

IN THE COURT OF APPEALS OF IOWA

No. 1-245 / 11-0306
Filed April 27, 2011

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

**S.R.B., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

A mother appeals the juvenile court order terminating her parental rights to her daughter. **AFFIRMED.**

Mike Bandstra, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Kevin Brownell, Assistant County Attorney, for appellee.

M. Kathryn Miller, Des Moines, attorney and guardian ad litem for minor child.

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

TABOR, J.

We consider a mother's challenge to the juvenile court order terminating parental rights to her now three-year-old daughter, M.B. Because the mother still struggled with her drug addiction at the time of the termination hearing and had not maintained regular visits with M.B., prolonging the parental relationship was not in the child's best interests. We affirm the termination.¹

I. Background Facts and Proceedings

In February 2010, the Department of Human Services (DHS) learned that the nineteen-year-old mother² was using methamphetamine and marijuana in the presence of her then twenty-month-old daughter. The mother had been diagnosed with bipolar and borderline personality disorders. She lived with M.B.'s father, who also used methamphetamine, was a convicted sex offender, and had a criminal history of drug and assault convictions. The mother acknowledged engaging in physical fights with M.B.'s father. The parents consented to the temporary removal of M.B. The DHS initially placed M.B. with her maternal grandmother. The juvenile court adjudicated M.B. as a child in need of assistance on March 15, 2010.

The DHS offered M.B.'s parents Family, Safety, Risk and Permanency (FSRP) services through Children and Families of Iowa (CFI). The services included supervised visitations and programs to address substance abuse, domestic violence, and mental-health issues. The mother was inconsistent in her

¹ The juvenile court also terminated the father's parental rights, but he did not appeal.

² Four years earlier, the mother had been the victim of physical abuse by her own father, requiring DHS intervention.

participation in the FSRP services; the DHS case worker calculated that the mother missed twenty-four of the thirty-nine visits offered between February 24 and October 1, 2010.

During spring 2010, the grandmother faltered in setting appropriate boundaries between the child and her mother and father. In May 2010, the DHS changed M.B.'s placement to the home of her great aunt and uncle, where she has remained. In June 2010, the mother entered a plea of guilty to possession of a controlled substance; the terms of her probation included substance-abuse evaluation and treatment. The mother successfully completed a residential drug-treatment program through the Mid-Eastern Council on Chemical Abuse (MECCA) in June 2010. But she did not follow through with the intensive out-patient services recommended by the MECCA staff upon her discharge. By July 2010, the mother had resumed her relationship with M.B.'s father and had relapsed on methamphetamine. When the mother returned to MECCA for services in mid-August 2010, she "appeared ambivalent about her substance abuse problem" and left the treatment program "against clinical advice." In September 2010, the mother attended placement screenings, but not treatment sessions with the House of Mercy, another residential drug-treatment program.

On September 2, 2010, the Polk County Attorney's Office filed a petition to terminate parental rights. The juvenile court held the termination hearing on October 14, 2010. The mother did not show up at the hearing and the DHS case worker reported that he did not know her whereabouts. The CFI in-home counselor testified that the mother had missed recent visits with M.B. and the

worker learned from the mother's family that she had relapsed in her use of methamphetamine. On February 7, 2011, before the juvenile court issued its termination ruling, the mother filed a motion seeking visitation with M.B. The motion asserted that visitation would be safe for the child because the mother was living at the House of Mercy. The court granted the motion for visitation.

On February 16, 2011, the juvenile court issued its ruling terminating parental rights. The court noted that the mother had recently filed a motion to reopen the record³ to offer evidence about her progress at the House of Mercy. But the court concluded that even if the assertions in the motion were true, it did not change the court's view on termination. The court found clear and convincing evidence in support of terminating parental rights under Iowa Code sections 232.116(1)(d) and (h) (2009). The mother appeals.

