

IN THE COURT OF APPEALS OF IOWA

No. 0-697 / 10-1295
Filed October 6, 2010

**IN THE INTEREST OF K.E.W.,
Minor Child,**

**L.A.W., Mother,
Appellant.**

Appeal from the Iowa District Court for Jackson County, Phillip J. Tabor,
District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Victoria Noel of The Noel Law Firm, P.C., Maquoketa, for appellant
mother.

John Kies, Bellevue, for father.

Thomas J. Miller, Attorney General, Janet Hoffman, Assistant Attorney
General, and Chris Raker, County Attorney, for appellee State.

Scott Nelson, Dubuque, for minor child.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.
Tabor, J., takes no part.

DANILSON, J.

A mother appeals the termination of her parental rights to her three-year-old daughter. She contends the State failed to prove the grounds for termination by clear and convincing evidence and the juvenile court erred in failing to grant her additional time for reunification. Considering the mother's minimal progress despite receipt of more than two years of services, we conclude there is clear and convincing evidence the circumstances that formed the basis for the child's adjudication continue to exist. We further agree that additional time would not likely result in the mother's ability to safely parent the child within six months. We affirm termination of the mother's parental rights.

Discussion.

This family first came to the attention of the Iowa Department of Human Services in 2006 as a result of a domestic violence incident and a founded report of the mother's denial of critical care to the child's older half-sister. The mother began receiving additional services in April 2008, due to a founded physical abuse report against the mother for an injury she caused to the child's older sister when the mother kned her in the head. This child was adjudicated a child in need of assistance in an uncontested adjudication in February 2009 due to the mother's inability to care for her. The child was voluntarily removed from the mother's care in May 2009 when the mother tested positive for methamphetamine. The mother denied using drugs. The child was placed in family foster care in a pre-adoptive home where she has remained since that time.

The mother has been homeless for the majority of time since the child's removal. The mother and her paramour were unable to pay their bills due to lack of public assistance and were evicted from their trailer. The mother later reported someone had broken into the trailer and was operating a meth lab in it. She refused to cooperate with a law enforcement investigation of the residence.

The mother lived at various shelters and stayed with at least eight different people throughout 2009 and the beginning of 2010. The mother has not been employed throughout these proceedings. In June 2010, the mother entered a women's shelter, but continued to be unsuccessful in finding employment. The mother has not tested positive for drugs since May 2009, but has refused to take additional drug tests. She completed a substance abuse program, but denied ever using drugs. The mother is on medications for her depression and mental health issues. Although DHS had conducted five child abuse investigations prior to the initiation of these proceedings, all resulting in founded reports, the mother refuses to acknowledge she was a party to the abuse to her children.¹ The mother minimizes her lack of stability and states she will be able to "turn things around." The mother is currently pregnant and due to deliver in January 2011.

¹ These reports were specifically in regard to the child's older half-sister, a special needs child. The children have different fathers. In January 2006, a domestic violence incident occurred between the mother and her paramour in the presence of the older sister, resulting in a founded report for denial of critical care, failure to provide proper supervision. A second report was founded in May 2006, when the older sister was left in the trailer by herself in the early morning hours and the trailer was burglarized. A third report was founded in March 2008, when the mother forced the older sister (then seven years old) to smoke a cigarette as a form of punishment. A fourth report was founded in March 2008, when the older sister was treated in the emergency room after having ingested some type of medications. A fifth report was founded in April 2008, when the mother kneed the older sister in the head for not cleaning her room fast enough. The older sister has been placed in the custody of her father.

The State filed its petition to terminate parental rights in May 2010. The guardian ad litem recommended termination of the mother's parental rights. Following a hearing in July 2010, the juvenile court entered its order terminating the mother's parental rights pursuant to Iowa Code section 232.116(1)(h) (2009).² The mother appeals. We review her claims de novo. *In re Z.H.*, 740 N.W.2d 648, 650-51 (Iowa Ct. App. 2007).

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. Our inquiry focuses on whether there is clear and convincing evidence the child cannot be safely returned to the mother's custody.

We conclude the State proved the child could not be returned to the mother's care at the time of termination. The mother has a past history of substance abuse and continues to have stability issues that have not been adequately addressed. Caseworkers expressed their concern that the individuals the mother associated with, and allowed in the family home, made it an unsafe environment for children. On occasion, the mother would not tell the

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

caseworker with whom she was residing. At one time, she resided with a man for about five days whom she described as pedophile. At another time, she temporarily resided with a woman she described as having a severe alcohol problem. The mother has also acknowledged in a conversation with a caseworker that she cannot protect her children if she cannot protect herself. During most of the pendency of these proceedings, the mother was homeless and did not know where she would be staying day to day. At the time of termination, she was in a women's shelter and remained unsuccessful in finding employment.

Caseworkers also testified that the mother never admitted to drug use, making it impossible to benefit from further treatment. The guardian ad litem recommended termination of the mother's parental rights and stated: "If [the child] was returned to her mother the concern is that she would be placed at further risk of maltreatment which would likely lead to a subsequent Child in Need of Assistance filing."

The mother has not acknowledged her parenting deficiencies and has made little progress in her ability to provide a safe and stable environment for the child. We agree with the juvenile court that there is clear and convincing evidence the child cannot be safely returned to the mother's custody.

The mother contends the juvenile court erred in terminating instead of granting her an additional six months to reunite with the child. We note that although 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. *In re C.B.*, 611 N.W.2d at 494.

The mother adamantly denies her deficiencies as a parent, and maintains that she is a good mother and has provided quality care to the child. The child has demonstrated increasing difficulties following visitations with the mother. Past performance of a parent may be indicative of the quality of future care the parent is capable of providing. *In re C.W.*, 554 N.W.2d 279, 283 (Iowa Ct. App. 1996). Without the mother’s recognition of the critical issues that have caused the removal of the child, including the five founded child abuse and denial of critical care investigations prior to this case, no meaningful change can occur. Two years of services have only resulted in minimal progress, and there is no evidence any additional time would prove otherwise.

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

AFFIRMED.