

IN THE COURT OF APPEALS OF IOWA

No. 2-188 / 12-0131
Filed March 28, 2012

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

**K.C., Mother,
Appellant.**

Appeal from the Iowa District Court for Linn County, Barbara Liesveld,
District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Annette F. Martin, Cedar Rapids, for appellant mother.

Edward Crowell, Cedar Rapids, for father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Jerry Vander Sanden, County Attorney, and Lance J. Heeren,
Assistant County Attorney, for appellee State.

Julie Trachta, Cedar Rapids, for minor child.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

DANILSON, J.

A mother appeals the termination of her parental rights to a son.¹ The mother has been unable to overcome difficulties stemming from substance abuse, mental health issues, and criminal proceedings. Because there is clear and convincing evidence that grounds for termination exist under section 232.116(1)(h) (2011), termination of parental rights is in the child's best interests pursuant to section 232.116(2), and no consequential factor weighing against termination in section 232.116(3) requires a different conclusion, we affirm.

I. Background Facts and Proceedings.

J.N. was born in November 2010 testing positive for cocaine and amphetamines. The mother, Keesha, has the following mental health diagnoses: depressive disorder, bipolar disorder, post traumatic stress disorder (PTSD), attention deficit hyperactivity disorder (ADHD), and poly substance abuse. At the time of J.N.'s birth, Keesha was on probation and had pending criminal charges. She had been in a residential substance abuse treatment program until three days before J.N.'s birth when she was asked to leave. At J.N.'s birth, Keesha tested positive for amphetamine, cocaine, and other opiates. She reported having used crack cocaine and an unprescribed drug the night before giving birth.

After J.N.'s birth, Keesha entered an inpatient substance abuse treatment program that allowed J.N. to be with her. Unfortunately, Keesha was discharged from the treatment program due to her own conduct.

¹ The father's parental rights were also terminated. He is currently serving a five-year sentence due to relapse and probation violation and has not appealed.

By stipulation of all parties, J.N. was adjudicated a child in need of assistance (CINA) on December 15, 2010. The court noted that Keesha was in inpatient substance abuse treatment with the child, and the father was involved in adult drug court. The district court ordered custody of J.N. remain with the mother while under the protective supervision of the Iowa Department of Human Services (DHS) and conditioned upon Keesha remaining in treatment “until successful completion.”

A January 19, 2011 dispositional order removed J.N. from the mother’s care and placed him with his paternal grandparents because Keesha had been unsuccessfully discharged from treatment. The court noted the following services were being offered to the family: family safety, risk, and permanency (FSRP) services, supervised visitation, couples’ counseling, relative placement, mental health treatment, medication management, Department of Corrections supervision and services, and DHS supervision and services. Keesha was authorized to live with J.N. in the paternal grandparents’ home so long as she maintained sobriety.

Keesha participated in treatment for a time and submitted several negative urinalyses (UAs). However, she moved out of the grandparents’ home after about two months because she “didn’t feel welcome there.”

A September 12, 2011 review and permanency order noted that a termination of parental rights petition had been filed. The court wrote:

Keesha relapsed in May. She is not complying with substance abuse treatment and drug testing. She denies relapsing and denies not cooperating with substance abuse treatment and drug testing. She has two new charges of Forgery and Fraudulent Use of Credit Cards. It is likely that she will be sentenced to a prison

term. Her revocation of probation proceedings were continued until the new charges are resolved.

The court ordered Keesha to cooperate with drug testing and complete a substance abuse evaluation. Supervised visits and other services were continued.

An October 31, 2011 letter sent to the court by Keesha's DHS social worker, Sandra McDonald, noted Keesha had not been cooperating with drug testing and was not complying with probation expectations or substance abuse treatment, but she was participating with supervised visits.

A termination hearing was held on November 3 and December 6, 2011. Dawn Larson, Keesha's probation officer, testified that she did not know where Keesha was living; she had not seen Keesha in person since May even though she remained on probation and check-ins were expected; Keesha last provided a UA in April 2011; Keesha was not participating in recommended substance abuse treatment; and the Department of Corrections likely would be recommending incarceration at Keesha's upcoming December probation violation hearing.

Karen Liechty, the FSRP worker, testified Keesha had attended twenty-two of thirty-one visits since July 2011. Keesha's visits with J.N. remained fully supervised. She described Keesha's parenting skills as "okay, but she could use improvement." Liechty noted that Keesha, on occasion, handles J.N. roughly and is easily frustrated.

Sandra McDonald testified that J.N. could not be returned to Keesha at present because she had not adequately addressed her mental health and

substance abuse concerns, and pending criminal charges. She stated Keesha and J.N. were bonded, but Keesha's likely prison sentence would remove her from being able to parent J.N. McDonald stated J.N. had been in his grandparents' care since January; he was doing well there; and they were willing to adopt him. She stated further, "I believe that the benefits and the importance of the stability and permanency for him outweighs that bond that he has with his mom and his dad."

