

IN THE COURT OF APPEALS OF IOWA

No. 2-078 / 11-1990
Filed February 15, 2012

**IN THE INTEREST OF P.W.,
Minor Child,**

**L.W., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Constance Cohen,
Associate Juvenile Judge.

A mother appeals the termination of her parental rights to her child.

AFFIRMED.

Steven L. Cooper of Burdette Law Firm, P.C., Clive, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John Sarcone, County Attorney, and Stephanie Brown,
Assistant County Attorney, for appellee.

Alexandra Nelissen of Nelissen Law Firm, Des Moines, for father.

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

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

TABOR, J.

A mother appeals the termination of her parental rights to her now almost two-year-old son, who was seriously injured while in her custody. She alleges the child, P.W., would be safe in her care because her paramour is incarcerated and subject to a no-contact order. She also argues termination was not in P.W.'s best interests and a guardianship would help achieve permanency for the child.

Three major barriers impede the mother's reunification with P.W. First, at the time of the termination hearing, she faced criminal charges of child endangerment with serious injury and neglect in connection with her son's injuries. Second, the mother did not sustain a bond with P.W., failing to attend visits even when she was not in jail. Third, the mother did not adequately address her mental health or substance abuse problems. Clear and convincing evidence supports the statutory grounds for termination. The record also shows the child's safety and long-term nurturing and growth would be best served by termination of the mother's parental rights. Accordingly, we affirm the juvenile court's order.

1. Background Facts and Proceedings.

On March 30, 2011, thirteen-month-old P.W. arrived by ambulance at the emergency room. He had suffered a third-degree burn to his hand, another burn on his foot, fractures to his right and left tibia, multiple fractures to his left ulna, two small hematomas on his brain, bleeding from his right ear canal, and bruising on his face. The mother, Larissa, told investigators that she was present in the home when P.W. burned his hand by grabbing a candle, but the Department of

Human Services (DHS) determined that the burn pattern was not consistent with that explanation. Larissa also blamed P.W.'s bruises on a fall from a bed into a nightstand, but medical professionals did not believe that the bruises resulted from accidental contact with furniture. Larissa offered no explanation for her son's broken bones or head trauma. Larissa lived with her boyfriend Antonio at the time that P.W. sustained the injuries.

The DHS removed P.W. from his mother's care and placed him with his paternal great grandmother.¹ On May 9, 2011, the juvenile court adjudicated him as a child in need of assistance (CINA). After the CINA adjudication, Larissa did not take advantage of the services offered through the DHS; she did not provide drug screens, did not complete substance abuse evaluation or attend therapy, and missed many visits with her son. On May 30, 2011, Larissa entered jail to await trial on charges of child endangerment and neglect related to P.W.'s injuries. She remained incarcerated until August 4, 2011. Even after bonding out of jail, Larissa made little effort to engage in DHS-recommended services or contact with P.W.

Meanwhile P.W.'s father, Quincy, actively participated in reunification services, but needed more time to address his mental health and substance abuse issues. In September 2011, the court placed P.W. in Quincy's custody. That placement lasted only one month; Quincy relapsed into drug use and the child returned to his great grandmother's care.

¹ The DHS declined to place the child with his father, Quincy, because he had a known drug history and had recently been arrested for domestic abuse assault of his girlfriend.

On October 20, 2011, the State filed a petition to terminate the parental rights of both Larissa and Quincy. At the start of the November 22, 2011 hearing, the State dismissed the petition against the father and presented evidence only concerning termination of the mother's rights.

Larissa, who was twenty-one years old, testified regarding her drug history, her mental health troubles, and the violence she endured when living with Antonio. She described first trying marijuana at age eleven and using several times per week until she was jailed in May 2011. She told the court that she had been drug free for seven months and did not need substance abuse treatment. She also testified to having a "meltdown" during the week before the termination hearing, and being admitted into an intensive outpatient mental health program the day before the hearing.

On the issue of domestic violence, she told the juvenile court that Antonio had beat her as many as seven times, that she tried to leave him, but returned to him out of fear for her safety. At the time of the hearing, Antonio was in prison. Larissa testified to participating in a class concerning domestic violence offered by Children and Families of Iowa, but was yet to achieve a certificate that she completed the one-on-one sessions. Finally, she testified that because of her pending criminal charges she could not provide an explanation concerning P.W.'s injuries: "It has to do with my freedom, so I'm just being cautious of the whole thing."

On November 30, 2011, the juvenile court issued its order terminating the mother's parental rights. The court found it "particularly disconcerting" that

Larissa had not seen P.W. for more than six months, despite being given the opportunity to visit her son.

The mother now appeals.

II. Standard of Review

We review the termination of parental rights de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010) (citations omitted). We defer to the juvenile court's view of the facts, especially on issues of credibility, but we are not bound by its fact finding. *In re C.A.V.*, 787 N.W.2d 96, 99 (Iowa Ct. App. 2010). We will affirm if the grounds under Iowa Code section 232.116 (2011) are supported by clear and convincing evidence. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). "Clear and convincing" means there are no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.* (quoting section 232.116).

