

IN THE COURT OF APPEALS OF IOWA

No. 1-254 / 11-0342
Filed April 27, 2011

**IN THE INTEREST OF L.J.,
Minor Child,**

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

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Steven J. Drahozal of Drahozal Law Office, Dubuque, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Ralph Potter, County Attorney, and Jean A. Becker, Assistant County Attorney, for appellee.

Stephen Scott, Dubuque, for father.

Mary Beth Fleming, Dubuque, attorney and guardian ad litem for minor child.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

SACKETT, C.J.

A mother appeals from the juvenile court order terminating her parental rights and from the court's denial of her motion for extension and to continue. She contends denying her motion violated her right to equal protection and termination is not in the child's best interest. We affirm.

I. Background.

The child was removed from the mother's care in June of 2010 before the mother left the hospital after the child's birth. By the time of the termination hearing in January of 2011, the child's father had not yet been identified, but the remaining putative father's testing had been scheduled for later in January. The mother filed a "motion for extension and to continue" alleging (1) the matter likely would have to be continued as to the putative father, (2) there was no showing it was not in the child's best interest to allow services to the mother to continue, (3) Iowa Code section 232.116(1)(h) (2011) allows, but does not require, termination once the child has been out of parental custody for six months, and (4) "it violates [the mother's] rights to due process and equal protection . . . not to extend her time for services and not to continue the termination of parental rights trial."

At the termination hearing, the mother also made an oral motion, alleging in part,

One other basis is that if this matter is not continued, and [the putative father] is the father, he gets some services, it is our position it would violate [the mother's] due process and equal protection rights not to continue this matter.

The court ruled, in part:

Given the child's age, our appellate courts, which have clearly held that permanency is paramount for a child this age, and

given the services that have already been provided, the court does not believe that an extension would be in this child's best interests and we will proceed today with hearing regarding mother's rights.

At the close of evidence, the mother, after discussing her progress in working toward reunification, again argued "an extension is warranted and that she be allowed to continue to make progress with [the child] and that the court grant the request for extension."

In its order terminating the mother's parental rights, the court noted in its introductory paragraphs that it had denied the mother's motion made at the beginning of the termination hearing. In its conclusions of law, the court ruled on the renewed motion:

At the conclusion of the hearing, [the mother] requested the court grant her an extension of time to work on the identified issues. Given the services provided and [the mother's] lack of progress in the current case, along with all the services provided and her lack of progress in the prior termination proceedings, the court does not believe a reasonable extension of time would result in the child being returned to her care. . . . Accordingly, [the mother's] request for an extension of time is denied.

No post-hearing motion to amend or enlarge was filed.

The court terminated the mother's parental rights under Iowa Code section 232.116(1)(h). Concerning the best interests of the child, the court found:

In determining the best placement for furthering the long-term nurturing and growth of a child, the court must consider what the future holds for the child if returned to the parents. In doing so, the court will look to the parents' past performance because it may indicate the quality of care the parent is capable of providing in the future. *In re J.E.*, 723 N.W.2d 793[, 798] (Iowa 2006). A look at mother's past performance indicates she is incapable of meeting the needs of a child on a consistent and long-term basis. Mother has had her parental rights terminated to two children and continues to demonstrate an inability to provide a safe and stable home. Mother has unresolved substance abuse issues, refuses mental health counseling, is not employed, does not have her own

means of transportation, and cannot consistently maintain the home so that it is safe and appropriate for a small child.

The court concluded “termination of parental rights is in the child’s best interests.”

The mother appeals.

II. Scope of Review.

Our review is de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978). The State has the burden of proving the grounds for termination by clear and convincing evidence. *P.L.*, 778 N.W.2d at 39. Although we give weight to the juvenile court’s findings of fact, we are not bound by them. *In re J.A.D.-F.*, 776 N.W.2d 879, 883 (Iowa Ct. App. 2009).

III. Merits.

A. Equal Protection. The mother first contends the court violated her right to equal protection when it denied her motion for extension and to continue. In both her written and oral motions for extension of time and to continue the proceedings, the mother alleged an equal-protection claim if services were provided to the putative father but her parental rights were terminated. As quoted above, the court’s rulings on the motions were not based on equal protection. The court did not expressly consider her equal-protection claim. No motion to amend or enlarge appears in the record. This claim is not preserved for our review. See *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003) (“Even issues implicating constitutional rights must be presented to and ruled upon by the district court in order to preserve error for appeal.”).

B. Best Interests. The mother also contends termination is not in the child's best interests. She does not challenge the statutory ground for termination. Once a statutory ground for termination is established test, "the court is required to use the best-interest framework established in section 232.116(2) when it decides what is in the best interest of the child." *P.L.*, 778 N.W.2d at 37. The primary considerations for the court are "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." *Id.* (quoting Iowa Code section 232.116(2)).

The mother argues she has made progress in improving her parenting. She challenges the State's reliance "on a vague notion of a 'need for permanency.'" She further argues there was no evidence the statutory considerations in section 232.116(2) are furthered by termination of her parental rights. The evidence belies her assertions. The mother has unresolved substance abuse and mental health issues. She is not able to maintain a clean and safe home that would prevent this child from suffering the same illness contracted by older siblings to whom the mother's parental rights were terminated. We conclude, as did the juvenile court, that in view of the mother's past performance and her resistance or inability to change, termination of her parental rights to this child best satisfies the considerations of section 232.116(2).

AFFIRMED.