IN THE COURT OF APPEALS OF IOWA

No. 1-1018 / 11-1936
Filed February 15, 2012

IN THE INTEREST OF J.C.,
Minor Child,

S.E.O., Mother,
Appellant.

Appeal from the Iowa District Court for Linn County, Barbara H. Liesveld, District Associate Judge.

A mother appeals from the termination of her parental rights to her child. **REVERSED AND REMANDED.**

Joan M. Black, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Jerry Vander Sanden, County Attorney, and Rebecca A. Belcher, Assistant County Attorney, for appellee.

Jessica Wiebrand, Cedar Rapids, for intervenor.

Judy Goldberg, Cedar Rapids, attorney and guardian ad litem for minor child.

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

TABOR, J.

The central questions in this appeal are whether termination of the mother's parental rights would serve the best interests of her eight-year-old son, J.C., and, conversely, whether severing the mother-son tie would be detrimental to J.C. given the closeness of their relationship. Because we find clear and convincing evidence in this record that J.C. and his mother share a very close bond, we believe that the juvenile court should have invoked its discretionary power under Iowa Code section 232.116(3) to forgo termination at this time. We conclude that an extra measure of patience with this mother would foster the child's long-term nurturing and growth, which we consider as part of the best-interest determination under Iowa Code section 232.116(2). Accordingly, we reverse the termination decision.

I. Background and Proceedings

Sarah and Otis[1] are the parents of J.C., who was born in September 2003. Sarah had physical care of the child in November 2007, when police investigated a noise complaint and found Sarah and a friend smoking marijuana in the child's presence. The Department of Human Services issued a founded child abuse report. J.C. lived with Otis for five months while Sarah completed a substance abuse treatment program. Sarah resumed care of J.C. in May 2008.

But one year later, the child was removed from her home due to her continued marijuana use. J.C. lived with Sarah's brother and his family until November 2009. The DHS returned J.C. to Sarah for a trial home placement

[1] The juvenile court order also terminated the parental rights of the father, but he does not appeal.

from November 2009 until the summer of 2010, when she relapsed by using alcohol and marijuana. Sarah voluntarily placed J.C. in the care of his paternal grandparents, where he stayed until the termination hearing in August 2011. Between August 2008 and June 2011, Sarah tested positive for marijuana seventeen times.

On June 6, 2011, the State filed a petition for termination of parental rights. After testing positive for marijuana on June 15, 2011, Sarah provided eight consecutive negative tests.

The court held a hearing on the termination petition on August 18, 2011. The State called three witnesses, all of whom extolled Sarah's parenting skills. Valerie Marshall, a Family Safety, Risk and Permanency (FSRP) service provider, testified that between October 2010 and August 2011, Sarah was consistent in her visits with J.C., despite the three-hour round trip between her home in Cedar Rapids and the residence of the paternal grandparents near Burlington.[2] Marshall testified: "Sarah does very well with [J.C.]. They are very bonded." Marshall testified that J.C. has expressed a desire to go home with Sarah, and that Sarah was able to deflect the inquiry and keep the visits "as positive as possible." When asked where Sarah would fall "[o]n a scale of one to ten, one being the worst parent you've ever seen and ten being the most interactive, nurturing parent you've ever seen," Marshall ranked Sarah as "between a nine or a ten." Marshall told the court that Sarah and J.C. enjoyed a

[2] The juvenile court found that Sarah had been inconsistent with her visits since J.C. was removed from her care, but according to worker Marshall, Sarah missed only one or two visits since October 2010.

"great relationship." Nevertheless, Marshall harbored concern that Sarah would start using marijuana again.

Melanie Lord, another service provider, testified that Sarah did not need parenting classes:

> She does well with [J.C.]. She disciplines him well. She does fun activities with him. She helps him with his homework. . . . She asks him about his spelling words. She does all those parenting things.

Lord added: "It's her lifestyle that's the issue."

DHS worker Jennifer Hansen testified, "Sarah has a lot of great skills that she possesses when she's interacting with [J.C.]." But Hansen also voiced her opinion that it was evident Sarah could not overcome her drug problem.

J.C.'s paternal grandfather testified that Sarah had done a good job teaching the child manners. He also testified that J.C. "loves his mom more than anything in the world."

Sarah's brother also testified that he has observed "a very strong bond" between Sarah and J.C. He was convinced that Sarah was committed to making positive changes in her life so that she could reunite with J.C.

Sarah testified that she has been diagnosed with anxiety and depression and over the years has "self medicated" with marijuana and alcohol to deal with those conditions. She told the court that she now wanted "a different life" and was taking steps to achieve that goal, including completing classes for a new career in massage therapy, moving to a new apartment, changing friends, reaching out to her family for support, and attending AA meetings regularly. At the time of the termination hearing, she had not used marijuana for two months.

She acknowledged she had been "selfish" and "in denial" about the consequences of her substance abuse and that the filing of the termination petition "catapulted" her efforts to work toward reunification.

On November 21, 2011, the juvenile court granted the petition to terminate parental rights, relying on Iowa Code sections 232.116(1)(f) and (*l*) (2011). The court recognized that Sarah and her son were "bonded." But the court concluded that Sarah lacked insight into how her drug use affected her ability to care for J.C. The court stated that termination was in J.C.'s best interests under section 232.116(2). When considering the "exceptions" in section 232.116(3), the court concluded: "There are none known in the instant case."

