

IN THE COURT OF APPEALS OF IOWA

No. 0-413 / 10-0654
Filed June 30, 2010

**IN THE INTERSET OF L.J.,
Minor Child,**

**S.S.G., Mother,
Appellant.**

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Steven J. Drahozal of Drahozal & Schilling, Dubuque, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Ralph Potter, County Attorney, and Jean Becker, Assistant County Attorney, for appellee State.

Mary Beth Fleming, Dubuque, for minor child.

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

DANILSON, J.

A mother appeals from a court order terminating her parental rights to her four-year-old daughter, L.J.¹ The mother contends the court erred in ordering termination because termination of her parental rights was not in the best interests of the child. We affirm.

I. Background Facts and Proceedings.

L.J. and her three-year-old half-brother, N.G., first came to the attention of the Iowa Department of Human Services (DHS) in December 2008. The mother is the mother of both L.J. and N.G.² The mother's parental rights to N.G. were terminated in October 2009, and this court upheld the court's order in February 2010. See *In re N.G.*, No. 09-1581 (Iowa Ct. App. Feb. 10, 2010). We reiterate a portion of the background facts from our court's decision in *In re N.G.*, as the facts are consistent with the evidence in these proceedings and are relevant to the mother's parental rights in regard to L.J.:

DHS had received reports that [the mother] and Mike,^[3] her husband, were harboring a teenage runaway, were using marijuana, and were keeping their residence in an unclean and unsafe condition. After the status of the home was confirmed, the family was given a week to clean the home. When DHS returned, there was no progress, so the children were placed into relative care for twenty-four hours. The next day, still no progress had been made. Therefore, [the mother] and Mike agreed to a voluntary foster care placement.

Over the next month, the condition of the home slowly improved, and the children were allowed to return to [the mother's] care. However, the home was not maintained, and the condition soon deteriorated.

¹ The father's parental rights were also terminated, but he does not appeal.

² The mother is due to give birth to another child in June 2010. She states that she is not involved in a relationship with the alleged father.

³ Mike was the mother's husband at the time. He is the father of N.G., but not the father of L.J.

At approximately 1:00 p.m. on February 26, 2009, two DHS caseworkers stopped by the residence for an unannounced visit. When the workers arrived, they found the back patio completely covered in dog feces. After being let into the home by an individual at the residence, the workers noticed feces, cigarette butts, and dirty dishes throughout the house and a broken refrigerator with spoiled and rotting food. The workers also saw the two family dogs in their kennel covered in their own urine and feces.⁴ When the workers made their way to the children's rooms, they found the children gated into their respective rooms. Both children were only dressed in diapers, had severe diarrhea, had feces leaking from their diapers to the floor, had food sitting on the floor, and had dried feces on their legs. [The mother] and Mike were found asleep in their bedroom. As a result of the condition of the home, a temporary removal order was obtained. The worker who removed them described the situation as follows:

A. I am the worker that removed them from the home. I put them in the car and when we asked [the mother] the last time they had eaten, she didn't recall. The 15-year-old gentleman that was supposed to be caring for them couldn't recall the time he gave them food. I took them to Burger King, ordered off the dollar menu. Three [orders of] chicken nuggets and some juice boxes. So between the two of them they ate twelve total nuggets. Twelve total nuggets and a large fry. And this is before we took them to the doctor. After the doctor's office, we still did not have a placement for them. We took them back to the Department, the office at DHS, and they proceeded to eat Nutrigrain bars, pudding, Sun Chips. They were very hungry.

Q. And thirsty? A. Yes. They drank quite a bit of juice.

At the doctor's office, both children were found to be extremely dehydrated, and both were diagnosed with giardia, an intestinal parasite spread by the ingestion of contaminated animal feces.

The children were immediately removed and placed in foster care. On April 9, 2009, the children were transitioned to a foster/preadoptive placement, where they have remained. On April 30, 2009, the children were adjudicated children in need of assistance (CINA). The mother received services including

⁴ One of the dogs had diarrhea, and as a result of its poor health, had to be euthanized.

parenting skills counseling, parent-child interaction therapy, random drug testing, and mental health counseling.

