

IN THE COURT OF APPEALS OF IOWA

No. 0-830 / 10-1353
Filed December 8, 2010

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

**T.R.B., Mother,
Appellant,**

**M.W., Minor Child,
Appellant.**

Appeal from the Iowa District Court for Polk County, Constance Cohen,
Associate Juvenile Judge.

A mother appeals the district court's order terminating her parental rights.

AFFIRMED.

Kathleen T. Sandre of Coppola, McConville, Coppola, Hockenber, &
Scalise, P.C., West Des Moines, for appellant mother.

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

Lynn Poschner of Borseth Law Offices, Altoona, for appellee father.

Nancy L. Pietz, Des Moines, and Kimberly Ayotte of Youth Law Center,
Des Moines, attorneys for minor child.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

VOGEL, J.

Tonya appeals the termination of her parental rights to her child, M.W., born March 1997.¹ After a two day hearing, (May 14 and June 25, 2010) the district court terminated Tonya's rights under Iowa Code sections 232.116(1)(d) (adjudicated CINA for physical abuse or neglect, circumstances continue despite services), and (g) (child CINA, parent's rights to another child were terminated, parent does not respond to services). We affirm.

Our review of termination of parental rights cases is de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). When the district court terminates parental rights on more than one statutory ground, we only need to find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996).

Although this case involves only M.W., Tonya has previously had her rights terminated to two children, both younger than M.W.; four other children are under juvenile court jurisdiction. While not directly related to the termination of Tonya's parental rights to M.W., this fact sheds light on Tonya's ongoing problems and her inability to learn acceptable standards of parenting such that M.W. could be returned to her care without suffering additional adjudicatory harm. Case history records are entitled to much probative force when a parent's current performance is being examined. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993).

¹ The parental rights of M.W.'s biological father were also terminated and he does not appeal.

The Iowa Department of Human Services (DHS) became actively involved with Tonya in 2003, and she began receiving services following various child protective assessments. Citing concerns of Tonya's neglect of M.W., (including a lack of food, exposure to illegal drugs, and unsafe living conditions) coupled with Tonya's chronic history of being a victim of domestic abuse, M.W. was removed from Tonya's custody in May 2008, and adjudicated a child in need of assistance (CINA) in July 2008.

Tonya claims the court erred in terminating her parental rights, asserting she should have been granted an additional six months to work towards reunification.² Iowa Code § 232.104(2)(b) (allowing the court to continue placement for an additional six months, at which time an additional permanency hearing will be held). Following M.W.'s removal and placement in foster care, Tonya was offered many and varied services to support reunification, such as substance abuse treatment, individual therapy, visitation opportunities, and family team meetings. Despite these and other services offered, Tonya failed to make sufficient progress such that M.W. could be safely returned home. At a review hearing in April 2010, the court found that no compelling reason was presented to maintain the parent/child relationship. Tonya's parental rights to M.W. were terminated in August 2010.

While Tonya loves M.W., her efforts to fix her problems were insufficient to demonstrate she could provide for her care. Tonya failed to organize her life such that M.W. would not suffer adjudicatory harm, were she returned home. The record supports that Tonya was provided reasonable services, and the court

² M.W. joined the petition on appeal filed by Tonya.

gave her more than sufficient time prior to termination to show she could adequately parent M.W. She failed to do so, and we find additional time would not improve Tonya's ability to learn to care for M.W. such that she could be returned. We affirm the district court's finding under 232.116(1)(d).

In considering whether to terminate parental rights, "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 re P.L.*, 778 N.W.2d 33, 37, 40 (Iowa 2010). The record demonstrates that Tonya is not able to provide a consistent, safe, and nurturing home for M.W. The district court found, "Despite extensive interventions over the course of many years, [Tonya] still lacks the capacity to provide structure and the basics that a child like [M.W.] needs in order to live in a healthy and safe environment." The court noted Tonya's extensive history of abusive relationships. We conclude that termination is appropriate under the factors set forth in section 232.116(2).

Although the court may find grounds to terminate, the court may determine termination is not appropriate if any of the circumstances contained in section 232.116(3) are found to exist. *In re P.L.*, 778 N.W.2d at 40 (Iowa 2010). On appeal, Tonya raised an argument based on section 232.116(3)(b): "[t]he child is over ten years of age and objects to the termination," and (c) "[t]here is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship."

M.W. did express that she did not want Tonya's parental rights terminated. Kellie Patterson-Liebeseller, a clinical therapist for Child Guidance, a

rehabilitation center, recommended termination of Tonya's rights because M.W. has not had the opportunity, or even felt she had "permission" to form a stable, long-term attachment to her foster family. Patterson-Liebeseller worried that M.W.'s loyalties were so torn between Tonya and her foster family that she has not been able to form attachments. She believes an attachment is possible if Tonya's rights are terminated. Susan Bredice, M.W.'s in-home provider testified that she recommended termination so M.W. could move forward with her life, and have an opportunity to progress into a healthy, strong person. She testified that although M.W. does not want her mother's parental rights terminated, that is still her recommendation. Jenny Cochran, a remedial skills specialist at Urban Dreams, an organization that offers programs in economically depressed areas, was a witness called by Tonya. She testified that Tonya was working hard to improve her life and provide for M.W., but agreed that M.W. would have a barrier attaching to a different family if she was bonded with Tonya and confused about where and with whom she would be living. We find that while M.W. is close to Tonya, that factor does not override M.W.'s need to form a stable attachment, which is something Tonya cannot provide. It is apparent from the district court ruling, that the decision to terminate was not made without a thorough and very thoughtful consideration of M.W.'s best interests. It found that even a close bond between mother and daughter would not preclude termination, as continuing the "constant drama and emotional turmoil" of the relationship was detrimental to M.W. We agree with the district court that the factors set forth in section 232.116(3) do not militate against termination.

AFFIRMED.

Vaitheswaran, J., concurs; Sackett, C.J., dissents.

SACKETT, C.J. (dissents)

I respectfully dissent.

I understand the juvenile court and the majority's decision to terminate the parental rights of this thirteen-year-old child's biological mother; for, while the evidence shows that the mother has made progress, she does not have the capacity to provide the best environment for her child. However, I am unable to find that termination of this child's parental rights is in her best interest because of the strong bond, which the majority recognizes continues to exist between mother and daughter, and because the child desires that her mother's rights not be terminated.

The child, at twelve, was found by one court to be a remarkable twelve-year-old and to be very mature for her age and to have demonstrated substantial insight. While the child recognizes she cannot be returned to her mother's home, she told the termination court,

[T]here's a lot of things I have to give up and I have to sacrifice, and this is one thing I'm not willing to give up or to sacrifice because her rights is like a—one of the things that I still have with my mommy. I really would like to keep that.

The issue of whether or not to legally sever the biological ties between parent and child is an issue of grave importance with serious repercussions to the child as well as the biological parents. See *In re D.A.W.*, 552 N.W.2d 901, 903 (Iowa Ct. App. 1996). There is evidence, and it is apparent to me, that termination of parental rights will have a detrimental effect on the child and she will suffer from severing the legal bond to her mother. I give serious

consideration to the opinions of the juvenile judge who is convinced that termination gives the child the best opportunity to move forward, grow as an individual, and liberate her from the loyalty that binds her to her mother. However, I cannot believe the bond the child has with her mother and the responsibility she feels towards her will end with the termination order. Furthermore, while it is suggested that termination will lead to adoption, I am unsure that will happen; for the foster mother will not adopt the child unless the child wants to be adopted, and there is a suggestion she does not want to be adopted.

I would dismiss the petition and remand for the entry of a permanency order.