II. Scope and Standard of Review

Termination rulings receive a de novo review. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We are not bound by the juvenile court's findings of fact, but give them weight, especially when they involve witness credibility. *Id.* We will reverse if the record lacks clear and convincing evidence of the elements necessary for termination. *Id.* The framework drafted by the legislature at section 232.116(2) guides our determination of what placement is in the best interests of a child. Our primary concerns are the child's safety, the best placement for furthering her long-term nurturing and growth, and her physical,

³ This motion does not appear in the trial court papers compiled by the Polk County Clerk of Court.

mental, and emotional condition and needs. See *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010).

III. Merits

The mother argues on appeal that the juvenile court should not have terminated her rights under Iowa Code section 232.116(1)(d) because the State failed to prove neglect. The mother also faults the juvenile court for declining to reopen the record to consider her efforts in obtaining substance-abuse treatment subsequent to the termination hearing. The mother asserts termination is not in the child's best interest and that she should be granted an additional six months to work toward reunification with her daughter. The mother additionally claims termination is not necessary because M.B. is living with a family member and that a guardianship would be a better alternative.

We begin by addressing 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. Here, we affirm the juvenile court's termination based on section 232.116(1)(h).⁴ The mother's attorney

⁴ 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) 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.

stated at the termination hearing that the mother was not contesting any of the four elements of subsection (h): “I can’t argue that she can be returned to the custody of my client today because my client isn’t here.”

On appeal, the mother asserts that during the four months between the hearing and the issuance of the termination ruling, she entered the House of Mercy residential program and was receiving in-patient treatment for her substance-abuse problems. She criticizes the juvenile court for not crediting her recent progress. We concur with the juvenile court’s determination that the mother’s efforts were too little, too late. “Time is a critical element.” *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (finding that “[a] parent cannot wait until the eve of termination, after the statutory time periods for reunification have expired, to begin to express an interest in parenting”). By the time the mother entered the House of Mercy, her daughter had been out of her care for nearly a year. Moreover, as the juvenile court recognized, entry into the program was no guarantee of the mother’s ultimate success: “[S]he has done that and other programs in the past, but has not been able to maintain over time.” See *In re J.K.*, 495 N.W.2d 108, 113 (Iowa 1993) (upholding termination because it was “too soon to conclude that [the parents’ substance] problems will not recur”); see also *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000) (pointing out that the “future can be gleaned from evidence of the parents’ past performance”).

(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.

The mother asks for six more months to reunite with her daughter. We do not see the value in delaying permanency for M.B. The child is doing well in the care of her aunt and uncle, who are willing to adopt her. The aunt testified that after visits with her mother, M.B. “tends to get upset, throw more fits,” and is “very, very clingy” with her uncle, fearing that he is going to leave her. Given the disruptive influence of the sporadic visits with her mother, termination is in M.B.’s best interests. Severance of her parental ties and placement with her aunt and uncle will foster M.B.’s long-term nurturing and growth, and meet her physical, mental, and emotional needs. See *P.L.*, 778 N.W.2d at 37.

Finally, the juvenile court opined that “the ambiguity of a guardianship could be a destabilizing influence for [M.B.]” The court reasoned that a guardianship was not in the child’s best interests given her young age and need for a permanent home. We agree. A guardianship does not necessarily provide stability for the child. So long as a parent’s rights remain intact, the parent can challenge the guardianship and seek return of the child to the parent’s custody. See Iowa Code § 232.104 (providing the parent may seek to modify a permanency order). Termination and adoption are the preferred solution when a parent is unable to regain custody within the time frames of chapter 232. *Cf. In re C.K.*, 558 N.W.2d 170, 174 (Iowa 1997) (“An appropriate determination to terminate a parent-child relationship is not to be countermanded by the ability and willingness of a family relative to take the child.”). In this case, given the mother’s track record of missing visitations and her uncertain prognosis for

overcoming her addiction, M.B.'s placement with a relative was not a reason to deny or delay termination under section 232.116(3).

AFFIRMED.