

**IN THE COURT OF APPEALS OF IOWA**

No. 2-314 / 12-0408

Filed April 25, 2012

**IN THE INTEREST OF C.A.M.,  
Minor Child,**

**J.M., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Pottawattamie County, Craig Dreismeier, District Associate Judge.

A mother appeals from the order terminating her parental rights.

**AFFIRMED.**

Scott Strait, Council Bluffs, for appellant.

Thomas J. Miller, Attorney General, Janet Hoffman, Assistant Attorney General, Matthew Wilber, County Attorney, and Dawn Landon, Assistant County Attorney, for appellee.

Phil Caniglia, Council Bluffs, for minor child.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

**EISENHAUER, C.J.**

A mother appeals from the order terminating her parental rights to her child, born in July 2009. She contends the State did not prove the statutory grounds for termination and termination is not in the child's best interests because of the close parent-child relationship. On our de novo review, see *In re. D.W.*, 791 N.W.2d 703, 706 (Iowa 2010), we affirm.

The child was removed from the parents' care in August 2010 following a domestic assault by the mother on the father. The court found the child in need of assistance in September 2010 under Iowa Code section 232.2(6)(c)(2) and (n) (2009). The child remained in foster care. The mother was ordered to submit to random drug/alcohol screens; complete domestic violence counseling; participate in family safety, risk, and permanency services; follow the treatment recommendations from her chemical dependency evaluation; maintain employment and suitable housing; and participate in visitation.

In August 2011 the State sought to terminate the parental rights of both parents. The court terminated the father's parental rights but dismissed the petition concerning the mother for lack of clear and convincing proof. At the time, the mother was residing in a domestic violence shelter where the child could be placed with her, she was participating in services and visitation, and she was more consistent in dealing with her substance abuse issues. By the time of a review/modification/permanency hearing in September, the child was spending Tuesday through Thursday with the mother. The court found visitation would increase over the next month until the child was returned to the mother's care.

In November 2011 the trial home placement was terminated and the child was returned to foster care after the mother tested positive for alcohol, amphetamines, and methamphetamine. The mother was no longer living at the shelter because she failed to follow shelter rules. Although the mother had maintained her part-time employment, she did not have suitable housing.

In January 2012 the State again petitioned to terminate the mother's parental rights. After a contested hearing in February, the court terminated the mother's parental rights under Iowa Code section 232.116(1)(d), (h), (i), and (l) (2011). The court found termination was in the child's best interests. The child was in a pre-adoptive foster care placement. The mother appeals.

The court terminated the mother's parental rights on four independent grounds under section 232.116(1). On appeal we may affirm the termination on any ground we find supported by clear and convincing evidence. *D.W.*, 791 N.W.2d at 707. Termination is appropriate under section 232.116(1)(h) where there is clear and convincing evidence the child is three years of age or younger, has been adjudicated in need of assistance, has been removed from the parent's care for six of the last twelve months, and cannot be returned to the custody of the parent at the present time. There is no dispute the first three grounds have been proved. The mother contends the State failed to prove by clear and convincing evidence the child could not be returned to her care. At the time of the trial on the first termination petition, the court dismissed the petition as to the mother because there was not clear and convincing evidence supporting the statutory grounds alleged. The mother appeared to be close to having the child returned to her care. Then she relapsed on alcohol and illegal drugs. She lost

her housing at the shelter. A child cannot be returned to a parent's care if there is clear and convincing evidence "[t]he child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance." Iowa Code § 232.102(5)(a); see § 232.116(1)(h)(4). Her continued substance abuse makes it impossible to return the child to her custody. See *In re J.K.*, 495 N.W.2d 108, 113 (Iowa 1993). Clear and convincing evidence supports termination under section 232.116(1)(h).

Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of the child after a review of Iowa Code section 232.116(2). *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010). In determining the child's 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.* The mother contends termination is not in the child's best interests because they are bonded to each other. See *id.* § 232.116(3)(c). She argues the child has been moved in foster care two times, and she "is clearly the most consistent adult influence" in the child's life.

The Iowa Department of Human Services report to the court prior to the termination hearing noted the child "appears to have a very strong bond with his mother. He also becomes attached quickly to his foster parents and has developed a strong bond with his current foster parents." The court considered the parent-child bond and found:

Despite the fact that [the child] has a bond with his mother, he has been out of her care for more than half of his life. Contrary to [the mother's] assertions that she has been the most consistent figure in

his life, this Court disagrees and finds that his current foster family clearly has provided more of a consistent, stable home environment for him.

Giving primary consideration to the child's safety, to the best placement for furthering his long-term nurturing and growth, and to his physical, mental and emotional condition and needs, we conclude returning him to his mother's care is not in his best interests. See Iowa Code § 232.116(2); see also *id.* § 232.116(2)(b). Although there is evidence of a strong parent-child bond, we do not find clear and convincing evidence termination would be detrimental to the child based solely on that parent-child relationship. See *id.* § 232.116(3)(c); see also *D.W.*, 791 N.W.2d at 709 (stating "our consideration must center on whether the child will be disadvantaged by termination and whether the disadvantage overcomes [the mother's] inability to provide for [the child's] developing needs").

**AFFIRMED.**