Deciding whether to terminate parental rights is a three-stage process.

First, the court must determine if the evidence proves one of the enumerated grounds for termination in section 232.116(1). If a ground is proven, the court may order the termination. Next, the court must consider whether to terminate by applying the factors in section 232.116(2). Finally, if the factors require termination, the court must then determine an exception under section 232.116(3) exists.

P.L., 778 N.W.2d at 40 (citations omitted).

III. Analysis

A. Termination Was Proper Under Iowa Code section 232.116(1)(h)

The juvenile court terminated Larissa's parental rights on four grounds: section 232.116(1)(d) (adjudicated CINA for physical abuse or neglect,

circumstances continue despite receipt of services); (e) (adjudicated CINA, removed from home for at least six months, and parents failed to maintain meaningful contact); (h) (child is three or younger, adjudicated CINA, removed from home for six of last twelve months, and cannot presently be returned home); and (j) (adjudicated CINA, parent has severe, chronic substance abuse problem and presents danger to self or others, and prognosis indicates child cannot be returned in reasonable time). To affirm, we need to find grounds for termination under just one of the sections cited by the juvenile court. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App.1996) *overruled on other grounds by P.L.*, 778 N.W.2d at 39.

At the time of the termination hearing, Larissa faced felony charges involving P.W. as the victim. Given that fact, Larissa acknowledged that she was not asking the juvenile court to return P.W. to her custody at the present time. Because the evidence supporting section 232.116(1)(h) was uncontested, both at trial and on appeal, we affirm on that ground.

Larissa asserts on appeal that it is possible she could regain custody within six months. We find that possibility too remote to delay permanency for P.W. The juvenile court succinctly summarized the downside to granting the mother more time:

It is unfair to expect [P.W.] to wait indefinitely for his mother to be accountable for the injuries he sustained, re-establish a relationship with him, resolve her addiction issues, resolve her relationship issues, resolve her mental health issues, and establish a safe and stable drug-free home where he can thrive.

Before turning to the mother's best-interest argument, we find it worthwhile to touch on the juvenile court's concerns about Larissa's unresolved criminal charges. Our supreme court has held that a juvenile court may not compel a parent to admit criminal responsibility for a child's injuries as a prerequisite to regaining custody. See *In re C.H.*, 652 N.W.2d 144, 149 (Iowa 2002). In the instant case, the juvenile court noted Larissa's testimony that she had to be cautious about disclosing information about P.W.'s injuries because her freedom was at stake. The court commented: "While there is some wisdom in this analysis, the problem is that Larissa has decided that she is not able to work on her own issues until after her criminal case is resolved." The court's comments did not cross the line drawn in *C.H.* The juvenile court did not penalize Larissa for exercising her Fifth Amendment privilege against self-incrimination. It simply found that Larissa had not adequately confronted her parenting deficiencies, in part because she was distracted by her own criminal case.

Given Larissa's past performance—including her lack of insight into her substance abuse problem and last-minute attention to her mental health situation—we are not convinced that additional time will increase the likelihood that she will be able to safely and effectively parent P.W. See *C.H.*, 652 N.W.2d at 151 (finding the father's past performance was proof additional time would not change his conduct).

B. Termination Was in P.W.'s Best Interests

Larissa contends that continuing P.W.'s relationship with his natural mother would be in his best interest. Larissa gives no specifics as to how she

would ensure the child's safety or why she would be the best placement for furthering P.W.'s long-term nurturing and growth. See Iowa Code § 232.116(2). At the termination hearing, Larissa testified she was not sure if a strong bond still existed between her and P.W. because she had no contact with him for many months. Even if Larissa is able to resolve her criminal charges, we do not find that it would be in P.W.'s best interests to remain in limbo while his mother confronts her other parental shortcomings so that she can renew the bonding process.

Larissa suggests that creating a guardianship would preserve her ability to reunify with the child within a reasonable period of time. But she does not specify who would be appointed as the child's guardian. Although the State withdrew its request to terminate the father's rights, he did not prove a stable placement for the child during the pendency of the CINA case.

A guardianship would only perpetuate the uncertainty for P.W. So long as Larissa retains her parental rights, she could challenge the guardianship and seek return of the child to her custody. See Iowa Code § 232.104 (providing the parent may seek to modify a permanency order). Termination of parental rights is the preferred solution when a parent is unable to regain custody within the time frames of chapter 232. See *In re C.K.*, 558 N.W.2d 170, 174 (Iowa 1997) ("An appropriate determination to terminate a parent-child relationship is not to be countermanded by the ability and willingness of a family relative to take the child.").

We conclude that severing legal ties with his mother is in P.W.'s best interest. None of the factors in section 232.116(3) weighs against termination.

Accordingly, we affirm the juvenile court's order.

AFFIRMED.