

IN THE COURT OF APPEALS OF IOWA

No. 0-995 / 10-1809
Filed January 20, 2011

**IN THE INTEREST OF N.H.,
Minor Child,**

**S.H., Mother,
Appellant.**

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

A mother appeals the termination of her parental rights. **AFFIRMED.**

Jeff Wright of Carr & Wright, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Kevin Brownell, Assistant County Attorney, for appellee.

Michelle Saveraid, Des Moines, attorney and guardian ad litem for minor child.

Considered by Mansfield, P.J., and Danilson and Tabor, JJ.

TABOR, J.

An eighteen-year-old mother appeals the termination of her parental rights to her one-year-old daughter, N.H. The mother argues that she has overcome the circumstances that led to her daughter's removal and that the child can be returned to her care now or, at a minimum, after an extension of six months. Because the mother lacked candor in her dealings with the social workers and in her testimony at the termination hearing, we—like the juvenile court—are unable to entrust the child to her care. We affirm the termination.

I. Background Facts and Proceedings

N.H. was born in September 2009, four months before her due date, and weighed only one pound, eight ounces. A test of her umbilical cord revealed a very high level of THC, the active chemical in cannabis. The mother, S.H., acknowledged smoking marijuana during her pregnancy. The Department of Human Services (DHS) placed N.H. in foster care in December 2009 when she was released from the hospital. The juvenile court adjudicated N.H. to be a child in need of assistance (CINA) on December 22, 2009.

This case presents the unfortunate pattern of a second generation of involvement with the foster care system. S.H.'s own mother had her parental rights terminated and S.H. grew up in the care of foster grandparents.¹ S.H. endured a "rough" upbringing, resorting to prostitution and illegal drugs when she was just fourteen years old. S.H. "aged out" of the foster care system just weeks

¹ The legal guardians who had custody of S.H. were not biologically related to her, but were her half-brother's grandparents. During her teen years, S.H. twice ran away from their home in Hartford, Iowa.

before her daughter was born. The mother was unable to identify the child's father because she "got drunk at a party and two months later found [herself] pregnant."

After N.H. was adjudicated to be a CINA, her mother was offered Family Safety Risk and Permanency (FSRP) services. S.H. was provided four opportunities per week to visit her baby. S.H.'s attendance at these visits was inconsistent at times. The social worker estimated that S.H. missed as many as eleven visits over the course of nine months.² When S.H. did attend the visits, she was nurturing to her daughter and they developed a bond, but S.H. did not consistently provide the baby supplies expected during the supervised visits.

The DHS also recommended S.H. undergo a mental health evaluation, which she did. As a result of the evaluation, S.H. attended therapy for depression, anxiety, and anger issues. S.H. testified that she was benefitting from the therapy sessions.

S.H. also participated in outpatient substance abuse treatment at the House of Mercy and successfully completed the program after seven months. Her primary treatment counselor noted in the discharge summary that S.H.'s prognosis was uncertain due to her "inability to move out of the contemplative stage of change regarding her addiction as well as her tendency to lose motivation, remain guarded, and revert back to old behaviors." The House of Mercy recommended that S.H. participate in an after-care program, but S.H. opted to attend weekly Narcotics Anonymous/Alcoholics Anonymous meetings

² S.H. also missed five doctor's appointments for her daughter.

instead. At the time of the termination hearing, she had not yet lined up a sponsor to assist her with the twelve-step program.

To her credit, S.H. provided drug-free urine samples for ten months during the pendency of the CINA case. Still, the social workers involved with her case worried about her long-term commitment to recovery based on the fact that S.H. chose to work as a dancer at an establishment where alcohol was served and drugs were frequently available despite her past struggles with substance abuse and her current efforts at recovery. S.H. did not believe that her job placed her in a predicament:

I know what people think about strippers. But, really, if I wanted to do the drugs and alcohol, I could do that at home. Anybody knows where to get it. It is everywhere. Just the fact that I am a dancer doesn't mean that I run with that crowd. I go there, I work, and I go home. I don't leave with any of the customers. I don't leave with any of the girls. I don't associate with them.

The mother's job also was a point of contention with the social workers because S.H. lied to them about having obtained employment. S.H. had been working for five months before she notified DHS that she had an income and an apartment.³ Social worker Kelly Saathoff testified: "Dishonesty is a huge step in recovery, and she has been dishonest with several things throughout this case." The DHS workers also had concerns because S.H. was not forthcoming about the people with whom she was associating.

On June 16, 2010, the State filed a petition seeking to terminate the mother's parental rights. The petition alleged that termination was proper under

³ S.H. completed a financial affidavit seeking appointment of counsel in August 2010 in which she listed her income as \$4000 per month.

Iowa Code sections 232.116(1)(d) and (h) (2009). The juvenile court heard evidence on the petition on July 15, 2010. At the hearing, the county attorney and guardian ad litem both asked S.H. whether she was pregnant with her second child.⁴ In response to both queries, S.H. denied that she was pregnant. In its October 29, 2010 ruling, the juvenile court found that S.H. was “not generally credible and specifically that she was pregnant at the time [of the termination hearing] and knew it.” The court terminated the rights of the mother on both grounds alleged by the State. The mother appeals from that order.

