

**IN THE COURT OF APPEALS OF IOWA**

No. 1-241 / 11-0100  
Filed April 27, 2011

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

**J.I.M., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Cerro Gordo County, Gregg R. Rosenblatt, District Associate Judge.

A mother appeals from the order terminating her parental rights.

**AFFIRMED.**

Richard N. Tompkins, Mason City, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd and Janet L. Hoffman, Assistant Attorneys General, Carlyle D. Dalen, County Attorney, and Nichole Benes, Assistant County Attorney, for appellee State.

Mark Young, Mason City, 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 juvenile court erred in finding clear and convincing evidence that P.M. could not be returned to the mother's custody at the time of the termination hearing. We affirm.

***I. Background Facts and Proceedings.***

J.M. is the mother of P.M., born in February 2008. The child came to the attention of the Iowa Department of Human Services (Department) in February 2009, after it was reported the child had a severe diaper rash that was blistered and bleeding. A Department investigative worker went to the mother's home unannounced at noon and found the mother sleeping and the child crying. Although the worker found the diaper rash report to be unsubstantiated, she had immediate concerns about the "deplorable" condition of the home and the child's safety in that environment. The worker observed that the home was full of garbage. There were cat feces and cigarette butts on the floor, dirty dishes scattered about, and medication, cords, and old food within the child's reach. The child was dirty, his bedding was stained and filthy, and his highchair was caked with dried food. The worker and the mother developed a safety plan, and the mother consented to the temporary placement of the child with a relative, allowing the mother forty-eight hours to clean her home. However, the mother did not do so. On February 16, 2009, the child was placed in family foster care with the mothers' consent. Thereafter the child was adjudicated a child in need of assistance (CINA).

After the child's removal, other concerns arose in the case. The mother had outstanding criminal charges at the time of the child's removal. The mother then spent approximately the first two months the case was open in jail. She continued to have legal issues throughout the case.

The mother also reported she had been diagnosed in the past with bipolar disorder, manic depression, and split personality disorder. She stated she had previously been prescribed medication but was not taking any. Based upon the mother's self-report, the worker recommended the mother have a mental health assessment, opining the assessment would help the mother stabilize her mental illness and would be in the child's best interests.

Additionally, the worker had concerns about the child's development. The child at the time was twelve months old and had no verbal skills. His legs appeared weak as if he had been confined to a seat. The child also showed no signs of separation anxiety from the mother. He was not fearful of strangers, something common in children his age. The child was referred to the Area Education Agency (AEA) for an assessment, and the child was found to be developmentally delayed by about four months. The AEA was involved initially in the case to help address the child's delays. However, the mother was generally resistant to AEA assistance and later refused any AEA involvement.

Services were offered to the mother including supervised visitation and parent-skill training, as well as services addressing child-development, positive child management techniques, self-sufficiency, organizational skills, budgeting, and housekeeping skills. In July 2009, the mother had a psychological evaluation. The licensed psychologist diagnosed the mother with bipolar

disorder with dependant personality traits. To “bolster [the mother’s] ability to optimally care for [the child],” the psychologist recommended the mother address her mental health needs by exploring medication management, among other things. However, the mother learned she was pregnant and was therefore unable to take the medications prescribed for her bipolar condition.<sup>1</sup> The mother stated she would explore medication management after that child was born.

The juvenile court, following a December 2009 review hearing, noted that consistent cleanliness of the mother’s home continued to be a concern in the case, but overall the mother had made progress. The court directed the mother follow the recommendations set forth in her psychological evaluation, including medication management at the appropriate time and individual counseling, as well as any conditions set forth for her through the Iowa Department of Corrections.

A review and permanency hearing was held in February 2010. There, the Department and the child’s guardian ad litem recommended the mother be given additional time to work toward reunification and to cooperate with services. On February 26, the juvenile court entered its order “reluctantly” granting the mother additional time and setting another permanency review hearing in three months. The court’s order noted it was “concerned with the length of time that [the child] ha[d] remained in family foster care, with the apparent lack of sustained progress toward reunification, despite intensive services and a generally cooperative attitude and consistent attendance by [the mother].” The court again directed the

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<sup>1</sup> The mother’s second child was also removed from the mother’s care, but that child is not at issue in this case.

mother to follow the recommendations set forth in her psychological evaluation, including medication management and individual mental health counseling.

