

IN THE COURT OF APPEALS OF IOWA

No. 1-239 / 10-1928
Filed April 27, 2011

**IN THE INTEREST OF S.P.,
Minor Child,**

**C.M.S., Mother,
Appellant.**

Appeal from the Iowa District Court for Webster County, James A. McGlynn, Associate Juvenile Judge.

A mother appeals a juvenile court order terminating her parental rights.

AFFIRMED.

Marcy Lundberg of Marcy Lundberg Law Office, Fort Dodge, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, Ricki Osborn, County Attorney, and Jennifer Bonzer, Assistant County Attorney, for appellee.

Christopher O'Brien, Fort Dodge, for father.

Angela Doyle, Fort Dodge, attorney and guardian ad litem for minor child.

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

TABOR, J.

A mother appeals the juvenile court order severing her parental rights to her one-year-old daughter. Because we share the juvenile court's concerns about the mother's continuing mental health problems and long absence from her child's life, we affirm the termination.¹

I. Background Facts and Proceedings

This thirty-four-year-old mother has been through two previous termination of parental rights cases. In September 2003, the juvenile court terminated parental rights to her then three-year-old daughter A.S. In August 2007, the court terminated rights to her then three-year-old son Q.S. Both of those termination orders chronicled the mother's history of substance abuse. The 2003 order noted that the mother had been diagnosed with bipolar mental illness, but had not complied with treatment recommendations.

The mother disputes the bipolar diagnosis, but acknowledges suffering from attention deficit hyperactivity disorder (ADHD) and post-traumatic stress disorder (PTSD) with intermittent explosive episodes. The mother also denies that she has abused controlled substances and attributes her previous drug convictions to being in the wrong place at the wrong time.

When S.P. was born in September 2009, she and her mother both tested positive for marijuana. Upon the recommendation of the Department of Human Services (DHS), the juvenile court removed S.P. from her parents' care in September 2009. She has lived with the same foster family since she was four

¹ The juvenile court also terminated the putative father's parental rights. He did not appear for the hearing and did not appeal.

days old. The court adjudicated S.P. as a child in need of assistance (CINA) on October 7, 2009.

From November 2009 until January 2010, the mother exhibited stable mental health and maintained consistent contact with her child. The DHS moved her from supervised to unsupervised visitations, usually lasting about two hours. But in mid-January 2010, the mother “started becoming very paranoid” and accused the social worker of “sitting outside her apartment watching her.” During one visitation, the mother said she was not on her medication and “if she didn’t get on her medication she was going to kill someone.”

From January until August of 2010, the mother stopped attending visits and had no contact with S.P. The DHS could not reach the mother during these seven months. The mother testified that she was trying to address her own mental health concerns before seeing her child. When the mother returned to supervised visitations with S.P. in August 2010, the child did not react well. S.P. was “very scared of [her mother], she cried and screamed.”

On April 16, 2010, the Webster County Attorney’s Office filed a petition to terminate parental rights. Because the State encountered difficulty in finding and serving the mother with the petition, the juvenile court did not hold the termination hearing until October 22, 2010, and November 9, 2010. The court issued its ruling terminating parental rights on November 15, 2010. The court found clear and convincing evidence in support of terminating parental rights under Iowa

Code sections 232.116(1)(b),² (e),³ (g),⁴ and (h)⁵ (2009). The mother now challenges the termination order.

² Section (1)(b) provides: “The court finds that there is clear and convincing evidence that the child has been abandoned or deserted.”

³ Section (1)(e) 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.

(2) The child has been removed from the physical custody of the child's parents for a period of at least six consecutive months.

(3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so.

⁴ Section 1(g) 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.

(2) The court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family or a court of competent jurisdiction in another state has entered an order involuntarily terminating parental rights with respect to another child who is a member of the same family.

(3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.

(4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

⁵ 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.

II. Scope and Standard of Review

We review termination rulings de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We are not bound by the juvenile court's findings of fact. *Id.* But we give them weight, especially when they concern witness credibility. *Id.* If the record lacks clear and convincing evidence of the elements necessary for termination, we will reverse. *Id.* Evidence is “clear and convincing” when we see no “serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.” *Id.* (citation omitted).

