

IN THE COURT OF APPEALS OF IOWA

No. 0-338 / 10-0527
Filed June 16, 2010

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

**J.D.B., Mother,
Appellant.**

Appeal from the Iowa District Court for Mahaska County, Lucy J. Gamon,
District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Michael Fisher, Oskaloosa, for appellant mother.

Fred Stiefel, Victor, for father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Rose Anne Mefford, County Attorney, and Misty White-Reinier,
Assistant County Attorney, for appellee State.

Terri Menninga, Pella, for minor child.

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

DANILSON, J.

A mother appeals from the juvenile court order terminating her parental rights to her two-year-old son, A.M. The mother contends the court erred in ordering termination because (1) clear and convincing evidence does not support the statutory grounds cited by the court, (2) the State did not make reasonable efforts for reunification with the child, (3) termination is not in the best interests of the child, and (4) the child could have been returned to her care within a reasonable period of time. We affirm.

The mother and A.M.'s older half-siblings first came to the attention of the Iowa Department of Human Services (DHS) in May 2007, before A.M.'s birth, when DHS became aware that the mother and A.M.'s two half-siblings¹ were residing with a registered sex offender (A.M.'s father).² The mother signed a safety plan providing that she would not allow the children to have contact with the father. However, the mother failed to comply with the safety plan and continued to allow the children to have contact with the father. A.M.'s half-sister (then six-years-old) reported that the father was spending the night, babysitting her, and hugging and kissing her. In June 2007, the half-siblings were removed from the mother's care. The mother became pregnant with A.M. around this time.

The half-siblings were adjudicated children in need of assistance (CINA), and the mother began receiving numerous services with the goal of improving

¹ A.M.'s half-brother, D.T., was born in April 1997, and half-sister, S.B., was born in November 2000.

² The father had convictions for lascivious acts with a child and sexual abuse in the third degree.

her ability to make choices regarding the people she exposed the children to. The mother also received housing assistance, mental health services, in-home services, therapy, counseling, and family safety, risk, and permanency services. Despite these services, the mother continued to minimize the threat that the father posed to the children. However, no further violations of the safety plan occurred, and no evidence indicated the father was any longer in the home. The half-siblings were returned to the mother's care in December 2007. A.M. was born in January 2008. The half-siblings' CINA case was closed in April 2008.

Thereafter, the mother lost her housing, and she and the children began living with another registered sex offender, John Williams, in early 2009.³ During this time, A.M.'s twelve-year-old half-brother was sleeping in the same bed with "Uncle John." In April 2009, the mother was charged with three counts of aggravated child endangerment and one count of felony neglect or abandonment of a dependent person as a result of the children's contact with John Williams.⁴ In May 2009, A.M. and the half-siblings were adjudicated CINA. A.M. was removed from the mother's care and placed in family foster care, where he has remained since that time. The half-siblings were each placed with their fathers.

During the course of the DHS investigation, caseworkers learned the mother had been sexually abused by her father as a child, and that she believed

³ John Williams pled guilty and was convicted of lascivious acts with a child. His victim was a twelve-year-old boy, nearly the same age as A.M.'s half-brother at the time he was sleeping with "Uncle John."

⁴ On May 21, 2009, the State filed a trial information against the mother charging her with four counts. The felony neglect charge is a class "C" felony and the other three charges are aggravated misdemeanors. These charges remained pending at the time of the termination hearing on March 19, 2010. Prior to these charges, on September 6, 2007, the mother was granted a deferred judgment and placed on unsupervised probation for six months for child endangerment, an aggravated misdemeanor, for permitting a child of whom she had control or custody to cohabit with a sex offender.

her father had also sexually abused A.M.'s half-sister. Yet the mother admitted that she allowed the children to have contact with her father after these incidents, and even allowed the children to spend the night with her father.

The mother was again offered numerous services. Although she made some progress, the juvenile court noted that concerns remained about her psychological well-being, inadequate attendance at therapy, and most importantly, her failure to realize the danger her decisions caused to the children. The mother refused to discuss the reasons her children were removed from her care, failed to acknowledge the threat that exposure to sex offenders caused the children, and showed no significant improvement in her ability to protect the children from sex offenders in the future. The mother's criminal charges had not yet been resolved. The court also found the mother did not have adequate transportation or employment and lacked safe and stable housing.⁵ Parental rights were terminated on March 19, 2010.⁶

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

⁵ At the time of the termination hearing, the mother was residing in a crisis intervention center where other residents were not screened in any way.

⁶ The father's parental rights were also terminated, but he does not appeal.

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).

I. Statutory Grounds.

The mother contends clear and convincing evidence does not support termination under Iowa Code sections 232.116(1)(d), (h), or (i) (2009). We may affirm the termination if facts support the termination of the mother'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).

Under section 232.116(1)(d), parental rights may be terminated if the court finds (1) the child has been adjudicated CINA after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of the parent and (2) subsequent to the CINA adjudication, the parent was offered or received services to correct the circumstance that led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

There is no dispute that A.M. was adjudicated CINA upon the court's finding that he was physically or sexually abused or neglected as the result of the acts or omissions of the mother. See Iowa Code § 232.116(1)(d)(1). With respect to the second prong, i.e., section 232.116(1)(d)(2), the mother contends that at the time of the termination hearing, no evidence supported a determination that an adjudicatory harm continued to exist.