In March 2010, the mother gave birth to her second child. Thereafter, the mother's progress began to decline. Although the mother stated she was taking her medication, several people, including the mother's paramour, the Department's worker, and the service provider, doubted the mother was taking her medication based upon her mood swings and overall detached attitude. The condition of the mother's home continued to be an issue. At each visit, someone needed to remind the mother of things such as food could not sit out indefinitely, dangerous items needed to be removed from the reach of children, and dirty diapers needed to be disposed of. The mother and her paramour had a domestic incident in April 2010 that resulted in the removal of the second child from the mother's care. The mother then stopped participating in services other than visitation.

Following the May 2010 review hearing, the juvenile court directed the State to file a petition for the termination of the mother's parental rights. The court found that the mother had

not demonstrated that she [was] able to meet [the child's] needs on a daily basis and struggle[d] in meeting her own needs, and there [were] ongoing concerns with the condition of her home, her mental health, medication, volatile temper, relationship with [her paramour], and lack of parenting skills.

On April 29, 2010, the State filed its petition for termination of the mother's parental rights. Hearing on the petition was held on October 15 and 26, 2010. The Department's case manager described the mother's progress in the case as a "roller coaster," explaining:

[The mother] will do well for a little while and will keep going up and it's looking like we're going to make progress and then all of a sudden we crash and seem to go down deeper than we were at the first level that we started.

Service providers and the caseworker testified that the mother was incarcerated on ten different occasions throughout the case, a couple of occasions were for periods of eleven days or more. Over sixty calls to police were made by and about the mother during the course of the case. Police had to be called twice to the service provider's center where visitation was held because the mother was unable to control her anger and began cursing and screaming at the service providers; the mother was removed from the building due to her disruptive behavior. The CASA, as well as the service provider, described the mother's behavior and moods as volatile. Although the Department and other providers continued to recommend mental health therapy and medication management to the mother, the Department worker testified the mother had seen several different therapists for only a few sessions before discontinuing contact with them.

The mother testified she had made significant progress in the case, and she had taken medication for her mental health issues until her OB-GYN took her off the medication. The mother testified she planned to participate in a program through her church to work on her personal and mental health issues. She testified that if she were given six more months, she would be able and capable of improving things and in having the child returned to her care.

Following hearing on the petition, the juvenile court terminated the mother's parental rights pursuant to Iowa Code section 232.116(1)(h) (2009). The mother now appeals.

## ***II. Scope and Standards of Review.***

We review termination orders de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We are not bound by the juvenile court's factual findings, but we give weight to them, especially those that involve witness credibility. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

## ***III. Discussion.***

On appeal, the mother contends the juvenile court erred in finding clear and convincing evidence that P.M. could not be returned to the mother's custody at the time of the termination hearing. Termination is appropriate under section 232.116(1)(h) where there is clear and convincing evidence:

- (1) The child is three years of age or younger.
- (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 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.

There is no dispute the first three elements of this section have been proved. However, the mother argues there is insufficient evidence to show the child cannot be returned to the mother's care at the present time. Upon our de novo review, we find the State has met its burden.

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 six-month limitation for children adjudicated a CINA aged three and younger. Iowa Code § 232.116(1)(h)(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 § 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.

Here, at the time of the termination hearing, the child had been out of the mother’s care for almost one year. The court had already granted an additional three months for reunification. Although the mother had made improvements in her parenting ability and life, the statutory six-month period expired concerning the child with little evidence that she could provide the necessary stability to parent the child safely. The juvenile court found that clear and convincing testimony existed that the child could not be returned to the mother’s care at the time of the termination hearing, due to the mother’s

volatile behavior fueled by her mental health concerns and her lack of progress in dealing with mental health treatment or controlling her behaviors, and her lack of parenting skills and abilities, despite many months of services, and her basic difficulty in even interacting with [the child] at times during the visits.

Upon our de novo review of the record, we agree with the juvenile court’s assessment. We therefore find the State proved the grounds for termination



under section 232.116(1)(h). Accordingly, we affirm the decision of the juvenile court terminating the mother's parental rights.

**AFFIRMED.**