The hearing was continued until December 6. Keesha testified there had been a hearing on her probation violation on December 2 and that it had been continued to determine whether she was a candidate for drug court. She had not yet gone to court on the newest misdemeanor charges. Keesha denied having relapsed in May. She stated that the reason she had not dropped any UAs since April was because she had become pregnant and had an abortion in May, which left her in pain for three weeks. And after that time, she was unable to understand the recording when she called in to see if she was to report for a UA. When asked why she had not appeared for a September meeting set up by her attorney with her social worker to resolve issues, Keesha stated:

I didn't feel my lawyer should be talking to [social worker] privately. I didn't want—I wanted a lawyer to hook up—stick up for me, not [social worker], and that's what [my lawyer] was doing. That's why I fired him. Sorry. That's the truth.

Q. You were aware you were invited to that meeting?

A. Oh, I was aware. And I told him he was fired because he was listening to everything [social worker] was saying and not trying to get my son back for me. He was parting with her, instead of me.

On January 9, 2012, Keesha's parental rights to J.N. were terminated pursuant to Iowa Code sections 232.116(1)(h) (child younger than three,

previously adjudicated CINA, out of parent's custody for last six consecutive months, and cannot be returned to parent at present time) and (I) (child adjudicated CINA and removed from parent's custody, parent has a severe, chronic substance abuse problem, and child will not be able to be returned in a reasonable period). Keesha appeals.

II. Standard of Review.

We conduct a de novo review of termination of parental rights proceedings. *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. Analysis.

Iowa Code chapter 232 termination of parental rights follows a three-step analysis. See *P.L.*, 778 N.W.2d at 39. The court must initially determine whether a ground for termination under section 232.116(1) is established. *Id.* If a ground for termination is established, the court must next apply the best-interest framework set out in section 232.116(2) to decide if the grounds for termination should result in a termination of parental rights. *Id.* If the statutory best-interests framework supports termination of parental rights, the court must finally consider

if any statutory exceptions or factors set out in section 232.116(3) weigh against termination of parental rights. *Id.*

A. Grounds for Termination.

“We only need to find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm its ruling.” *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2000). Section 232.116(1)(h) provides that termination may be ordered when there is clear and convincing evidence a child age three or younger who has been adjudicated CINA and removed from the parents’ care for the last six consecutive months cannot be returned to the parents’ custody at the time of the termination hearing. Iowa Code § 232.116(1)(h).

The mother contends statutory grounds have not been proved by clear and convincing evidence, complaining she has not been given the chance to move beyond supervised visitation and “she was never given the opportunity to show what she could do with [J.N.] on her own.” We reject the mother’s contention.

Clearly statutory grounds have been proved. The child is under three years of age. He was adjudicated CINA in January 2011 and has been out of Keesha’s custody for more than six consecutive months. She has not followed through with substance abuse or mental health treatment. She has failed to comply with the terms of her probation. The mother was offered numerous services, but did not take advantage of all of the services provided. At the time of the termination hearing, she remained unemployed and was facing probation revocation and new criminal charges. Keesha did not then have a home suitable

for J.N.: she was living with her mother and mother's boyfriend, the boyfriend having been determined not appropriate for J.N. to be around.

B. Factors in Termination.

Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of section 232.116(2). *P.L.*, 778 N.W.2d at 37. In determining the best interests, this court's 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." *Id.*

We agree with the district court's finding that termination and adoption would best provide for the child's long-term nurturing and growth. We repeat what the district court stated:

Permanency for children is critical to positive outcomes and success in life. Research indicates that a child must have a relationship with at least one adult who is nurturing, protective and fosters trust and security over time to become a physiologically healthy adult. Stability of relationships is important because day to day consistency of care giving directly impacts a child's ability to trust, love and cope. [J.N.] should not be made to wait for Keesha to grow up and for [father] to get out of prison.

See *P.L.*, 778 N.W.2d at 38-39 (discussing the importance of "providing a stable, loving homelife for a child as soon as possible").

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.

Id. at 41.

C. Exceptions or Factors Against Termination.

Finally, we give consideration to whether any exception or factor in section 232.116(3) applies to make termination unnecessary. The factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply the factors in this section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993).

We acknowledge there is a bond between mother and child here, however, we cannot maintain a relationship where there exists only a possibility the mother will become a responsible parent sometime in the unknown future. We conclude no exception or factor in section 232.116(3) applies to make termination unnecessary.

IV. Conclusion.

There is clear and convincing evidence that grounds for termination exist under section 232.116(1)(h), termination of parental rights is in the child's best interests pursuant to section 232.116(2), and no consequential factor weighing against termination in section 232.116(3) requires a different conclusion. We affirm termination of the mother's parental rights.

AFFIRMED.