II. Standard of Review

Our review of termination decisions is *de novo*. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We are not bound by the juvenile court’s findings of fact, but we do give them weight, especially in assessing the truthfulness of witnesses. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). “We will uphold an order terminating parental rights if there is clear and convincing evidence of grounds for termination under Iowa Code section 232.116 (2009).” *In re D.W.*, ___ N.W.2d ___, ___ (Iowa 2010). “Evidence is ‘clear and convincing’ when there are no ‘serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.’” *Id.*

III. Analysis

The mother raises several issues for our consideration. First, she contends the State did not prove under section 232.116(1)(d) that the

⁴ The juvenile court noted in its termination ruling that when S.H. took the stand, her tight tee-shirt revealed a “protruding belly” and “[i]t appeared apparent then that she was pregnant.”

circumstance that led to the CINA adjudication “continues to exist despite the offer or receipt of services.” Second, she argues that the State did not prove under section 232.116(1)(h) that the child could not be returned to the mother’s care. Third, she argues that termination is not in the child’s best interest. And fourth, she contends the juvenile court should have entered an order under section 232.102 continuing placement of the child for an additional six months.

Our supreme court recently reiterated:

Termination of parental rights under chapter 232 follows a three-step analysis. *In re P.L.*, 778 N.W.2d at 39. First, the court must determine if a ground for termination under section 232.116(1) has been established. *Id.* If a ground for termination is established, the court must, secondly, apply the best-interest framework set out in section 232.116(2) to decide if the grounds for termination should result in a termination of parental rights. *Id.* Third, if the statutory best-interest framework supports termination of parental rights, the court must consider if any statutory exceptions set out in section 232.116(3) should serve to preclude termination of parental rights. *Id.*

D.W., ___ N.W.2d at ___.

Turning to the first step, we find termination was proper under both section 232.116(1)(d) and (h). The record leaves no question that this young mother made significant strides in her personal development. She completed a substance abuse treatment program and engaged in mental health counseling. She also acted independently in obtaining a job and her own apartment.

But her failure to communicate honestly with DHS workers about her work, her living arrangement, and her associates does not bode well for her long-term success as a parent. Likewise, the fact the mother chose to work in an environment that facilitates exposure to drugs and alcohol despite the fact her

past substance abuse precipitated the CINA adjudication calls into question her commitment to recovery. Equally troubling is the mother's untruthful testimony concerning her second pregnancy at the termination hearing. Because of the mother's lack of credibility, we cannot conclude that she has achieved the change of lifestyle necessary to accommodate raising a child or that any change will be enduring. The circumstance that led to the CINA adjudication continues to exist despite the mother's receipt of services.

We also agree with the juvenile court's conclusion that the State presented clear and convincing evidence that the child could not be returned to her mother's custody at the time of the termination hearing. See Iowa Code § 232.116(1)(h). The mother is critical of the DHS for not finding that her "foster grandparents" in Hartford could provide a suitable place to reunite the family. But the social workers testified that N.H. could not be placed in the Hartford home because the foster grandmother operated a daycare that would expose N.H. to too many health risks given her premature birth. Further, the mother formed an unrealistic plan, especially given her past problems with unreliable transportation, as to how she would commute the almost twenty miles from her work and appointments in Des Moines to their residence in Hartford for child care. Finally, the mother does not have a stable history with the Hartford home herself, having twice run away from that placement a few years earlier.

The social workers did not believe that S.H. was ready to assume care of her daughter at the time of the termination hearing. DHS worker Brenna Maher-Coughenour testified that based on her ten months of working with the family, it

was not likely that S.H. could parent N.H. on her own “in the foreseeable future.” We credit this testimony in our determination that N.H. should not have to wait for her mother to adopt a stable lifestyle, particularly when N.H. is at such a tender age. See *In re D.W.*, 385 N.W.2d 570, 578 (Iowa 1986) (holding that it is not appropriate to “gamble with the children’s future” by asking them to wait for the mother’s maturity). The juvenile court rejected the mother’s request for additional time to regain custody, noting that it could not “make a finding that it is reasonably likely that [N.H.] can be returned to the custody of her mother within the next months or in the foreseeable future.” Given the uncertainty that the child could be returned at the end of a six-month extension, the court correctly refused to continue the dispositional order. See *In re A.A.G.*, 708 N.W.2d 85, 92–93 (Iowa Ct. App. 2005).

Turning to the second step, we conclude that termination will provide the best prospects for N.H.’s safety; her long-term nurturing and growth; as well as her physical, mental, and emotional well-being. In determining what is in the child’s best interests, we assess the parent’s ability to provide security and basic necessities for the child. Despite earning as much as \$600 per night as a dancer, S.H. did not consistently bring provisions for her child to the supervised visitations. The mother’s exposure to unsavory influences at her job and her lack of candor about her associates poses a continued risk to her child. We also may consider whether the child has been integrated into a foster family and whether that family is willing to adopt the child. *D.W.*, ___ N.W.2d at ___. In this case, N.H. has been in the care of her foster parents since March 8, 2010. Their bond

with her has been described as “solid and growing” and they have expressed a desire to adopt her. We believe this permanency plan is in the best interest of one-year-old N.H.

As for the third step, the mother does not allege that any countervailing factors arise under section 232.116(3) that would preclude the decision to terminate parental rights. Accordingly, we affirm.

AFFIRMED.