

IN THE COURT OF APPEALS OF IOWA

No. 2-047 / 11-2034
Filed February 1, 2012

**IN THE INTEREST OF D.V.,
Minor Child,**

L.H., Mother,
Appellant.

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

A mother appeals the district court's ruling terminating her parental rights to her son. **AFFIRMED.**

Laura J. Lockwood of Pargulski, Hauser & Clarke, P.L.C., Des Moines, for appellant mother.

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

Kathleen T. Sandre of Coppola, McConville, Coppola, Hockenber & Scalise, P.C., West Des Moines, for appellee father.

Kimberly Ayotte of Youth Law Center, attorney and guardian ad litem for minor child.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

VAITHESWARAN, P.J.

A mother appeals the termination of her parental rights to her son, born in 2009. She does not challenge the ground for termination cited by the juvenile court. Instead, she argues that the juvenile court should have denied the termination petition based on (1) the best-interest factors set forth in section 232.116(2) (2011) and (2) certain exceptions to termination set forth in section 232.116(3). Alternately, she asserts the court should have deferred termination for six months or considered a guardianship.

I. Iowa Code section 232.116(2) requires the court to consider the best interests of the child as follows:

In considering whether to terminate the rights of a parent under this section, 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.

The mother argues it is not in the child's best interests to terminate her parental rights

when a clear mother-child bond exists, when the child is placed with protective relatives, when no safety concerns exist for the child, when the child's mental and emotional needs are better served to maintain the relationship, when the parental rights of the father remain intact with the goal of reunification with father, and when termination of her rights would legally end any child support obligation or inheritance rights for [the child].

On our *de novo* review, we disagree with the mother's assertion that "no safety concerns exist for the child." See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010) (setting forth standard of review). We find the record replete with safety concerns and find that factor dispositive.

The mother had chronic substance abuse issues that were not remediated with outpatient or inpatient substance-abuse treatment. The child's father, who was also named in the termination petition, but whose parental rights were not terminated, testified that he did not think the mother "knew how" to stay sober. Given his own substance abuse history, he elected to end his relationship with the child's mother rather than risk another relapse with her. He acknowledged her current lifestyle was chaotic and disruptive and her drug use was dangerous for the child if she were parenting him.

An Iowa Department of Human Services social worker expressed similar concerns. She testified that when she spoke to the mother approximately two weeks before the termination hearing, the mother "was slurring her words" and "was very difficult to understand." She stated she was afraid the mother would die of an accidental overdose and opined that, in the twenty-three years she had been working with parents in the juvenile system, "this is the worst case of addiction I've ever seen." In her report to the court, she asserted that the mother was "clearly in no position to safely care for [the child], or herself, at any time in the near future." Based on this record, we conclude the child's interests were best served by termination of the mother's parental rights.

II. We turn to the exceptions to termination contained in section 232.116(3). That section provides in pertinent part:

The court need not terminate the relationship between the parent and child if the court finds any of the following:

a. A relative has legal custody of the child.

...

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.

The mother acknowledges the child was placed with relatives but focuses more on the exception contained in paragraph (c).

There is no question the mother shared a close bond with the child. The child's father testified that he could "only imagine" how it would hurt the child not to have regular contact with his mother, given that he was "a mama's boy" early on. The paternal grandfather, with whom the child was placed, also testified there was a bond between mother and child. And, a service provider who supervised visits between mother and child affirmed the connection between them. But, given the mother's severe substance abuse, including intravenous drug use while participating in a drug treatment program, the child's safety had to be the primary concern. As the service provider stated, the mother "was a good parent" during the supervised visits but would need to "demonstrate sobriety for a long period of time" before she could step back into a more permanent parenting role.

We agree with the juvenile court that neither cited exception articulated in section 232.116(3) warrants denial of the termination petition.

III. Iowa Code section 232.104(2)(b) allows a court to defer termination for an additional six months, and section 232.104(2)(d) allows a court to place the child in a guardianship. The mother contends the juvenile court should have ordered one of these alternatives to termination, particularly in light of the court's unwillingness to terminate the father's parental rights.

With respect to the six-month extension, the court stated:

There is no way given [the mother's] current circumstances that she could deal with her disease of addiction and address the issues created by her addiction in the next few months. There is no basis

by which the Court could make the findings necessary that it is reasonably likely she could be reunited with [the child] within the next six months. While it is hoped that she will eventually succeed in maintaining sobriety for a period long enough that she can successfully engage in treatment, it will take much longer for her to build a recovery lifestyle which could support her long-term sobriety and a reunification with her son.

We agree with this assessment.

We turn to the question of a guardianship. While the juvenile court declined to terminate the father's parental rights, this fact does not militate in favor of a guardianship as to the mother, in lieu of terminating her parental rights.

As the court stated,

[A] guardianship is only a possible viable permanency option if [the mother's] parental rights are terminated. The court finds that given the extremely risky behaviors that his mother has exhibited that it is not in [the child's] best interests to maintain his mother's parental rights. While it is hoped that if [the mother] gains some sobriety she will be permitted access to [the child] and the court believes that would be likely, the degree of her addiction is such that any permanency option for [the child] must eliminate her legal ability to disrupt any placement until he can be completely self protective The court believes that in order to ensure permanency—whether that be adoption, placement with the other parent, or guardianship—it is necessary to terminate [the mother's] parental rights.

Again, we find no reason to disagree with this assessment.

We affirm the termination of the mother's parental rights to her son.

AFFIRMED.