

IN THE COURT OF APPEALS OF IOWA

No. 1-008 / 10-1998
Filed February 9, 2011

**IN THE INTEREST OF D.L.,
Minor Child,**

**B.J.D., Father,
Appellant,**

**R.LN., Mother,
Appellant.**

Appeal from the Iowa District Court for Jefferson County, William S. Owens, Associate Juvenile Judge.

A father and mother appeal separately from the order terminating their parental rights. **AFFIRMED ON BOTH APPEALS.**

William C. Glass, Keosauqua, for appellant father.

Patricia J. Lipski, Fairfield, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Tim W. Dille, County Attorney, and Patrick McAvan, Assistant County Attorney, for appellee State.

Stephan Small, Fairfield, for minor child.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.

DANILSON, J.

A father and mother appeal separately from the termination of their parental rights to their one-year-old child. The father contends the juvenile court erred in terminating his parental rights despite a strong parent-child bond, and where his placement in a residential facility precluded him from having custody of the child. The mother contends the court erred in terminating her parental rights despite a strong parent-child bond, and in failing to grant her additional time for reunification. Considering the inability of the father to care for himself or the child now or in the foreseeable future, we affirm the termination of his parental rights. Given the mother's instability, lack of contact with the child, and the fact that she made little to no progress throughout these proceedings, we affirm termination of her parental rights.

I. Background Facts and Proceedings.

The child was born in June 2009. This family came to the attention of the Iowa Department of Human Services (DHS) in October 2009, upon reports that the mother had left the child alone in a church and was not able to care for the child appropriately.¹ The mother is mildly mentally retarded. At the time, the mother and child were staying in Fairfax, Ottumwa, and Kansas City, Missouri. It took DHS several days to locate the mother and child. The mother agreed to a voluntary placement of the child in foster family care on October 8, 2009.

¹ The mother agreed to allow a woman named D.B. to adopt her child. However, the mother later discovered D.B.'s parental rights had been terminated due to her marriage to a sex offender, and the mother decided she wanted the child back.

The mother is married to T.L., who is not the child's father, as verified by paternity testing in December 2009.² The mother separated from T.L. in August 2008, and began a relationship with the father. The father suffers from a mental disability as a result of a seizure he incurred as an infant. He is incapable of managing his personal needs and is the subject of a guardianship proceeding. The father resides at Insight Human Services in Mount Pleasant, a residential program to instruct him how to become independent. He has been admitted to this facility twice before. The father cannot provide exclusive care for the child without supervision. He has, however, participated in weekly supervised visitation with the child, and has been offered additional services for parenting skills and money management.

The mother has received numerous services to address her mental health and stability issues. Since the child's removal, the mother has changed residences approximately ten times. She has lived with friends, her sister, her estranged father in Missouri, the father in his residential program, several other men, and in homeless shelters. She obtained employment with a traveling carnival for a short period of time, but otherwise has been unemployed. She is currently homeless and resides in a women's shelter in Keokuk. She has had some counseling and supervised visitation with the child, but overall, her involvement and participation in services has been inconsistent and sporadic. The mother has not seen the child since April 2010 and has spoken with the DHS case manager "maybe maximum six times." At different times, the mother has

² Any parental rights of T.L. to the child have been terminated, and he does not appeal.

reported that she is engaged, pregnant, miscarrying, that she has been raped, and that she has given birth to twins. As a result of her conflicting reports, DHS was unable to determine whether the mother has any other children.

The State filed its petition to terminate parental rights in July 2010. The child is developmentally delayed, but healthy and adoptable. Following a hearing taking place on September 29, 2010, the court entered its order terminating the father's and mother's parental rights pursuant to Iowa Code section 232.116(1)(h) (2009). The parents now appeal, and we review their claims de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

II. Parental Rights of the Father.

Because the father does not dispute the grounds for termination have been proved, we may affirm on those grounds. See Iowa R. App. P. 6.903(2)(g)(3) ("Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue."); *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) ("When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm.").

However, the father contends termination would be detrimental to the child because of the strong parent-child bond he shares with the child. This argument asks us to consider whether the exception under section 232.116(3)(c) applies to refute termination of parental rights. See Iowa Code § 232.116(3)(c) ("There 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."). The father also argues termination "is not in the child's best interests where the father

is living in a residential facility that precludes him from having custody pursuant to a guardianship proceeding.” This argument asks us to consider whether the exception under section 232.116(3)(e) applies to refute termination of parental rights. See Iowa Code § 232.116(3)(e) (“The absence of a parent is due to the parent’s admission . . . to any institution, hospital, or health facility.”).

Upon our review, we find a parent-child bond does exist between the father and the child. The father participated in weekly supervised visits with the child. The DHS case manager discussed the father’s “ability to play” with the child and hold the child during these visits. The case manager further stated the father is “nurturing,” that he “does a good job greeting” the child on visits, and that “there is a bond between the two.”