Sarah appeals the termination decision, alleging that the grounds for termination were not proven, that termination was not in J.C.'s best interests, and that the relationship between mother and son was so close that termination was detrimental to the child.

II. Scope of Review

We exercise de novo review in termination appeals. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We give weight to the juvenile court's findings of fact, but are not bound by them. *Id.*

Even when the State satisfies the statutory grounds for termination under section 232.116(1), our decision to terminate parental rights must reflect the child's best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). The best-interest determination focuses on the child's safety; his or her physical, mental, and emotional condition and needs; and the placement which best provides for

his or her long-term nurturing and growth. Iowa Code § 232.116(2); *see In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010) (holding "there is no all-encompassing best-interest standard to override the express terms" of the statute). In addition, termination is not mandatory when we find "clear and convincing evidence that termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." Iowa Code § 232.116(3)(c).

III. Analysis

A. Statutory grounds for termination exist.

Sarah contends the State failed to prove the fourth element of section 232.116(1)(f)—that J.C. could not at the present time be returned to her custody. She does not contest the State's proof under the alternative ground for termination at section 232.116(1)(*l*) (child adjudicated as child in need of assistance, parent has a severe, chronic substance abuse problem and presents a danger to self or others, and child will not be able to be returned in a reasonable period of time). We may affirm the termination order on any statutory ground supported by clear and convincing evidence. *D.W.*, 791 N.W.2d at 707. We find the uncontested ground to be a sufficient basis for termination.

B. Termination is not in J.C.'s best interests and, in fact, would be detrimental to him given the closeness of the parent-child relationship.

We part ways with the juvenile court on whether terminating Sarah's parental rights was in her son's best interest considering the factors at section 232.116(2) and whether this was an appropriate case to exercise discretion not to terminate given the circumstance listed in section 232.116(3)(c).

On the question of best interests, this is not a case like *In re P.L.*, 778 N.W.2d at 41, where despite receiving services the father "had yet to acquire the parenting skills to take care of his child." In the instant case, the social workers had nothing but praise for Sarah's parenting skills. She had exemplary interactions with her son, and did everything she could to keep the visits positive. Sarah had no problem maintaining steady employment; she recently left her job voluntarily to pursue further education and a new career path. She lived in a safe and clean apartment and had a room ready for J.C.'s use. She was developing a support system of reliable family members and friends to support her more healthy endeavors. Sarah's level of competency as a mother stands out as a rare commodity in our parental termination jurisprudence.

The counterweight, of course, is the valid concern that Sarah did not embrace her drug-free lifestyle until the eleventh hour and—if her past performance is any indication—she may not be able to sustain her abstinence. It is true that our appellate courts have found changes in a parent's behavior in the two or three months before a termination hearing to be insufficient. *See In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (noting mother showed "almost complete lack of cooperation with DHS" for eighteen months and waning interest in her children before entering drug treatment a month before hearing).

But this case is distinguishable from *C.B.* Sarah has maintained a close and positive relationship with her son throughout the case. While it took her a regrettable stretch of time to realize the harm caused to her son by her marijuana use, she owned up to that failing at the termination hearing.

At the termination hearing, Sarah asked for additional time to prove that she could provide a stable, drug-free home for J.C. She expressed her belief that delaying permanency by six months would not harm J.C.

> His goal, his dream is to be back with me so I think that it would be positive for him to have that, you know, his prayers would be answered for me to be successful and to continue. That would be a great outcome for that child.

We conclude J.C.'s safety is not endangered by allowing Sarah six more months to prove her commitment to a drug-free lifestyle that would place a priority on parenting her son. J.C.'s paternal grandfather testified that even if the court terminated Sarah's parental rights, he would allow J.C. to have continued contact with her if she was not using drugs. J.C.'s physical, mental, and emotional needs are not well served by severing legal ties with his mother at this time. If Sarah is able to continue to abstain from the use of controlled substances, returning J.C. to her home would be the best placement for furthering his long-term nurturing and growth. At eight years of age, he has developed an enduring attachment to his mother. We are firmly convinced after reviewing the evidence in the record that to extinguish that connection at this juncture would be detrimental to J.C.

The juvenile court's ruling mentions sections 232.116(2) and (3) and cites accepted maxims from Iowa case law. But it does not analyze why the facts of this case compel its conclusion that termination is in J.C.'s best interest or why it finds insufficient evidence that termination would be detrimental to the child. When we review the facts anew, we believe two factors set this case apart from most termination appeals: Sarah's extraordinary potential to be a successful

parent for J.C. and the unusually close relationship between mother and son.

While time is of the essence in achieving permanency for a child like J.C., we cannot lose sight of the competing principle that "termination is an outcome of last resort." *In re B.F.*, 526 N.W.2d 352, 356 (Iowa Ct. App. 1994). "The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State." *Santoksky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 1394–95, 71 L. Ed. 2d 599, 606 (1982).

We conclude termination of Sarah's parental rights is not in J.C.'s best interests at this time. *See* Iowa Code § 232.116(2). In addition, we find clear and convincing evidence in the record that termination of Sarah's rights would be detrimental to J.C. due to the closeness of their relationship. *See* Iowa Code § 232.116(3)(c). Accordingly, we reverse and remand this case for the juvenile court to enter an order granting the mother's request for six more months to prove she can maintain a consistent, drug-free lifestyle that would allow reunification with her son.

REVERSED AND REMANDED.