The mother began receiving services in the instant proceedings in April 2009. She also received services for the same issues involving A.M.'s older half-siblings from August 2007 through April 2008. However, despite the removal and

CINA adjudications of her children, coupled with numerous services offered and received, the mother has still not discussed her continued contact with sex offenders or acknowledged that these contacts endanger her children. In fact, the record suggests quite the opposite: the mother's actions demonstrate that she does not feel contact with sex offenders or her father (who previously sexually abused her and who she believes has sexually abused A.M.'s older half-sister) poses a risk to the children.

The juvenile court stated:

[T]he child's mother has been offered a psychological evaluation and counseling in an attempt to provide her with insight and awareness into how and why she knowingly allowed her children to reside with two separate sex offenders over the course of two years. The mother has not made significant progress in her counseling because she refuses to talk about the incidents that led to the removal of her children. This refusal to talk is apparently based on the fact that the mother faces serious criminal charges in relation to these incidents. However, in this case the safety of the child is paramount, and the penal consequences to the mother of talking about these incidents can be of only secondary concern. Without the mother's progress in counseling, the court has absolutely no assurance that "history will not repeat itself." The risk remains unacceptably high that if the child was returned home, the mother would continue to expose him to sex offenders, thus jeopardizing his safety.

The record shows that despite the offer and receipt of services, the circumstance that led to A.M.'s adjudication continues to exist. See Iowa Code § 232.116(1)(d)(2). We agree with the juvenile court that clear and convincing evidence supports termination of the mother's parental rights under section 232.116(1)(d), and we affirm on that ground. Because we affirm termination under section 232.116(1)(d), we need not address the mother's arguments concerning sections 232.116(1)(h) or (i).

II. Reasonable Efforts.

The mother contends the State failed to make reasonable efforts to reunify the family or eliminate the need for removal. She alleges she was not provided reasonable visitation opportunities or additional services to show she could provide adequate parental skills to care for the child.

There is no evidence in the record that the mother requested additional services throughout the pendency of these proceedings. She did request additional visitation at the review hearing in November 2009. Although DHS agreed to try to increase visits with the mother's older children, more improvement from the mother was necessary before it would agree to increase visitation with A.M.

The mother had no further objections to the amount of visitation she received, and no mention was ever made in regard to the sufficiency of the services. A parent's challenge to services by the state should be made when they are offered, not when termination of parental rights is sought after services have failed to remedy a parent's deficiencies. *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005). The mother fails to indicate that she requested or otherwise challenged the adequacy of services prior to the termination hearing. We conclude this issue has been waived.

III. Best Interests.

The mother contends termination is not in the best interests of the child. This claim implicates our analysis under section 232.116(2). We consider whether to terminate parental rights 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. If section 232.116(2) supports termination, we must then determine if a factor listed in section 232.116(3) exists to refute termination. 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.

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

The mother has been involved with DHS in the instant case since May 2009. Extensive services have been offered to her, but she has failed to fully take advantage of these services. The mother has made some improvements, such as finding employment for ten to twenty hours per week at Hardee's. However, the juvenile court determined that such employment is not sufficient to support one child, let alone three children, and we agree. The mother also does not have adequate transportation or safe and stable housing.

Further, there are criminal charges pending against the mother, and these charges have hindered her ability to make necessary improvements in her life that would support reunification with the child. At the time of the termination of parental rights hearing, these criminal charges had been pending ten or more months. She is unable to provide for A.M.'s physical, mental, and emotional needs without first addressing her failure to keep him safe from sex offenders

and realizing that she must protect him in the future. It is alarming that the mother demonstrates little insight as to the harm that the child has suffered and could suffer in the future due to her lack of awareness as to the seriousness of her actions. As the juvenile court stated:

[T]he Court considers that the long term best interests of this child are for termination of parental rights to occur so that the child may be adopted. [The child] is now just over two years old. He is a happy, healthy, thriving child with no special needs. He has some bond with his mother and very little, if any, bond with his father. Placement of the child with either of his parents would be contrary to his welfare and would jeopardize his safety. His mother has a history of exposing her children to sex offenders and has not made significant progress in therapy to address this issue. The father is an untreated sex offender who is currently in jail.

We find it is unlikely the mother will be able to responsibly parent A.M. now or in the near future. 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 factors weighing against termination including presence of evidence "that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." Iowa Code § 232.116(3)(c). The factors weighing against 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). Under the facts and circumstances in this case, we conclude that any applicable factors

listed in section 232.116(3) are not sufficient to save this parent-child relationship. *See id.*

IV. Additional Time.

The mother further contends the court erred in failing to allow her additional time to be reunited with the child. Upon our review, we find the juvenile court was correct in concluding that the mother's history of neglect, lack of concern, and irresponsibility would not be corrected in the near future. As the juvenile court stated:

There is clear and convincing evidence that the offer or receipt of [additional] services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.

Despite the offer and receipt of services, the child's mother has never acknowledged and taken responsibility for the danger this exposure to a sex offender presented to her child.

According to the credible testimony of various professionals in this case, she would require many months, if not years of therapy, before returning this child could be safely considered.

Granting the mother more time would only be a further detriment to the child. The child cannot wait any longer for the mother to provide the permanency and stability he needs in order to thrive. Additionally, the foster family stands willing to adopt. We affirm the termination of the mother's parental rights.

AFFIRMED.