

**IN THE COURT OF APPEALS OF IOWA**

No. 1-250 / 10-1810  
Filed April 27, 2011

**IN THE INTEREST OF  
B.B.B. Jr. and D.P.M.,  
Minor Children,**

**C.G.K., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Pottawattamie County, Gary K. Anderson, District Associate Judge.

A mother appeals the termination of her parental rights to her older son.

**AFFIRMED.**

Scott D. Strait, Council Bluffs, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Matthew D. Wilber, County Attorney, and Eric D. Strovers, Assistant County Attorney, for appellee State.

William J. Acosta-Trejo, Council Bluffs, for father of B.B.B. Jr.

Lori L. Falk-Goss, Council Bluffs, attorney for minor children.

Maura C. Goaley, Council Bluffs, guardian ad litem for minor child, D.P.M.

Phil Caniglia, Council Bluffs, guardian ad litem for minor child, B.B.B. Jr.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

**POTTERFIELD, J.****I. Background Facts and Proceedings.**

Cynthia is the mother of D.M., born in June 1998.<sup>1</sup> She has a long history of substance abuse. D.M. was removed from his mother's custody in April 2009 when his mother tested positive with high levels of amphetamines and methamphetamine.<sup>2</sup>

In July 2009, D.M. was adjudicated a child in need of assistance (CINA), and in an August 21, 2009 dispositional order, the juvenile court continued D.M.'s custody with the Department of Human Services for placement in a Psychiatric Medical Institution for Children (PMIC). In 2007, D.M. had been diagnosed with Oppositional Defiant Disorder, Attention Deficit Hyperactivity Disorder, and Mood Disorder. An October 2009 psychological evaluation by the same evaluator added diagnoses of Asperberger's Disorder and Schizoaffective Disorder. The 2009 evaluation summarized, in part:

It appears that [D.M.] will need structure and consistency in his environment. At this point in time it would be doubtful that either of his parents could provide those unless they have made a great deal of improvement over the years. Also, they will have to have education and understanding regarding [D.M.'s] mental health issues, as they are severe, problematic, and longstanding. [Most likely] this child will be able to learn some adaptive skills and abilities but it could be highly doubtful that he will live independently on his own. He will also continue to need vigorous mental health treatment in terms of medications and therapy services throughout

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<sup>1</sup> Cynthia has three other children, two of whom were living with her and who were adjudicated children in need of assistance in July 2009, a daughter born in 1992, and a son, born in 2000. Her rights to her other son were terminated as well, but she does not appeal that decision.

<sup>2</sup> It must be noted that this is not the first time the child was removed from his mother's custody as a result of her drug dependency and resulting criminal problems. D.M. was removed from his mother's care in 2002, returned to her in 2004, removed in 2006 and returned to her in 2007. At the time of the termination hearing, D.M. had spent sixteen consecutive months (and more than fifty-seven months of his life) out of her custody.

his lifetime. He will need to remain in placement until a suitable level of care can be found when his behaviors are under control. He will need structure and consistency.

Social worker Kristi O'Donnell reported to the court in February 2010 that in PMIC placement,

[D.M.] has come leaps and bounds. There have been very few times that [D.M.] has needed to be physically restrained, and also very few times that [D.M.] needs to be redirected. [D.M.] does best in an environment that is very structured and predictable, and that's exactly what he is getting from the PMIC program.<sup>[3]</sup>

She also noted that "during the two months that mom didn't have any contact [D.M.'s] behaviors were more stable. When mom came back around and started making promises about coming for visits and making phone calls some of [D.M.'s] behaviors crept back up."

In an April 2010 permanency order, the juvenile court noted Cynthia obviously loves her children very much, but is not capable of controlling her addictions, seeking treatment, or proving to this Court that she can maintain sobriety. [Cynthia] has been consistent with visitation, but continues to be non-compliant in seeking treatment for her substance abuse. Each time the Court has seen [Cynthia], she is about to start treatment, almost ready to go get her evaluation, and close to finding a good program. All of her children deserve permanency in their lives.

The court also stated that D.M. wished to be placed with relatives, but his "mental health issues do not bode well" for such placement.

A petition to terminate Cynthia's parental rights was filed on May 18, 2010. Evidence presented at the September 20, 2010 termination hearing established that since D.M.'s removal, Cynthia had been enrolled in substance abuse

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<sup>3</sup> D.M. was placed in foster care in late February 2010, but returned to PMIC placement in May 2010 because his behavior deteriorated. He remained in PMIC placement until August 18, 2010, when he was sent to family foster care.

treatment on more than one occasion, but had never successfully completed treatment. She failed to provide any drug screens after February 26, 2010, and admitted drug use in June 2010. Cynthia did not have housing or employment. D.M. stated he wished to retain the parent-child relationship with both his parents.

