

IN THE COURT OF APPEALS OF IOWA

No. 2-1042 / 12-1808
Filed December 12, 2012

**IN THE INTEREST OF J.C.,
Minor Child,**

**K.F., Mother,
Appellant.**

Appeal from the Iowa District Court for Buchanan County, Alan D. Allbee,
Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Steven Ristvedt of Ristvedt Law Offices, P.C., Independence, for appellant
mother.

Alanson Flickinger of Craig, Wilson & Flickinger, Independence, for father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, and Shawn M. Harden, County Attorney, for appellee State.

Michael Bandy, Waterloo, for minor child.

Considered by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ.

EISENHAUER, C.J.

A mother¹ appeals from the order terminating her parental rights to one of her children, contending the evidence failed to establish the child could not be returned to her custody. We affirm.

When the parents divorced the second time in 2007, this child, then three years old, and an older sibling were placed with the father. The older sibling abused this child and was removed from the home. In 2008 the mother took the child and refused to return him until ordered to do so by the court. In 2009 the mother was convicted of soliciting the father's murder and incarcerated. She was released in 2010. In 2010, because of the child's behavioral problems, the father voluntarily placed him with the paternal grandmother, where he has remained. The child was adjudicated in need of assistance in May 2011, was placed in the custody of the department of human services, and continued to reside with the paternal grandmother. The child participated in play therapy and received medication for mental health issues, including post-traumatic stress disorder.

In late 2011 the mother had a supervised, therapeutic visit, but the child, who had not seen her since her arrest in 2008 for soliciting the father's murder, did not recognize her. By the time of a permanency hearing in May 2012, the mother had participated in nine or ten supervised visits. The child expressed a desire not to have visitation with the mother, expressed concern the mother "is going to take me again," and exhibited negative behavior after visits with the mother.

¹ The court also terminated the father's parental rights. He is not involved in this appeal.

The State sought termination of the mother's parental rights under Iowa Code section 232.116(1)(f) (2011). Following a contested hearing in mid-September, the court terminated the mother's parental rights. The court concluded returning the child to the mother's care would subject the child to adjudicatory harm as defined in section 232.2(6)(c)(1), (c)(2), (f), and (n). Concerning the child's best interests, the court found placement with the grandmother best furthered the child's long-term nurturing and growth; best met his physical, mental, and emotional condition and needs; and provided him with stability, safety, security, support, care, and comfort. The court noted the strong bond between grandmother and child and the grandmother's desire to integrate the child permanently into her family.

We review terminations de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We examine both the facts and law, and adjudicate anew those issues properly preserved and presented. *In re L.G.*, 532 N.W.2d 478, 480-81 (Iowa Ct. App. 1995). We accord considerable weight to the findings of the juvenile court, especially concerning the credibility of witnesses, but are not bound by them. *Id.* at 481.

The mother contends the State failed to prove by clear and convincing evidence the child could not be returned to her custody. She states she is employed, has suitable housing, and argues nothing indicates the child would be in imminent danger if returned to her care.

The mother either denies or does not recognize the child's mental and emotional health problems. When asked in the termination hearing about any danger to the child if returned to her care, the mother said she did not believe he

would be in any danger “because I haven’t seen any of the behaviors.” Yet she acknowledged she had seen the child for about twenty-four hours total in the four years preceding the termination hearing. The mother did not recognize disrupting the child’s stable, secure placement would hurt him: “I don’t think it would hurt him. I can give him the same care, the same attention that [the grandmother] does.” She focused instead on her own desires: “I’m his mom. I want him home where he belongs.” She made comments to the child inappropriate for his age: “If DHS gets what they want, I won’t get to see you for ten years.” (That is, until he turned eighteen). When asked about the appropriateness of such comments, the mother again focused on herself: “I wanted him to hear my side of it.” The mother minimized her actions in soliciting the murder of the child’s father, blaming the man who was her husband at the time for encouraging her to do it. We conclude the child would be at imminent risk of mental or emotional harm and lack of proper care if returned to the mother’s care. Clear and convincing evidence supports termination under Iowa Code section 232.116(1)(f).

Without listing any additional issues in her petition, the mother raises several claims in her argument in support of her one stated issue.² The mother argues the State did not make reasonable efforts to reunify her with the child because visitation was delayed for three months initially so the child’s therapist

² We encourage attorneys to follow form 5 in Iowa Rule of Appellate Procedure 6.1401 when preparing a petition on appeal, including setting forth separate legal issues, how they arose and were preserved for appeal; stating what findings or conclusions of the court the appellant disagrees with and why; generally referring to a particular part of the record supporting the appellant’s position; and providing supporting legal authority for each issue. See Iowa R. App. P. 6.201(d) (“The petition on appeal *shall substantially comply* with form 5 in rule 6.1401.” (emphasis added)); see also Rule 6.1401–Form 5.

could raise any concerns. She also argues she missed two and one-half months of visitation when a no-contact order was issued based on an “erroneous interpretation of a psychological evaluation” of the child. Though visitation is an important ingredient to the goal of reunification, *In re S.W.*, 469 N.W.2d 278, 280-81 (Iowa Ct. App. 1991), the nature and extent of visitation is always controlled by the best interests of the child and may warrant limiting parental visitation. See *In re C.G.*, 444 N.W.2d 518, 520 (Iowa Ct. App. 1989). The mother never progressed beyond supervised visitation. The child expressed fear for his safety if the mother were granted unsupervised visitation. The child also exhibited negative behavior after visits with the mother. We conclude additional visitation would not have resulted in reunification.

The mother also argues termination is not in the child’s best interests and it need not occur because the child was in the custody of a relative. In considering the child’s best interests, our primary considerations are “the child’s safety,” “the best placement for furthering the long-term nurturing and growth of the child,” and “the physical, mental, and emotional condition and needs of the child.” Iowa Code § 232.116(2). We also may consider how long the child has been in “a stable, satisfactory environment and the desirability of maintaining that environment and continuity for the child.” *Id.* § 232.116(2)(b)(1). Given the child’s fragile emotional condition, the mother’s past actions, the mother’s current inability to recognize his needs, the child’s placement in a stable and secure environment, and the desirability of maintaining that stability and continuity for him, we conclude termination of the mother’s parental rights is in the child’s best interests.

Although the child is placed with a relative, see Iowa Code § 232.116(3)(a), we do not find that factor precludes an otherwise appropriate termination. See *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). We affirm the order terminating the mother's parental rights.

AFFIRMED.