

IN THE COURT OF APPEALS OF IOWA

No. 1-919 / 11-1074
Filed December 7, 2011

**IN THE INTEREST OF C.W. and K.M.,
Minor Children,**

**N.M., Mother,
Appellant.**

Appeal from the Iowa District Court for Scott County, Christine Dalton,
District Associate Judge.

A mother appeals the termination of her parental rights to her two sons.

AFFIRMED.

Steven W. Stickle of Stickle Law Firm, P.L.C., Davenport, for appellant
mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Michael J. Walton, County Attorney, and Julie A. Walton,
Assistant County Attorney, for appellee State.

Stephen W. Newport of Newport & Newport, P.L.C., Davenport, attorney
and guardian ad litem for minor children.

Jean Capdevila, Davenport, for father of K.M.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

A mother appeals the termination of her parental rights to her two sons. Because the mother does not contest that the grounds for termination exist, and because we find on our de novo review that termination of the mother's parental rights is in the children's best interests and no factors weighing against termination are pertinent, we affirm.

I. Background Facts and Proceedings.

Nicole is the mother of C.W., born in February 2004, and K.M., born in February 2009.¹ In September and October 2009, there were three founded child abuse assessments against the mother. One assessment was based upon an incident in which C.W., then age five, started a fire in his bedroom while his mother was asleep and K.M.'s father was in the shower. His stated intent was to burn his mother and younger brother. The children were voluntarily placed with their maternal grandfather in Illinois in October 2009.

C.W. began receiving consistent mental health treatment and reported acts of sexual abuse and some physical abuse of K.M. K.M. had failed to thrive in his parents' care and was not meeting developmental milestones; he refused to eat during supervised visits with his parents. The voluntary out-of-home placement became court-ordered on January 28, 2010, by ex parte order, and confirmed after a hearing and order filed on February 2, 2010.

¹ The father of K.M. also had his parental rights terminated. He filed a notice of appeal, but the appeal was dismissed pursuant to a motion by the State for failure to file an appeal petition, by order filed November 18, 2011.

The father of C.W. did not participate in the proceedings and does not appeal the termination of his parental rights.

On March 25, 2010, the children were adjudicated children in need of assistance (CINA) following a hearing and the parties' stipulation. The court specifically found:

[C.W.] has received inadequate supervision in that he has been found wandering the neighborhood without supervision while his mother was in the house. [K.M.] has failed to thrive in the custody of his parents and, since placement, has gained several pounds and started eating. [C.W.] has been sexually abused by at least 2 individuals in this home that the parents allowed to have contact with both children. The mother has slapped [C.W.] leaving a hand print. [C.W.] is ADHD and has difficulty controlling his behaviors in the home as the parents are unwilling or unable to provide a structured routine and proper supervision.

On May 21, 2010, a dispositional order was filed in which the court stated that since removal:

[C.W.'s] behaviors have become hard to manage for all. He has been hospitalized [and] . . . is in dire need of both behavioral therapy and sexual abuse counseling. He cannot receive both these services quickly [where his grandfather resides]. The parents have been concerned that the grandfather is sabotaging reunification so foster care in Iowa is recommended. [K.M.] was placed in foster care separately from [C.W.] because [C.W.] has been physically sexually aggressive placing K.M. at risk. A foster home was not located which could accommodate both boys together given C.W.'s current behaviors. C.W. remains hospitalized but a foster family is ready to accept him once he is discharged.

Both parents have been generally cooperative with pre-dispositional services offered to the family. They are attending their parenting education appointments and visitation. The mother is in need of mental health counseling, anger management therapy, sexual abuse identification and prevention training, and parenting education.

....

. . . Both parents have learning disabilities.

The mother must immediately address her mental health and anger management needs. She does not have Title XIX coverage so her options are limited. The provider has helped her make appointments. It is the mother's responsibility to make follow-up appointments or ask for help to do so. She does take medication as prescribed but is in need of regular individual therapy.

The court also noted that K.M.'s father was a registered sex offender, which "limits the Department [of Human Services (DHS)]'s ability to arrange family setting visitation," and DHS was making reasonable efforts and providing appropriate services to accommodate the parents' learning disabilities. The children were placed with separate foster families.

A dispositional review hearing was held on August 24, 2010. In the dispositional review order, the juvenile court noted K.M. had "gained sufficient weight and is beginning to use words. Although his negative and self-destructive behaviors have recently increased, the foster mother, daycare provider, and parents are working to consistently deal with the issue." However, C.W. had "struggled a great deal" and was placed at a psychiatric mental health institute for children." The court specifically found C.W. "cannot be placed in the family home setting at this time because of his severe behaviors." The court also noted the "parents have made little progress on the case plan goals." Nicole, though ordered to attend mental health and anger management appointments, had not yet followed through.

In December 2010, K.M.'s father informed DHS he had relatives he wanted to be considered as a placement option. At a December family team meeting, DHS informed the parents that termination of parental rights would be sought.

