enumerated circumstances, including “[a] relative has legal custody of the child.” Iowa Code § 232.116(3)(a). The exceptions to termination in section 232.116(3) are permissive, not mandatory. See *P.L.*, 778 N.W.2d at 38; *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply the factors in this section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993).

A guardianship would preserve the possibility of a parent-child reunification. However, from our review of the record, we find it is unlikely the mother will be able to responsibly parent J.M. now or in the future due to her extensive history of substance abuse and instability. Additionally, the grandparents and the child will benefit from the authority and boundaries permitted by a termination of the mother’s rights. Under the facts and circumstances in this case, the grandparents’ custody of the child should not inhibit the termination of the mother’s parental rights.

The mother also contends the juvenile court abused its discretion in denying her motion for a continuance. The mother filed the motion for continuance when she was unable to attend the termination hearing as a result of a recent arrest. We review the juvenile court’s denial of a motion to continue for abuse of discretion, and will only reverse if injustice will result to the party desiring the continuance” and the denial was unreasonable under the circumstances. See *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996).

There is no dispute that the mother was arrested the night before the termination hearing and remained in custody at the Polk County jail the morning of the hearing. She was also unable to be transported to the hearing by Polk County jail staff due to concerns about her mental condition and state of mind. In addition, the juvenile court considered the mother's history of lack of cooperation with services and visitation, inconsistent communication with DHS service providers, and lack of progress toward reunification. The court has no obligation to grant a continuance because "children simply cannot wait for responsible parenting." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). We find no abuse of discretion in the court's denial of the mother's motion for continuance.

We affirm the termination of the mother's parental rights.

Father. Statutory Grounds. The father contends clear and convincing evidence does not support termination under sections 232.116(1)(d), (e), (f), or (i). We may affirm the termination if facts support the termination of the father's parental rights under any of the sections cited by the juvenile court. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

The father argues the child was removed due to the mother's substance abuse, that he has no such issues, and that the child should be immediately returned to his care. We disagree. The court is required to find that the child cannot be returned to the parent's care "at the present time," pursuant to Iowa Code section 232.116(1)(f)(4). The child was removed from the father's care when the father would not provide DHS with his own home address, was living with the mother, and was allowing the child to be exposed to the mother's substance abuse. The father has received services for more than a year, and

has been uncooperative. His decision-making has not improved. He has continued to blame others for the fact that he has not been reunited with J.M. From June through November 2009, the father again would not provide DHS with a home address and was at some point living out of his pickup truck. He has not had regular visitation with J.M. and has refused to provide DHS with his employment information. Even in the days preceding the termination hearing, the father was having a relationship and living with a different known drug user, who was facing imprisonment for twenty years. It is clear the father has no insight as to how his actions have endangered J.M. We find clear and convincing evidence the child could not be returned to the father's custody at the time of the termination and affirm on that ground. Because we affirm the termination under section 232.116(1)(f), we need not address the father's arguments concerning sections 232.116(1)(d), (e), or (i).

Best Interests. The father contends termination is not in the best interests of the child, because of his bond with the child and a guardianship should have been established with the child's grandmother. See Iowa Code § 232.116(3); *P.L.*, 778 N.W.2d at 40. However, the record indicates major concerns exist regarding the father's mental health, decision-making, instability, and lack of insight. He has been uncooperative and inconsistent with services provided to him and has continued to place J.M. in dangerous situations. It is unlikely the father will be able to responsibly parent J.M. now or in the future. A parent does not have an unlimited amount of time to correct his deficiencies. *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997). Although the father clearly loves and cares about J.M., any bond he shares with her is not sufficient to maintain the

parent-child relationship. Under the facts and circumstances in this case, we conclude the exceptions under section 232.116(3) are not sufficient to save this parent-child relationship. See *C.L.H.*, 500 N.W.2d at 454.

We affirm the termination of the father's parental rights.

AFFIRMED ON BOTH APPEALS.