

IN THE COURT OF APPEALS OF IOWA

No. 0-334 / 10-0488
Filed May 26, 2010

**IN THE INTEREST OF E.R.,
Minor Child,**

**A.R., Mother,
Appellant.**

Appeal from the Iowa District Court for Plymouth County, Robert Dull,
District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Dewey Sloan Jr., LeMars, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Darin J. Raymond, County Attorney, and Amy Oetken,
Assistant County Attorney, for appellee State.

John Polifka, Sioux City, for minor child.

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

DANILSON, J.

A mother appeals from the district court order terminating her parental rights to her eighteen-month-old son, E.R. The mother contends the court erred in ordering termination because clear and convincing evidence does not support the statutory grounds cited by the court. Specifically, she contends (1) she was exercising visitation and was refused additional visitation; (2) she was complying with the responsibilities expected of her; (3) both parents made all attempts to maintain meaningful contact; and (4) she was making progress to the extent that there was no reason to terminate her parental rights. We affirm.

This child came to the attention of the Iowa Department of Human Services (DHS) in March 2009, when DHS received a child abuse referral noting bruises on E.R.'s left arm that looked like he had been grabbed. A child abuse assessment was subsequently founded, and the mother's fiancé admitted to causing the bruises during rough play. The child was four-months-old at the time. The mother and fiancé lived with the fiancé's parents, who indicated the mother and fiancé were young, immature, lacked insight into parenting, and were rough and inappropriate with the child. The mother had spanked the child, and there were concerns about poor attachment of the child to the mother. The child was adjudicated a child in need of assistance (CINA). The child was removed from the mother's care in July 2009, and was placed in family foster care where he has remained since that time.¹

¹ In August 2009, the mother gave birth to a daughter, who was hospitalized because she was born two months premature. Upon her release from the hospital, the daughter joined E.R. in the same foster care family. The mother's parental rights as to the daughter are not at issue in these proceedings.

The mother was offered numerous services to reunify her with the child. Although the mother and fiancé participated in services, they exhibited minimal improvement. Concerns also surfaced about the mother's mental health and the fiancé's substance abuse and mental health issues. The district court determined that despite services offered and received, the mother had unrealistic expectations for the child, struggled with elementary parenting skills, and had shown little improvement in her ability to interact with and parent the child. Further, the mother missed visitations with the child, denied her problems, and blamed others for the continued removal of the child. Parental rights were terminated on March 10, 2010.²

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 district 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).

The mother contends clear and convincing evidence does not support termination under sections 232.116(1)(b), (d), (e), or (h). We may affirm the termination if facts support the termination of the mother's parental rights under

² The father's parental rights were also terminated, but he does not appeal.

any of the sections cited by the district court. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

Under section 232.116(1)(h), parental rights may be terminated if the court finds by clear and convincing evidence (1) the child is three years of age or younger, (2) the child has been adjudicated CINA, (3) the child has been removed from the physical custody of the parent for at least six months of the last twelve months, or for the last six consecutive months, and (4) the child cannot be returned to the custody of the parent at the present time.

There is no dispute that the child is three years of age or younger, has been adjudicated CINA, and has been removed from the physical custody of the mother for at least six months, indeed since July 2009. See Iowa Code § 232.116(1)(h)(1), (2), (3). With respect to the fourth and final prong, i.e., section 232.116(1)(h)(4), the mother contends that although there was testimony by the DHS worker that the child cannot be returned to her care, the progress that she had been making is to the contrary.

Caseworkers continue to be concerned with the mother's lack of even the most elementary parenting skills and her ability to responsibly parent the child. The mother cancelled visits with the child, frequently argued with the fiancé during visits, and became frustrated when the child cried. Visits did not progress to semi-supervised or unsupervised throughout the pendency of these proceedings. Caseworkers also expressed concern, as the district court noted, regarding the lack of attachment between the mother and child, and the mother's physical and mental instability. Importantly, despite the mother's recent efforts to

participate more in services, she continued to make minimal improvement. As the district court stated:

[The child] is fifteen months old and has been removed from his mother's custody for the last seven months, despite services having been initiated prior to the conclusion of the investigation by Child Protective Services in April of 2009. Since the initiation of those services there has not been significant progress towards reunification. At best the situation of [the] mother and her fiancé can be best described as having ceased regressing and beginning to stabilize so that recuperative/rehabilitative/parenting skills can begin to be developed. Such is not sufficient for [the child]. The almost one year hiatus caused by his parents' inability and/or lack of desire to reunite cannot now be overlooked.

The record shows that the child cannot be returned to the mother's care now or anytime in the near future. See Iowa Code § 232.116(1)(h)(4). Although the mother contends that she was making progress, we agree with the district court that the mother has made no significant progress toward reunification since the initiation of services, and she was only beginning to stabilize one month prior to the termination hearing. We believe her failure to make consistent and meaningful progress is clear and convincing evidence that supports termination of the mother's parental rights under section 232.116(1)(h). We affirm on that ground.

Although we are not required to do so,³ we further note that the grounds for termination in sections 232.116(1)(d) and (e) have been met by clear and convincing evidence.⁴ Although the record *does* indicate that the mother was trying to comply with the some or most of the responsibilities expected of her, her

³ Because we affirm termination under section 232.116(1)(h), we need not address the mother's arguments concerning section 232.116(1) (b), (d), or (e). See *S.R.*, 600 N.W.2d at 64.

⁴ We do not, however, find the grounds for termination have been met under section 232.116(1)(b).

efforts were not consistent and did not produce results sufficient to support reunification. The circumstances that led to the child's adjudication continued to exist at the time of termination. See Iowa Code § 232.116(1)(d)(2). Further, despite the mother's contention otherwise, the record does not indicate that she made all attempts to maintain meaningful contact with the child. The child was removed from the mother's care in July 2009. Throughout these proceedings, the mother continued to deny her problems and blamed DHS for her inability to care for the child. The child displayed attachment problems to the mother and became upset in the mother's presence. The mother cancelled several supervised visits in the months preceding the termination hearing and showed little to no progress during visits. Due to the lack of progress made by the mother, visitation did not advance. The record indicates that the mother did not maintain significant and meaningful contact with the child in the six months preceding termination. See *id.* § 232.116(1)(e)(3).

Although the mother does not contend termination is not in the child's best interests under section 232.116(2) or that any factors under 232.116(3) exist, we have analyzed the facts of this case under those subsections and do not find that either section 232.116(2) or (3) refute termination of the mother's parental rights in this case. See *P.L.*, 778 N.W.2d at 37 (outlining the court's analysis under section 232.116(2), (3)).

This child cannot wait any longer for the mother to provide the permanency and stability he needs in order to thrive. We affirm the termination of the mother's parental rights.

AFFIRMED.