On January 24, 2011, a permanency hearing was held. In its permanency order filed January 27, 2011, the court listed the following services having been offered to the parents: parenting education; child nutritional information; supervised visitation; mental health therapy; anger management therapy; sexual

abuse protective counseling and education about appropriate boundaries; family therapy; and support services such as transportation and budgeting education.

Despite C.W. having received specialized behavior and psychiatric treatment and medication management, he continued to struggle. The court noted he “will need residential care for some amount of time before he can attempt a home placement.” K.M. remained underweight, but “is becoming a good eater” and had “grown socially and [is] speaking better.” It was observed the children enjoyed seeing their parents. But Nicole had not followed through with her mental health appointments and was not attending her therapy sessions. Though being provided parenting techniques in an appropriate manner, she was unable “to implement techniques most of the time without prompting from the visitation supervisor.” The court wrote,

Nicole still struggles with management of her anxiety and anger. It is clear from the testimony that Nicole and [K.M.’s father] struggle to handle their own needs and haven’t made adequate progress despite over one year of intense services. The court is convinced that additional services are not likely to change the outcome.

A petition for termination of parental rights was filed on March 7 and, following a June 30 hearing, an order terminating the mother’s parental rights was filed on July 1, 2011. The mother appeals.

II. Scope and Standard of Review.

We review all termination decisions de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). Although we are not bound by the juvenile court’s findings of fact, we do give them weight, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for

termination under section 232.116. *Id.* Evidence is considered “clear and convincing” when there are no “serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.” *Id.*

III. Discussion.

On appeal, the mother does not dispute that the grounds for termination exist under Iowa Code section 232.116(1) (2011).² Consequently, we need not address the matter and deem the grounds established by clear and convincing evidence. See *P.L.*, 778 N.W.2d at 40.

The mother argues the court did not adequately consider the best interests of the two children in terminating her relationship with them. The mother argues that since she is making progress, she should be allowed additional time. The record establishes the juvenile court did consider the children’s best interests. The mother has a learning disability and mental health issues. She is unable to manage her own medication schedule consistently and has been unable to internalize the parenting education she has received. For more than a year and a half, she has been offered and received numerous services tailored to accommodate her mental challenges and aimed at assisting her in being able to provide safe and stable care to her children. She has not

² The mother’s rights were terminated pursuant to Iowa Code section 232.116(1)(d) (child has been adjudicated CINA after finding the child, or another child in same family, has been physically or sexually abused or neglected as the result of acts or omissions of one or both parents; and services were offered but circumstances continue to exist); (f) (as to C.W. only: child is four years of age or older, adjudicated CINA, removed at least twelve months, and cannot be returned presently); (h) (as to K.M. only: child under three years of age, adjudicated CINA, removed at least six months, and cannot be returned presently); and (i) (child meets the definition of CINA; there is clear and convincing evidence that the abuse or neglect posted a significant risk to the life of the child or constituted imminent danger to child; and services would not correct the situation) (2011).

progressed beyond supervised visits. C.W. is institutionalized due to the severe trauma he suffered in his mother's custody. A week before the termination trial, C.W. expressed fear about the possibility of being returned to his mother's care. K.M. has made strides in foster care and is fully integrated into that home; but remains small for his age and his immune system is not doing well.

Terminating the mother's parental rights so the children might be permanently placed gives primary consideration to their safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional needs of the children under section 232.116(2). "It is well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child." *P.L.*, 778 N.W.2d at 41.

The mother contends the court should have refused to terminate her parental rights because C.W. was, and will continue to be, hospitalized, see Iowa Code § 232.116(3)(d) (noting court need not terminate if "[i]t is necessary to place the child in a hospital, facility, or institution for care and treatment and the continuation of the parent-child relationship is not preventing a permanent family placement for the child"), and K.M.'s integration into the foster family should not be considered because DHS failed to timely pursue a family placement option. See *id.* § 232.116(3)(a) (noting court need not terminate if "[a] relative has legal custody of the child").

We do not find any factors listed in 232.116(3) weigh substantially against termination. While C.W. is institutionalized, the record indicates that he is

adoptable and a prior foster family has indicated a willingness to have him return upon his discharge. We also note the family option for K.M. only was not proposed until December 2010, more than a year after K.M. left his mother's custody and about seven months after he was placed in foster care. The paternal relative contacted DHS in January 2011, indicating a desire to adopt K.M. She then contacted DHS in March 2011 and left a message that she was not interested in being considered a placement for C.W. At trial, the relative testified she left several telephone messages with DHS and did not receive a return telephone call. She also testified she had adopted a child in Illinois in February 2011.

At the time of the termination hearing, the DHS social worker testified a home study for the Illinois relatives had recently been completed. K.M. is doing better in his present placement and is fully integrated into his foster family. He does not know the relatives whom the mother proposes as a placement for him. K.M. is entitled to stability and safety and we conclude no factors weighing against termination in section 232.116(3) are pertinent.

We affirm the termination of parental rights.

AFFIRMED.