

IN THE COURT OF APPEALS OF IOWA

No. 0-375 / 10-0569
Filed June 16, 2010

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

**L.L.G., Mother,
Appellant.**

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

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Amanda M. Demichelis of Demichelis Law Firm, P.C., Chariton, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Jon E. Anderson, Assistant County Attorney, for appellee State.

M. Kathryn Miller, Des Moines, for minor child.

Considered by Vaitheswaran, P.J., and Doyle and Tabor, JJ.

DOYLE, J.

A mother appeals the termination of her parental rights to her child, K.A. She contends the State failed to prove the grounds for termination by clear and convincing evidence and termination is not in the child's best interests. Additionally, she contends termination was inappropriate because the child was in the custody of a relative and termination would be detrimental due to the closeness of the parent-child relationship. We review her claims de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

The mother has two older biological children born in 2003 and 2004. Those children came to the attention of the Iowa Department of Human Services (Department) in August 2004 after the children's father broke one child's femur after becoming angry. The children were placed with the mother's parents. The mother ultimately consented to the termination of her parental rights to those children, and her parental rights were terminated in February 2006. At that time, the mother was pregnant with K.A. The mother's parents adopted the two older children.

K.A. was born in March 2006. In May 2006, the State filed a child in need of assistance (CINA) petition asserting K.A. was "at risk of neglect due to the mother's prior history and her inability to demonstrate she could safely parent her other two children." Following a contested adjudicatory hearing, the juvenile court dismissed the petition, finding the State had not met its burden. The court found, among other things, that the mother and K.A.'s father were being assisted by the child's paternal great-grandparents.

The great-grandparents cared for K.A. on the weekends while the parents were a couple. The parents eventually separated, and K.A. would stay with the great-grandparents for months at a time. In May 2008, the mother moved to Nebraska, entered the Job Corps program, and signed over temporary custody of K.A. to the great-grandparents. The mother was dismissed from the program for drug use five weeks later. The mother returned to Iowa but left K.A. in the great-grandparents' care.

In November 2008, the mother told the great-grandparents that she had met a man and she was moving to Nebraska. The mother came to visit K.A. for a few days and then never took K.A. back to the great-grandparents' care. K.A. had resided with the mother and her boyfriend for about a month when the mother called the great-grandparents to come and get K.A. The mother told the great-grandmother that K.A.'s hair was falling out in handfuls, K.A. had eating issues, and it was taking K.A. three to four hours to get to sleep. The great-grandparents picked K.A. up, and K.A. lived with them until May 2009.

In May 2009, the mother called the great-grandparents and told them that she wanted K.A. back, so the great-grandparents took K.A. to the child's mother. The great-grandparents visited K.A. in June and found the mother's apartment to have dirty dishes and dirty clothes all over. K.A. told the great-grandparents that K.A. wanted to go back with them. However, the great-grandparents took K.A. back to the mother when she accused the great-grandparents of trying to kidnap K.A.

Approximately three days after the great-grandparents visited the mother and K.A. in Nebraska, the mother was arrested for failing to pay her fine after

pleading guilty to possession of marijuana. The mother wrote an email giving the great-grandparents authority to care for the child until the mother moved and had more stability. K.A. then returned to Iowa to live with the great-grandparents.

In July 2009, the mother contacted the great-grandparents, stating she was getting married in October 2009 and she wanted to take K.A. back. The mother moved back to Iowa in approximately September and began living with the mother's sister, her boyfriend, and four children.

On September 4, 2009, the State filed an application for order of temporary removal seeking K.A. be placed with the great-grandparents due to prior CINA services, asserting K.A. would be in risk of further abuse if placed with the mother. Thereafter, the mother tested positive for marijuana use. On September 23, 2009, the juvenile court ordered that K.A. be removed from the mother's care and continued the child's placement with the great-grandparents.

In October 2009, K.A. was adjudicated a CINA. The State filed its petition to terminate parental rights in February 2010. The termination hearing was held in March 2010. In a March 29, 2010 order, the juvenile court terminated the mother's parental rights pursuant to Iowa Code sections 232.116(1)(b), (d), (e), (g), and (h) (2009). The mother now appeals.

The mother first contends the State failed to prove the grounds for termination by clear and convincing evidence. We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Termination is appropriate under section 232.116(1)(h) where there is clear and convincing evidence of the following:

- (1) The child is three years of age or younger.

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

There is no dispute the first three elements have been proved. Instead, the mother argues the State failed to prove the children could not be returned to her custody.

Upon our de novo review, we conclude there was clear and convincing evidence the child could not be returned to the mother's care at the time of the termination hearing. The mother remained unemployed at the time of the hearing and had no financial means to care for the child, except a small student loan she would receive through taking college courses online. Although the mother was taking part in supervised visits with K.A., she failed to take advantage of the opportunity given to her to schedule extra visits with K.A. at the great-grandparents' home, despite having the time available. The mother, who has abused substances in the past, failed to provide several urine samples as requested. The stability of the mother's housing situation at the time of the hearing was questionable, as the mother resided in a two bedroom house with six other people. Finally, the therapist working with the mother and K.A. opined that although she believed the mother and child should continue to have an on-going relationship with each other, "supervision, as necessary, should be provided to ensure [K.A.'s] safety." The therapist's report stated that K.A. did not want to live with the mother due to the mother's teasing, and referred to an

incident where the mother put K.A. in a dryer at the Laundromat as an example of the mother's teasing. Additionally, the therapist noted that "[o]ther parties involved in this family's case have brought up concerns about [K.A.'s] safety around mom in settings other than therapy. . . . I believe this reflects back [the mother's] choices in determining how to best interact and help [K.A.]."

While the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," this patience has been built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). Once the statutory limits established in section 232.116 have passed, "the rights and needs of the child rise above the rights and needs of the parents." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). Children should not be forced to endlessly await the maturity of a natural parent. *C.B.*, 611 N.W.2d at 494. We find clear and convincing evidence the child could not safely be returned to the mother's care at the time of termination. An extension of time is not warranted. Accordingly, the mother's parental rights were properly terminated under section 232.116(1)(h).

Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of Iowa Code section 232.116(2). *P.L.*, 778 N.W.2d at 37. In determining the best interests, this court's primary considerations are "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." *Id.* Taking these factors into account, we conclude the child's best interests require termination of the mother's parental rights. The child has lived with the great-grandparents for

most of the child's life. The mother has not established she is able to provide for the child's long-term nurturing and growth. The child needs permanency, and the mother has not been able to provide a stable home. The continued legal relationship of the mother with the child would only continue that instability. We conclude the juvenile court did not err in determining termination was in the child's best interests.

The mother also contends termination is not warranted because the child is in the care of a relative. Additionally, the mother cites the closeness of the parent-child relationship as a reason termination is not warranted. Iowa Code section 232.116(3) includes both as exceptions to termination. Iowa Code § 232.116(3)(a) (care of a relative) & (c) (closeness of the parent-child relationship). However, the exceptions to termination in section 232.116(3) are permissive, not mandatory. See *P.L.*, 778 N.W.2d at 38; *J.L.W.*, 570 N.W.2d at 781. 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).

Although the mother clearly loves and cares about K.A., any bond she shares with K.A. 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 *id.* Accordingly, we affirm the judgment of the juvenile court.

AFFIRMED.