Despite these services, many issues have remained that have prevented the mother's reunification with L.J. Most concerning are the mother's drug abuse issues that she has continued to struggle with throughout the pendency of these proceedings. The mother has tested positive for methamphetamine and has had twelve positive urine analyses for THC, but she continues to deny using drugs. The mother contends she has not had a positive drug test since September 2009, and has not smoked marijuana since New Years' Day 2009, but the record shows otherwise. The mother tested positive for both marijuana and methamphetamine as recently as February 12, 2010.

The mother also has a long history of mental health concerns, and has been diagnosed with bipolar disorder, generalized anxiety disorder, avoidant personality disorder, and depressive personality disorder. However, the mother states that she has "never been a big fan" of counseling. The mother has skipped therapy appointments, consistently failed to take her prescribed medications, and has had problematic relationships with nine or ten different therapists who have been assigned to help her address her needs.

Further, the mother has been unable to care for herself consistently. She came to supervised parenting sessions unkempt, without showering, in dirty clothes, and with a noticeable odor. She has been unemployed since 2005. Although she recently began receiving SSI disability benefits, she does not yet have stable and permanent housing. Throughout these proceedings, the mother

has moved around from place to place, living in a campsite, a homeless shelter, and with friends or family.

The mother acknowledged that L.J. could not be returned to her care at the time of termination because she had no place to live. The mother requested additional time to work toward reunification. The court denied the mother's request for additional time, and noted that the mother had made little progress after receiving services for more than a year.

Parental rights were terminated on April 9, 2010, and the mother now appeals.

II. Standard of Review.

We review termination proceedings de novo. *In re Z.H.*, 740 N.W.2d 648, 650 (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 the 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 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).

III. Discussion.

The district court terminated the mother's parental rights pursuant to Iowa Code section 232.116(1)(f) (2009). On appeal, the mother does not contest the existence of statutory grounds for termination of her parental rights. Rather, she contends that termination of her parental rights is not in the best interests of the child.

This claim invokes our analysis under section 232.116(2). See *P.L.*, 778 N.W.2d at 39. 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. *Id.* "Section 232.116(2) requires us to '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.'" *Id.* at 40.

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)).

L.J. is four years old and was first removed from the mother's care in December 2008. The mother has received extensive services since that time, but has shown very little improvement. In fact, many of the same issues that prompted the removal of the child still remained issues that deterred reunification at the time of termination. The record clearly supports the finding that the mother is unable to provide a safe environment for the L.J., and that returning L.J. to her care is not an option. As the court stated:

The Court notes that interactions remain fully supervised, [the mother] has made no progress with her mental health issues, and she continues to deny any use of illegal substances despite all credible evidence to the contrary. Accordingly, the Court does not believe an extension of time would likely result in the child being placed in her care. [The mother] has received services for over the last year and has made no consistent or substantial progress. L.J. is in need of permanency now and should not be forced to endlessly await the maturity of her mother.

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Pursuant to Iowa Code section 232.116(2), . . . termination is in the best interests of the child. L.J. is currently placed in a foster-adopt home with her half-sibling. The foster parents are committed to adoption should TPR occur and they have provided a stable and healthy environment for L.J. and she has become integrated into their family. The Court believes it is in L.J.'s best interests to maintain the current living environment and maintain continuity for L.J. given the length of time she has been in the foster home.

We agree, finding it is unlikely the mother will be able to parent L.J. responsibly 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.

Having concluded that termination is in the best interests of the child, we must determine if an exception under section 232.116(3) exists so the court need not terminate. See *P.L.*, 778 N.W.2d at 40. Section 232.116(3) lists factors weighing against termination, including the presence of evidence "that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." The mother asserts there is a bond between herself and the child. However, she offers no evidence that termination of that bond would be detrimental to the child. The factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *P.L.*, 778 N.W.2d at 38. We agree with the district court that none of the factors listed in section 232.116(3) provide a basis to preserve this parent-child relationship under these facts and circumstances.

AFFIRMED.