The juvenile court terminated Cynthia's parental rights to the child pursuant to Iowa Code section 232.116(1)(d), (e), (f), and (j) (2009). The court wrote:

Cynthia apparently believes that since [D.M.] wishes to continue his parent-child relationship with her that she does not have to comply with Court orders which are designed to help her conquer her long-standing and ongoing substance abuse problem and that she can merely rely on [D.M.'s] desires to prevent the termination of her parental rights concerning [D.M.] There is clear and convincing evidence that has been presented to the court that she cannot currently care for [D.M.] now or in the near future due to her ongoing substance abuse problems which she has not addressed despite years of services being offered to her. It is quite apparent to the Court that [Cynthia] has no desire to comply with Court orders which have been entered in the past to allow reunification . . . [and she] would rather maintain her current lifestyle using drugs, living on unemployment payments and living a nomadic lifestyle, where she stays with friends and relatives and anyone else who will let her live with them and not truly change her lifestyle in a significant way so that the [child] could be placed with her.

The court addressed D.M.'s statement to the court that he wished to maintain a parent-child relationship with his mother:

Significantly, D.M. also testified that he did not want his [father's] parental rights to be terminated despite the fact that he has seen [the father] only one time in over one year. Also significant is D.M.'s doctor's conclusion that [D.M.] needs to remain in a very structured environment which is quite clear that Cynthia cannot provide nor will ever provide for him. The Court finds it is simply not acceptable for [D.M.] to languish in foster care for an additional six years waiting for his mother to cure her substance abuse

problem, obtain a job, obtain stable employment and a stable home when she has utterly failed to do so in the last 18 months. The Court specifically finds that [D.M.] does not have the maturity level required to make a competent decision what is in his best interest, and as such, the Court must do that for him . . . .

Cynthia appeals, asserting the State did not prove by clear and convincing evidence that grounds for termination existed. She also argues termination of her parental rights is not in the child's best interests, given her bond with the child, and the child's desire to return to her care.

## **II. Statutory Grounds.**

"We only need to find grounds to terminate parental rights under one of the sections cited by the juvenile court in order to affirm its ruling." *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2002). On our de novo review, see *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010), we affirm the juvenile court's termination of the mother's parental rights pursuant to section 232.116(1)(f). Section 232.116(1)(f) provides the court may terminate a parent's rights when all of the following have occurred: (1) the child is four years of age or older; (2) the child has been adjudicated CINA; (3) the child has been removed from physical custody of the parent for the last twelve consecutive months; and (4) there is clear and convincing evidence that the child cannot be returned to the custody of the parents at the present time. D.M. is twelve years old; was adjudicated CINA in July 2009; has been removed from his mother's physical care for more than twelve consecutive months at the time of the termination hearing. Cynthia's continued substance abuse problem and lack of housing or employment present the antithesis to the structured, predictable, stable environment D.M.'s doctor says he needs.

### **III. Best Interests of the Child.**

Cynthia nevertheless contends termination of her parental rights is not in D.M.'s best interests. She argues the juvenile court did not give appropriate weight to D.M.'s stated preference and the fact that he had not had any substantial length of time in a stable, satisfactory environment since being removed from his mother's care.

Section 232.116(3)(b) provides that the court "need not terminate the relationship between parent and child" if a "child is over ten years of age and objects to the termination." This factor is permissive, and it is in the court's discretion, based on the unique circumstances of the case and the best interests of the child, to apply such factors. *In re A.J.*, 553 N.W.2d 909, 916 (Iowa Ct. App. 1996). D.M. told the juvenile court he wanted to live with his mother again someday. We acknowledge D.M.'s heartfelt wish to return to living with his mother. Unfortunately, we agree with the juvenile court that D.M. is not mature enough to understand what would be in his best interests.

In determining whether termination is in the child's best interests Iowa Code section 232.116(2) states, "the court shall give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child." See *P.L.*, 778 N.W.2d at 40–41. As already noted, Cynthia's lifestyle does not contribute to the child's long-term nurturing and growth. D.M.'s mental and emotional condition requires structure and predictability, which his mother is unable to offer. We acknowledge that at the time of trial D.M. had been in his current foster family placement for only a short time. But D.M. was

reportedly doing well there; he stated he felt comfortable there, and it felt more like a home to him.

#### **IV. Conclusion.**

There is clear and convincing evidence to support termination pursuant to Iowa Code section 232.116(1)(f). Given the mother's unresolved issues concerning substance abuse, housing, and employment, termination is in the child's best interests, notwithstanding the child's stated preference. Accordingly, we affirm the juvenile court's termination of the mother's parental rights.

**AFFIRMED.**