However, “aside from the couple hours of the visit time,” the case manager did not view the father “as someone that will be a full-time caretaker” for the child. Although providers worked with the father on parenting skills, he was unable to “retain any previous information,” and the visits week to week were “pretty repetitive and redundant.” The case manager did not feel additional time would help the father reunite with the child.

Under the facts of this case, we do not believe the bond here is a reason to refuse to terminate. Nor do we find the father’s admission to a residential facility is what precludes him from reuniting with the child. It is clear the father loves and cares for the child, but unfortunately, the record reflects that the father is unable to care for himself or the child (who also has special needs), or that he would be able to do so in the near future. Therefore, the exceptions under section 232.116(3)(c) and (e) do not apply to refute termination in this case.

A mental disability alone is not a sufficient reason for termination of a parent-child relationship. *In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1989). However, it is a proper factor to consider and, when it contributes to a parent's inability to parent, may be determinative on the issue of whether termination is required in the child's best interest. *Id.* A parent's mental disability can be a contributing factor to the parent's inability to perform essential parenting functions, and termination can be appropriate where a parent lacks the capacity to meet a child's present and future needs. *In re T.T.*, 541 N.W.2d 552, 556 (Iowa Ct. App. 1995); see also *In re A.M.S.*, 419 N.W.2d 723, 733-34 (Iowa 1988). We find this to be the situation here, as determined by the juvenile court in its finding that "there is no evidence to show [the father] would ever be able to care for his son without significant, if not complete, supervision."

We agree, and conclude the father's limited ability to learn parenting skills would certainly jeopardize the short- and long-term development of the child. See *In re S.D.*, 669 N.W.2d 261 (Iowa Ct. App. 2003). We cannot maintain a relationship where there exists only a possibility that the father will be able to parent sometime in the unknown future. We affirm termination of the father's parental rights.

III. Parental Rights of the Mother.

Like the father, the mother does not dispute the grounds for termination have been proved, and we affirm on those grounds. Iowa R. App. P. 6.903(2)(g)(3); *S.R.*, 600 N.W.2d at 64. However, the mother contends termination would be detrimental to the child because of the strong parent-child bond she shares with the child. She further claims the juvenile court erred in

failing to grant her an additional six months to re-establish her relationship with the child.

The child was removed from the mother's care in October 2009, at four months of age. The mother has moved at least ten times since that time, living in various cities in Missouri and Iowa. Although the mother was offered visitation, her participation was inconsistent. Her last visit with the child was in April 2010. After that time, the mother made no effort to visit or contact the child and contacted DHS six times at best. DHS was not able to reach the mother because she did not provide an address and stated that her phone was broken.

At the time of the termination hearing, the mother was homeless and living in a women's shelter in Keokuk. However, she could only stay in the shelter for thirty days and did not have a plan where she would live after that time. She testified that she was six months pregnant, but did not know a specific due date for the baby, and had not consistently received prenatal care. She refused to disclose the father's name.

Upon our review, we do not believe the mother shares a bond with the child so that termination would be detrimental to the child. In fact, it is not clear that the child would even recognize the mother, as their last visit was in April 2010, when the child was only ten months old. The exception under section 232.116(3)(c) does not apply to refute termination in this case.

Further, the juvenile court determined that "there is simply no evidence to suggest that [the mother has] made sufficient enough progress to justify providing . . . additional time to work toward reunification." We agree. Although the law requires a "full measure of patience with troubled parents who attempt to

remedy a lack of parenting skills,” Iowa has built this patience into the statutory scheme of Iowa Code chapter 232, including a six-month limitation for children in need of assistance aged three and below. See Iowa Code § 232.116(1)(h)(3); *In re D.A., Jr.*, 506 N.W.2d 478, 479 (Iowa Ct. App. 1993). If a parent ceases to have contact with the child for this limitation period, and the other requirements are met, the legislature has determined that the needs of the child are best served by termination of parental rights. See *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000).

Further, evidence of the parent’s past performance may be indicative of the quality of the future care that parent is capable of providing. *Id.* at 495. In this case, the mother has demonstrated little effort to change or improve the problems that rendered her unfit to care for the child. We conclude that additional time for the mother would not eliminate the need for removal. We are convinced the child’s interests are best served by terminating the mother’s parental rights and making him eligible for placement in a safe and stable adoptive home.

IV. Conclusion.

Having considered the issue raised on appeal, we find no reason to further delay the permanency the child needs and deserves. Termination of parental rights is in the child’s best interests, see Iowa Code § 232.116(2), and no factor weighing against termination in section 232.116(3) requires a different conclusion. We affirm the termination of the father’s and mother’s parental rights.

AFFIRMED ON BOTH APPEALS.