

IN THE COURT OF APPEALS OF IOWA

No. 0-997 / 10-1701
Filed January 20, 2011

**IN THE INTEREST OF O.B.,
Minor Child,**

**S.M.J., Mother,
Appellant.**

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

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

AFFIRMED.

David G. Baumgartner, Strawberry Point, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John Bernau, County Attorney, and Ryan Gallagher, Assistant County Attorney.

Steven Carr of Carr & Carr, Manchester, for father.

Stephanie Rattenborg, attorney and guardian ad litem for minor child.

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

VOGEL, J.

Shannon appeals the termination of her parental rights to O.B., born in November 2009.¹ The district court terminated Shannon's rights under Iowa Code section 232.116(1)(h) (child is three or younger, child adjudicated CINA, removed from home for six of last twelve months, and child cannot be returned home). 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 Shannon was age twenty-four or twenty-five, she had a relationship with Justin, then age fourteen or fifteen. The Iowa Department of Human Services (DHS) was already involved with Shannon, as her inappropriate relationship with Justin occurred during the termination proceedings of Shannon's parental rights to three other children. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993) (explaining that case history records are entitled to much probative force when a parent's record is being examined, as past termination of parental rights sheds light on a parent's ongoing problems). Shannon was subsequently convicted of sexual abuse in the third degree on February 10, 2010. O.B. was born of the relationship and adjudicated a child in need of assistance (CINA) on February 18, 2010, pursuant to Iowa Code section 232.2(6)(b). In March 2010, O.B. was voluntarily placed in family foster care, as Shannon was placed at a residential facility to serve her sentence.

¹ The parental rights of the biological father of O.B. were also terminated and he does not appeal.

Shannon challenges the termination of her parental rights, asserting the State failed to prove O.B. could not be returned to her care and termination was not in O.B.'s best interests. Although Shannon asserts she made progress in improving her parenting skills, DHS worker Kelly Antons testified to her lingering concerns with Shannon's "lack of consistency and follow-through with her mental health needs," her lack of follow-through with O.B.'s medical appointments, and her continued inappropriate relationship with O.B.'s father.

Shannon also faults the State for failing to include subsection (4) under 232.116(1)(h) in its petition for termination of parental rights, concerning whether there is clear and convincing evidence the child cannot be returned home at the present time. A review of the petition clearly shows subsections (1), (2), and (3) of 232.116(1)(h) were included, but subsection (4) was not enumerated. However, as the State points out, this issue is being raised for the first time on appeal. Shannon proceeded with the termination proceeding with no objection to the form or substance of the petition. Therefore, we find this claim has not been preserved for our review. *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003).

Even if we were to reach the merits of her claim, the State, in its petition for termination, detailed specific factual allegations including that Shannon "is currently incarcerated at the Dubuque Residential Facility with an expected discharge in March of 2011; that she "has a history of mental health concerns and she has not been consistent with her mental health services;" that she is "immature and is impulsive;" and that she has "exhibited poor quality parenting skills and [she] lack[s] the consistency, follow-through and attentiveness needed to provide, protect or nurture the child." The apparent oversight in the petition of

not spelling out the allegation that O.B. could not be returned at the present time under subsection (4) is hardly a ground for us to reverse the termination, as Shannon had fair notice by the very nature of the filing of this detailed termination of parental rights petition that O.B. could not be returned home. Further, the district court made findings supporting each element of 232.116(1)(h), including that O.B. could not be returned to Shannon's care. We affirm the termination of Shannon's parental rights under 232.116(1)(h).

Even if a statutory ground for termination is met, a decision to terminate must still be in the best interest of the child after a review of Iowa Code section 232.116(2). *In re P.L.*, 778 N.W.2d 33, 37, 40 (Iowa 2010). We consider "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.* Shannon asserts termination of her parental rights was not in O.B.'s best interest, and she should have been granted an additional three to six months to work toward reunification. Social worker Antons testified that Shannon's additional requested time would not be appropriate because she has "had numerous opportunities to deal with the majority of the same concerns in the first termination" and she has not done so; "this is a last-ditch effort." The district court found that Shannon was to remain incarcerated for approximately an additional six months, and did not have appropriate living arrangements upon discharge. We agree that even after Shannon's anticipated released date, she would not be equipped to care sufficiently and safely for O.B. We conclude termination of Shannon's parental rights was in O.B.'s best interest as set forth under the factors in section 232.116(2).

AFFIRMED.

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

SACKETT, C.J. (concurring specially)

I concur specially. I too would affirm.