

IN THE COURT OF APPEALS OF IOWA

No. 1-449 / 11-0453

Filed June 29, 2011

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

**S.L.L., Mother,
Appellant,**

Appeal from the Iowa District Court for Clinton County, Phil Tabor, District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Cheryl Fullenkamp, Davenport, for appellant mother.

Nathan Tucker, Davenport, for father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Mike Wolf, County Attorney, and Cheryl Newport, Assistant County Attorney, for appellee State.

Marsha Arnold, Davenport, for minor child.

Considered by Sackett, C.J., and Doyle and Danilson, JJ. Tabor, J., takes no part.

DOYLE, J.

A mother appeals from the order terminating her parental rights to her child.¹ She claims (1) the State failed to prove the grounds for termination by clear and convincing evidence and (2) termination was not necessary under Iowa Code section 232.116(3)(a) (2011). We review these claims de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

This family first came to the attention of the Iowa Department of Human Services in April 2010 due to unsafe conditions in the home. The parents left small and dangerous items within reach of the young child and did not stop her from eating old food off the floor. Their relationship was volatile, with frequent reports of fighting in front of the child. Police were called to the house six times in a seven-month period. In June 2010, the parents agreed to place the child with her paternal grandmother, where she has since remained.

The child was adjudicated as a child in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(c)(2) and (n) in August 2010. The parents began participating in weekly supervised visits and parenting skills sessions. The service provider's notes indicate the mother had difficulty interacting with and disciplining the child. She needed help changing diapers and required prompting to play with the child. She also struggled with showing the child affection. The mother often had to be told to give the child a hug when she walked into the room for a visit.

¹ The father's separate appeal was dismissed as untimely by the Iowa Supreme Court.

A psychological evaluation reported the mother was mildly mentally retarded with a “mental age equivalent” at the twelve-year-old level. She did not fully understand developmental capabilities of children and expectations for their normal growth. She required supervision and support with routine activities such as cleaning and cooking. The mother also had an admittedly difficult time controlling her anger, leading to the frequent altercations with the father. During these altercations, the mother would throw things and become destructive.

The State filed a petition to terminate parental rights in January 2011. The parents’ visits with the child from that point forward became somewhat sporadic. In a two-month time period, they missed thirteen out of twenty-three scheduled visits. Following a hearing in March 2011, the juvenile court entered an order terminating the mother’s rights to the child under Iowa Code sections 232.116(1)(d), (h), and (i). The mother appeals.

We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). In this case, we choose to focus our attention on section 232.116(1)(d). Under that section, parental rights may be terminated if the court finds by clear and convincing evidence the child was previously adjudicated a CINA and if, after services have been offered to the parents, the circumstances that led to the adjudication continue to exist. Iowa Code § 232.116(1)(d).

The child was adjudicated under sections 232.2(6)(b) and (c)(2) because of the risk of neglect occasioned by the mother’s lack of supervision. Both of these sections reflect the preventative, as well as remedial, nature of our statute termination provisions. See *In re L.L.*, 459 N.W.2d 489, 494 (Iowa 1990). “They

are designed to prevent probable harm to the child and do not require delay until after harm has occurred.” *Id.* The mother’s argument that termination under section 232.116(1)(d) was inappropriate because there “are no allegations that the child was ever physically abused by the mother, only an allegation that she *could* have been physically abused” is thus without merit. Moreover, the evidence established the risk of neglect that prompted the child’s adjudication continued to exist at the time of the termination hearing.

The service provider reported that despite months of supervised visits and parenting skills sessions, the mother failed to show a significant amount of progress in internalizing the information taught to her and implementing it in visits. She remained unable to recognize common safety concerns such as the need to keep small objects out of the child’s reach. The parents were unable to keep their home clean without reminders from others. They left items that could be dangerous to the child, such as razors or small bike parts, on the floor. The parents continued to have domestic disputes with one another, the latest occurring in February 2011 when the mother threw a rat cage at the father. In light of the foregoing, we find clear and convincing evidence that grounds for termination exist under section 232.116(1)(d).

We further find the best-interest framework in Iowa Code section 232.116(2) supports termination of the mother’s parental rights, though the mother did not contest this step of the analysis on appeal. See *P.L.*, 778 N.W.2d at 39 (outlining the three-step analysis for terminations under chapter 232). The assessment under section 232.116(2) “may include whether ‘the parent’s ability to provide [for] the needs of the child is affected by the parent’s mental capacity

or mental condition.” *In re D.W.*, 791 N.W.2d 703, 708 (Iowa 2010) (quoting Iowa Code § 232.116(2)(a)). While a parent’s “lower mental functioning alone is not sufficient grounds for termination,” it is a contributing factor in this case to the mother’s inability to provide a safe and stable home for the child. *Id.* We also consider the fact that the child’s cognitive and communicative skills are delayed, and her needs will likely only increase as she grows older. *Id.* It is doubtful the mother will be able to manage these new challenges independently, as she needs assistance herself with daily living activities.

Finally, we consider the mother’s argument that the statutory exception to termination in section 232.116(3)(a) should serve to preclude termination of her parental rights. That section states termination is not necessary if the court finds a relative has legal custody of the child. Iowa Code § 232.116(3)(a). The juvenile court declined to invoke the exception though the child was in the custody of her paternal grandmother. *See In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997), *overruled on other grounds by P.L.*, 778 N.W.2d at 39 (stating section 232.116(3) is “permissive, not mandatory”). We agree with the court’s decision. The child has been in her grandmother’s care for close to one year. She is doing very well there, and the grandmother has expressed interest in adopting her. Termination will accordingly provide the child with the safety, security, and permanency she deserves. *See P.L.*, 778 N.W.2d at 41.

We accordingly affirm the juvenile court order terminating the parental rights of the mother.

AFFIRMED.

Danilson, J., concurs; Sackett, C.J., concurs specially.

SACKETT, C.J. (concurring specially)

I concur specially. I too would affirm the termination of the mother's parental rights. The mother is mentally impaired, operates as a twelve year-old and could only parent with accommodations that appear never to have been offered or requested. Had she requested accommodations and shown that with them she could adequately parent, my decision would probably have been different. There are factors here other than the mother's disability that support termination, and for that reason I concur with the majority.