

IN THE COURT OF APPEALS OF IOWA

No. 2-285 / 12-0413
Filed April 25, 2012

IN THE INTEREST OF Z.C.,
Minor Child,

P.J.K., 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.

Thomas P. Graves of Graves Law Firm, 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.

Jeremy Feitelson, West Des Moines, for father.

Karl Wolle of Juvenile Public Defender's Office, Des Moines, attorney and
guardian ad litem for minor child.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

BOWER, J.

A mother appeals the termination of 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 termination is not in the child's best interest and argues the exception to termination found in Iowa Code section 232.116(3)(a) (2011) should be applied in lieu of termination.

Because there is clear and convincing evidence supporting termination of the mother's parental rights and because termination is in the child's best interests, we affirm.

I. Background Facts and Proceedings.

The child at issue was born in May of 2009 and was removed from the mother's care and adjudicated in need of assistance following the mother's arrest in October 2010. The mother was found with marijuana in the child's presence and was charged with possession of marijuana, drug paraphernalia, and child endangerment. The mother made initial improvements and the child was returned to her care in January 2011. However, by April 25, 2011, the mother had been evicted from her residence, and the child was again removed from her care. Less than one month later, the mother was in jail on a probation violation. At the August 2011 review hearing, the mother was in jail pending trial on two forgery charges.

By the fall of 2011, the child was in the care of the father, who was granted additional time to show he could be safely reunited with the child. This plan unraveled following the mother's release from jail in November 2011.

Although the mother's first visit with the child was to be in a therapeutic setting, the father not only allowed the child to have contact with the mother but allowed the mother to stay overnight. During that night, the mother and father fought and exposed the child to trauma and harm. The child experienced distress as a result. The child was again placed in foster care and the mother was ordered to have no unauthorized contact with the child.

On January 3, 2012, the State filed a petition to terminate the mother's and the father's parental rights. The father voluntarily and intelligently consented to termination. Trial was held regarding termination of the mother's parental rights. In its order dated February 13, 2012, the juvenile court terminated the mother's parental rights pursuant to Iowa Code sections 232.116(1)(d), (e), and (h). Although the permanency plan calls for the child to be placed with relatives, the court found that given the child's age and chaotic history, relative placement did not militate against termination. Finding the State established termination is in the child's best interest, the court terminated the mother's parental rights.

II. Scope and Standard of Review.

We review proceedings to terminate parental rights *de novo*. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We give weight to the juvenile court's findings of fact, even though we are not bound by them. *Id.* This is especially true with regard to questions of witness credibility. *Id.*

III. Grounds For Termination.

The mother first contends there is insufficient evidence to support termination of her parental rights. The juvenile court terminated the mother's

parental rights pursuant to Iowa Code sections 232.116(1)(d), (e), and (h). We need only find grounds to terminate under one of these sections to affirm. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa 1999). Termination is appropriate under section 232.116(1)(h) where the State proves by clear and convincing evidence the following:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

There is no dispute the first three elements have been proved. The only question is whether there was clear and convincing evidence the child cannot be returned to the mother's custody at the time of termination.

We find clear and convincing evidence supports termination under section 232.116(1)(h). At the time of termination, the mother did not have stable housing or employment. She was still on probation for her child endangerment conviction and was facing two felony forgery charges. Additionally, the mother had not progressed beyond supervised visitation with the child and had insufficient parenting skills to safely parent the child. The mother herself testified she was unable to have the child returned to her care at the present time. The grounds for termination were proved.

IV. Best Interest.

The mother next contends termination of her parental rights is not in the child's best interest. In making the best interest determination, "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." Iowa Code § 232.116(2); *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010).

We find termination of the mother's parental rights is in the child's best interest. The mother is unable to safely parent the child, let alone attend to the child's nurturing and growth. As the district court noted:

Perhaps most telling was [the mother]'s patent inability to comprehend how to prioritize [the child]'s best interest. When asked what she believed to be in [the child]'s best interest, her answer was entirely focused on herself. The first thing she responded with was that this court date came too fast for **her**. She knew she was not in a position to look good for the Court and believed she deserved a chance because she and [the child] were very happy before. She then went on to say that it was wrong to put [the child] far away from his mother who loves him. It was all about [the mother].

While we agree the mother loves the child, she cannot provide for the child's physical, mental, or emotional need; cannot provide the child with nurturing and growth; and cannot safely care for the child.

The mother argues the exception to the termination statute found in section 232.116(3)(a) should be applied. That section states the court "need not terminate the relationship between the parent and child if . . . a relative has legal custody of the child." While the permanency plan anticipates the child will be placed with relatives, "[a]n 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.” *In re C.K.*, 558 N.W.2d 170, 174 (Iowa 1997). The child’s best interest always remains the first consideration. *Id.*

As stated, termination is in the child’s best interest. The child’s placement with a relative does not change this. The child deserves a permanent, stable home with a parent who can attend to the child’s needs. Termination allows the child this chance at permanency through adoption. There is simply insufficient evidence that would militate against termination of the mother’s parental rights under section 232.116(3).

Finding that the State has proved the grounds for termination by clear and convincing evidence and termination is in the child’s best interest, we affirm.

AFFIRMED.