

IN THE COURT OF APPEALS OF IOWA

No. 1-981 / 11-1824
Filed January 19, 2012

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

A.S., Mother,
Appellant.

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

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Yvonne C. Naanep, Des Moines, for appellant mother.

Jason Hauser of Hauser Law Office, P.C., for father.

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

Nicole Garbis Nolan of the Youth Law Center, Des Moines, for minor child.

Considered by Vogel, P.J., Eisenhauer, J., and Sackett, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

EISENHAUER, J.

A mother appeals from the order terminating her parental rights to her child. She contends the State failed to prove the grounds for termination by clear and convincing evidence. She also contends the court erred in terminating her parental rights because the child is in the custody of a relative. We review her claims de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

The child, born in December 2007, was removed from the home in April 2010 because the parents were abusing the prescription drug oxycontin and were stealing in order to support their addiction. The parents were arrested and charged with burglary and theft that same month. As part of their resulting sentences for their criminal convictions, both parents underwent inpatient substance abuse treatment and were discharged to halfway houses. At the September 2010 permanency hearing, the juvenile court found it was reasonably likely the child could be returned to the custody of one of his parents within six months.

Following successful discharge from her halfway house program, the mother opted not to enter the House of Mercy to continue her efforts toward sobriety. She also declined to participate in family drug court and failed to follow through on obtaining recommended mental health treatment. She missed a month of supervised visitation with the child and lied as to why she failed to attend. She failed to provide urine samples for analysis when requested. The mother was arrested in October 2010 for a misdemeanor theft charge, which was dismissed after she took a misdemeanor theft class. She never reported the incident to the department of human services or her probation officer. The

mother was arrested for a probation violation in January 2011 and again in April 2011.

A petition to terminate the mother's parental rights was filed in March 2011. Because the father made great strides in his recovery, the child was placed in his care in April 2011. The termination hearing was held in June 2011. In its October 27, 2011 order, the juvenile court terminated the mother's parental rights pursuant to Iowa Code sections 232.116(1)(d) and (h) (2011).

The mother contends the State failed to prove the grounds for termination by clear and convincing evidence. Specifically, she contends the State failed to prove the child could not be returned home, as required in section 232.116(1)(h)(4), because the child was already in the father's care. The mother makes no argument regarding termination under section 232.116(1)(d). We may affirm the termination order on any ground we find supported by clear and convincing evidence. See *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). Because the mother does not challenge the grounds for termination under section 232.116(1)(d), we affirm.

The mother also contends termination is not warranted because the child is in the custody of his father and because of the closeness of the relationship she has with the child. Iowa Code section 232.116(3)(a) provides, "The court need not terminate the relationship between the parent and child if the court finds . . . [a] relative has legal custody of the child." However, a "determination to terminate a parent-child relationship is not to be countermanded by the ability and willingness of a family member to take the child." *In re C.K.*, 558 N.W.2d 170, 174 (Iowa 1997). Section 232.116(3)(c) provides,

The court need not terminate the relationship between the parent and child if the court finds . . . [c] there is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.

When considering these exceptions for termination, our primary consideration is still “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.” *P.L.*, 778 N.W.2d at 40.

The mother has not begun to make an honest attempt at recovering from her drug addiction. Instead of addressing her issues in order to regain custody of her child, she admittedly tried to sabotage the father’s efforts to reunite with the child. The mother has demonstrated an inability to place her child’s needs above her own. Regarding the bond between the mother and child, the trial court found: “[G]iven [the child’s] age and inconsistent contact [the mother] has had with him for over a year his bond with her is secondary to others.” We agree with this assessment and conclude continuing the mother’s relationship with the child by exercising the option not to terminate is not in the child’s best interests.

Accordingly, we affirm.

AFFIRMED.