

IN THE COURT OF APPEALS OF IOWA

No. 1-127 / 10-1994
Filed February 23, 2011

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

**R.A.C., Mother,
Appellant.**

Appeal from the Iowa District Court for Linn County, Susan Flaherty,
Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Kara L. McFadden, Cedar Rapids, for appellant mother.

Lorraine Machacek, Cedar Rapids, for appellee father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, Jerry Vander Sanden, County Attorney, and Rebecca Belcher,
Assistant County Attorney, for appellee State.

Deborah M. Skelton, Walford, attorney and guardian ad litem for minor
child.

Considered by Vogel, P.J., and Doyle and Tabor, JJ.

DOYLE, J.

A mother appeals from the termination of her parental rights to her child. She contends the State failed to prove the grounds for termination by clear and convincing evidence. She also contends termination was not in the child's best interests. We review her claims de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

J.R.C. is the father and R.A.C. is the mother of M.C., born in 1995.¹ M.C. has been diagnosed as mildly mentally retarded. The parents divorced in 1998, and M.C. lived with each parent off and on.

Since 2000, M.C. has been the subject of at least five child abuse assessments, including past reports of sexual abuse perpetrated against M.C. The child again came to the attention of the Iowa Department of Human Services (Department) in 2004, after it was reported that M.C. had been sexually abused by a relative. M.C. received voluntary services through the Department.

In June 2006, the Department received a report that M.C. was living with the mother and the mother's boyfriend, who had previously been convicted for sexual activity with a minor and was required to register as a sex offender. A safety plan was developed to protect M.C., and the mother agreed she would not allow any contact between M.C. and her boyfriend. M.C. was thereafter adjudicated a CINA, and the court ordered that M.C. have no contact with the mother's boyfriend.

Despite receiving services to correct the problems that led to the CINA, in 2008 the Department learned the mother had continued to allow her boyfriend to

¹ The father has not appealed from the termination of his parental rights.

be around M.C., as well as allowing the relative that previously abused M.C. to have unsupervised contact with the child. M.C. reported that the relative had sexually abused her again. In September 2008, M.C. was placed, with agreement of the parents, in family foster care.

While in foster care, M.C. reported other incidents of previous sexual abuse or inappropriate sexual exposure while in her parents' custody. In 2009, M.C. reported that her father had sexually abused her in the past, and she resisted visitation with him. The father acquiesced in her refusal, and he stopped all contact with M.C. M.C. then began resisting visitation with the mother.

A permanency hearing was held in September 2009. At the hearing, all parties agreed that M.C. could not be returned to her parents' care. The mother continued to live with her boyfriend, and the relative who sexually abused M.C. lived with the father. The court directed that the permanency goal be changed to M.C. remaining in family foster care and that efforts to return M.C. to her parents end. The mother last visited with M.C. in October of 2009.

The State filed a petition to termination the parents' parental rights in July 2010. M.C. has stated she wishes to be adopted by her foster family, and the foster family wishes to adopt her.

A hearing on the State's petition was held in October 2010. The mother testified that she believed it was best for M.C. to remain in the care of the foster family, but testified she wanted to continue to be involved in the child's life and therefore did not want her parental rights terminated. She wanted to be able to communicate with M.C.'s therapist about her progress and have visitation with M.C. when M.C. was ready.

Following the hearing, the juvenile court entered an order terminating the parents' parental rights pursuant to Iowa Code section 232.116(1)(f) (2009). The mother now appeals.

Termination is appropriate under section 232.116(1)(f) where:

- (1) The child is four years of age or older.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

The mother does not dispute the first three elements of this section have been proved. She instead argues there was not clear and convincing evidence M.C. could not be returned to her care at the time of the termination hearing.

While the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," this patience has been built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). The legislature incorporated a twelve-month limitation for children adjudicated CINA aged four and older. Iowa Code § 232.116(1)(f)(2), (3). Our supreme court has stated that "the legislature, in cases meeting the conditions of [the Iowa Code], has made a categorical determination that the needs of a child are promoted by termination of parental rights." *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990) (discussing Iowa Code section 232.116(1)(e)). The public policy of the state having been legislatively set, we are obligated to heed the statutory time periods for reunification.

At the time of the termination hearing, M.C. had been out of the mother's custody for two years. M.C. had been sexually abused several times while in the custody of the mother, despite the offer of services. The mother continued to reside with her boyfriend who had previously been convicted of a sex crime against a minor. Moreover, the mother did not present any evidence that M.C. could be returned to her care at the time of the termination hearing. In fact, the mother testified that she believed it was best for M.C. to remain in the care of the foster family at that time. Upon our de novo review, we conclude there was clear and convincing evidence M.C. could not be safely returned to the mother's care at the time of the termination hearing.

Additionally, the mother contends termination is not in M.C.'s best interests. In considering whether to terminate, the court must then apply the best-interests framework established in Iowa Code section 232.116(2). *P.L.*, 788 N.W.2d at 37. In determining the best interests of a child, the court's primary considerations "are '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.*

Taking these factors into account, we agree with the juvenile court that M.C.'s best interests require termination of the mother's parental rights. The juvenile court found:

[M.C.] needs permanency, safety, and security. She is desperately in need of an opportunity to move forward in her therapy and deal with past trauma. As a result of the relationship she has formed with the [foster] family, she is an adoptable child. She has asked for and deserves a family who will provide her with permanency, stability, and a sense of importance. Termination of parental rights

and adoptive placement, rather than continued status as a foster child, is a better means of providing those things for [M.C.].

Upon our de novo review, we agree with the juvenile court's assessment.

While we do not doubt the mother's love for the child, "[i]t is well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child." *Id.* at 41. The record reveals that the child cannot be returned to the mother at this time, and the child should not be forced to wait for permanency. See *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) ("[P]atience with parents can soon translate into intolerable hardship for their children."). "At some point, the rights and needs of the child rise above the rights and needs of the parents." *J.L.W.*, 570 N.W.2d at 781. The child should not be forced to endlessly suffer the parentless limbo of foster care. *In re J.P.*, 499 N.W.2d 334, 339 (Iowa Ct. App. 1993). We agree with the juvenile court that termination was in the child's best interests. Accordingly, we affirm the decision of the juvenile court terminating the mother's parental rights.

AFFIRMED.