

**IN THE COURT OF APPEALS OF IOWA**

No. 1-141 / 11-0082  
Filed March 21, 2011

**IN THE INTEREST OF M.B.Y.,**  
Minor Child,

**K.N., Mother,**  
Appellant.

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

A mother appeals the termination of her parental rights to her child.

**AFFIRMED.**

Charles Hallberg of Hallberg Law Office, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney  
General, Harold Denton, County Attorney, and Rebecca Belcher, Assistant  
County Attorney, for appellee State.

David Fiester, Cedar Rapids, for appellee father.

Barbara A. Connolly, Cedar Rapids, attorney and guardian ad litem for  
minor child.

Considered by Vogel, P.J., and Doyle and Tabor, JJ. Mansfield, J., takes  
no part.

**TABOR, J.**

A mother appeals the termination of her parental rights<sup>1</sup> to her three-year-old son, M.Y. She acknowledges she is not ready to resume custody now, but asks for additional time to show that she can provide consistency for her son. She argues that because a family member is caring for M.Y., the juvenile court had discretion to defer termination. We cannot justify delaying termination when M.Y. already has been outside the mother's custody for nearly one year and she only recently started serious efforts toward reunification.

**I. Background Facts and Proceedings**

K.N. gave birth to M.Y. in January 2007. K.N. testified that M.Y.'s father was physically violent toward her. They lived together only about one month after M.Y.'s birth.

M.Y. came to the attention of the Department of Human Services (DHS) in November 2009 when investigators received a report that he had been acting out sexually with other children. An investigation revealed that K.N.'s new live-in boyfriend, David, had a long criminal record and physically abused K.N. Assessments also determined that David was using and selling methamphetamine from the home, and K.N. was smoking marijuana and leaving M.Y. unsupervised. The DHS removed M.Y. from the home in January 2010 after a "hair stat" test showed the child had been exposed to amphetamines. The DHS placed M.Y. with his maternal aunt.

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<sup>1</sup> M.Y.'s father did not contest the termination of his parental rights in the juvenile court.

In March 2010, K.N. began dating Jacob. They cohabited and used illegal substances together. K.N. also reported that Jacob was physically violent toward her. In August 2010, authorities arrested the couple for manufacturing methamphetamine. At the time of her arrest, K.N. was on probation for possession of a precursor to methamphetamine.

In September 2010, K.N. started to undergo a substance abuse evaluation, but did not complete it. Before entering a substance abuse treatment program, K.N. left for Oregon where her mother lived. She returned to Iowa after three weeks and moved in with her grandmother. She found a job and had been working for about two and one-half months before the termination hearing. K.N. also started counseling the week before the termination hearing. She had not participated in out-patient drug treatment or any programs to address her dependency and domestic violence issues. Also during this time period, K.N. started taking Adderall for her attention deficit disorder; the drug—which is a combination of dextroamphetamine and amphetamine—was prescribed by a physician who was a family member and did not examine K.N. in person. K.N.'s visits with M.Y. have remained fully supervised.

On September 15, 2010, the Linn County Attorney's office filed a petition for termination of parental rights. The juvenile court heard evidence on December 9, 2010. At the time of the termination hearing, K.N. was facing felony drug charges. On January 3, 2011, the court issued its order terminating K.N.'s

parental rights. The order based the termination on the grounds in Iowa Code sections 232.116(1)(h)<sup>2</sup> and 232.116(1)(l)<sup>3</sup> (2009). The mother appeals.

## II. Scope and Standard of Review

Our review is de novo in termination cases. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). While we are not bound by the juvenile court's factual findings, we accord them weight, especially when the court is making credibility determinations. *Id.*

Our primary concern is the best interest of M.Y. See *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa Ct. App. 1995). We determine best interests by considering the parent's past performance as an indicator of what the future holds for the child. *Id.*

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<sup>2</sup> Section (1)(h) provides:

The court finds that all of the following have occurred:

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

<sup>3</sup> Section (1)(l) provides:

The court finds that all of the following have occurred:

- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.
- (2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.
- (3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

The juvenile court must find that the petitioning party has presented clear and convincing evidence to support at least one ground for termination spelled out in Iowa Code section 232.116. *In re D.W.*, 791 N.W.2d at 706. 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.* When the juvenile court bases termination on multiple grounds, we may affirm on any ground supported by clear and convincing evidence. *Id.* at 707.