When determining what is in the best interests of a child, we operate within the framework established in section 232.116(2). Our primary concerns are the child’s safety, the best placement for furthering her long-term nurturing and growth, and her physical, mental, and emotional condition and needs. See *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010).

III. Merits

The mother contests the termination on all four grounds cited by the juvenile court. She also asks for six more months to work toward reunification and argues that termination is not in S.P.’s best interests.

We first address the statutory basis for termination. When the juvenile court relies upon multiple grounds for termination under Iowa Code section 232.116(1), we may affirm the order on any ground supported by clear and convincing evidence. *D.W.*, 791 N.W.2d at 707. In this case, we affirm the juvenile court’s determination that the mother deserted S.P. within the meaning of sections 232.116(1)(b) and 232.2(14).

A court may terminate the parent's relationship with a child if the court finds "there is clear and convincing evidence that the child has been abandoned or deserted." Iowa Code § 232.116(1)(b). Abandonment requires proof of "both the intention to abandon and the acts by which the intention is evidenced." Iowa Code § 232.2(1). In contrast, "desertion" does not contain an intent element:

"Desertion" means the relinquishment or surrender for a period in excess of six months of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of desertion need not include the intention to desert, but is evidenced by the lack of attempted contact with the child or by only incidental contact with the child.

Iowa Code § 232.2(14).

The juvenile court was "unable to say by clear and convincing evidence that the mother abandoned [S.P.] as the term is defined by Iowa Code section 232(1)." But the court did find "undisputed evidence" showing the mother relinquished or surrendered her parental rights, duties, and privileges inherent in the parent-child relationship with S.P. for a period in excess of six months from January 4, 2010, until August 9, 2010, and that during this period there was absolutely no attempt on the mother's part to contact the child.

The mother contends on appeal that she did not desert S.P. because she spent those months "actively engaged in mental health treatment." The mother alleges that in early June 2010 she asked DHS to resume visitation with S.P. The DHS log introduced as an exhibit at the termination hearing shows that the mother's attorney did not inform the Children and Families of Iowa (CFI) in-home provider until July 9, 2010, that the mother wanted to reach her to set up visits. The provider met with the mother on July 20, 2010, and gave her several months'

worth of progress reports on her daughter. The CFI provider noted that the mother appeared “confused” and not in the “right state of mind.” When the mother actually resumed visits with S.P. in August 2010, the CFI worker documented odd behavior by the mother. The providers kept the visits short and had as many as three staff people on hand.

We concur with the juvenile court’s calculation that the mother relinquished her parental relationship with S.P. for more than six months.⁶ The State’s proof that the mother exerted no efforts to see her child during that stretch of time—which was more than half S.P.’s young life—was enough to establish desertion. The State was not required to prove the mother’s intent to desert the child. Termination was proper under section 232.116(1)(b). See *In re A.B.*, 554 N.W.2d 291, 293 (Iowa Ct. App. 1996) (affirming termination under this provision when father only parented child when it was convenient for him).

We also find that termination is in the child’s best interests. The mother’s recurring mental illness has prevented her from providing a secure environment for S.P. The child identifies her foster parents as her family and is fully integrated into their home, having lived there since she was a newborn. They are willing to adopt her. These factors convince us that termination of her mother’s parental rights is in S.P.’s best interest. See Iowa Code § 232.116(2)(b).

None of the care providers in the case could say that six more months would make a difference in the mother’s ability to care for her daughter. While

⁶ Even if the time is measured from January 4, 2010, until the mother’s attorney called the CFI worker on July 9, 2010, more than six months elapsed.

the mother found stable housing, she was not engaged in mental health therapy beyond taking medications. Her history of psychological instability—which contributed to the termination of her rights to two other children—dampens her future prospects for safely parenting S.P. See *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000) (pointing out that “future can be gleaned from evidence of the parents’ past performance”).

Finally, we do not see any countervailing factors in section 232.116(3) weighing against termination of parental rights. S.P. has little to no bond with her mother. When the mother did decide to renew contact, the child was very afraid of her as evidenced by her crying, screaming, and clinging to the CFI worker during the visits. The worker described S.P.’s bond with her mother as akin to the child’s relationship with a stranger. Given the lack of closeness in the parent-child relationship, we find no reason to delay termination.

AFFIRMED.