### **III. Merits**

#### **A. The mother does not contest the State’s proof of the elements under Iowa Code section 232.116(1)(h).**

The mother argues on appeal that the State did not present clear and convincing evidence to support the elements under Iowa Code section 232.116(1)(h), specifically that she has a severe and chronic substance abuse problem and that custody cannot be returned to her within a reasonable period of time. The mother’s history of illegal drug use and associated criminality suggests a substance abuse problem. We also are troubled by K.N.’s testimony that she can stay clean without any drug treatment. But we do not have to decide if the juvenile court was correct in terminating under the substance abuse alternative. It is sufficient that we find the State presented clear and convincing evidence under section 232.116(1)(h). See *R.R.K.*, 544 N.W.2d at 276 (explaining appellate court needs to find grounds for termination under only one section to affirm the juvenile court’s ruling). It was uncontested that M.Y. was three years old, had been adjudicated as a child in need of assistance, and had been out of

the mother's care since January 2010. Plus, K.N. acknowledged at the termination hearing that M.Y. could not be returned to her care at the present time. The statutory elements for termination were met.

**B. The juvenile court correctly rejected K.N.'s request for additional time to reunify with her son.**

The juvenile court summarized the situation as follows:

[M.Y.] has been out of his mother's care for almost one-third of his life. [K.N.] admits she needs additional time before being ready to resume full-time care of [M.Y.]. This Court agrees, but must put the child's interest before the mother's interest. [K.N.] has already been given additional time to demonstrate she can maintain sobriety and a stable non-violent home environment. It is not known what the outcome will be in her felony drug charges. [M.Y.] is very young and needs permanency.

It is often said in our termination cases that the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills." See *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). But that statement is tempered with the reality that such patience has been built into the statutory scheme of chapter 232. *Id.* By her own admission, K.N. got off to a late start in complying with the services suggested by DHS. Her eleventh-hour effort to seek counseling before the hearing does not meet the standard of urgency that termination cases demand. See *id.* at 495 (holding that a parent cannot wait until the "eve of termination" to correct deficiencies and begin to express an interest in parenting). We do not find that these circumstances warrant an extension of time before K.N.'s parental rights are terminated.

**C. M.Y.'s long-term interests are best served by severing K.N.'s parental rights and M.Y.'s placement with an aunt does not weigh heavily against the decision to terminate.**

When determining what is in the best interests of M.Y., we look to the framework established in section 232.116(2). The legislature highlighted as primary considerations: 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. *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010).

We share the juvenile court's position that permanency is critical to ensuring a positive outcome and successful future for M.Y. The court highlighted the need for day-to-day consistency of care as a critical ingredient in a child's ability to trust and cope as he or she matures into an adult. The DHS social worker testified that M.Y. is "already confused about his relationship with his mom, especially when there was a good chunk of time when he didn't see her." M.Y. was "very angry" the first few times he saw his mother when she came back from Oregon. The worker told the court that M.Y. trusted that his aunt would meet his needs and looked to her for his continued care. His speech development improved while in her care. The DHS considered the aunt a good candidate to adopt M.Y.

We conclude that M.Y.'s best interests lie in allowing him to be available for adoption. His placement with a relative under 232.116(3)(a) provided the juvenile court with an option not to terminate. But considering the evidence

showing the child's confusion and anger over his mother's inconsistent role in his life coupled with uncertainty whether the mother will be able to end her involvement with illegal substances, the court properly went ahead with the termination despite custody remaining with the child's aunt.

**AFFIRMED.**