

IN THE COURT OF APPEALS OF IOWA

No. 2-408 / 12-0651
Filed May 23, 2012

**IN THE INTEREST OF D.K.,
Minor Child,**

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

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A mother appeals the termination of her parental rights. **AFFIRMED.**

Heather A. Norman of Norman, Fleming & Norman, Dubuque, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Ralph Potter, County Attorney, and Jean A. Becker, Assistant County Attorney, for appellee State.

Steven J. Drahozal of Drahozal Law Office, P.C., Dubuque, for appellee father T.H.

Victoria D. Noel of Blair & Fitzsimmons, P.C., Maquoketa, attorney and guardian ad litem for minor child.

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

POTTERFIELD, J.

A mother appeals the termination of her parental rights, asserting the juvenile court erred in: (1) finding termination was in the child's best interests; (2) terminating her parental rights despite her close bond with the child; and (3) denying her an additional six months to work toward reunification. We affirm.

I. Background Facts and Proceedings

This family came to the attention of the Iowa Department of Human Services (DHS) on July 7, 2011, when the mother became homeless after being asked to leave her mother's residence because the landlord discovered she was on the sex offender registry. The mother and her newborn child then moved in with the child's potential paternal grandmother.¹ Soon after, the mother moved in with her boyfriend and left the child with the maternal grandmother.

On July 28, 2011, service providers at a family team meeting asked the mother to leave the child voluntarily with the paternal grandmother, which the mother agreed to do. The child remained in this home until October 6, 2011, when the child was placed in foster care. The child remained in foster care at the time of trial.

On September 1, 2011, the mother was placed at the Elm Street Correctional Facility after violating the terms of her probation on a sex abuse conviction. On September 22, 2011, the child was adjudicated to be in need of assistance based on the mother's homelessness and her inability to handle the responsibilities of caring for a newborn child.

¹ Paternity was disputed at the time.

The mother participated in two-hour supervised visits with the child twice per week. In December 2011, the mother's visits were increased to four hours twice per week, but, after consistent concerns during a two-week trial period, the duration of the visits was reduced to three hours per visit and visits occurred three times per week. The mother attended all visits with the child. Though the mother demonstrated an ability to provide for the child's basic needs, care providers expressed concerns about the mother's ability to do so consistently and her ability to be engaged with the child for the full visit.

The correctional facility at which the mother resided placed residents on a system of four levels, through which the residents would advance as they demonstrated progress. As of the final report to the court dated February 22, 2012, the mother had been unable to progress and remained at the lowest level due to repeated violations of the facility's rules. She had been written up on ten separate occasions for violating rules. One week before trial, which was on March 8, 2012, the mother advanced to the second level at the facility. The facility recommended the mother remain in the facility for an additional six months, though she testified she could progress through the remaining levels in less than six months. The mother testified she believed she could complete the remaining levels because she was taking the levels more seriously and wanted to focus on getting her child back. She testified that the last family team meeting (either the February 1, 2012 meeting or a later meeting), was emotional for her because it was the first time she realized the seriousness of the matter.

As of the time of trial, the mother was in a relationship with an individual who had a criminal history and was also on probation. For these reasons, the

mother's probation officer would not allow her to have physical contact with the individual. The mother testified she had violated this rule nine times, most recently on January 30, 2012. She testified she believed she was male dependent. She stated she talked to her boyfriend every day on the phone, contact that did not violate any rules of the facility. She testified the last time she saw her boyfriend was immediately before the trial when she saw him outside the courthouse.

The juvenile court terminated the mother's parental rights pursuant to Iowa Code section 232.116(1)(h) (2011). The mother appeals, asserting the juvenile court erred in: (1) finding termination was in the child's best interests; (2) terminating her parental rights despite her close bond with the child; and (3) denying her an additional six months to work toward reunification.

II. Additional Time

The juvenile court denied the mother's request for a six-month extension, finding it was unable to determine the need for removal would not still exist at the end of the six months. After our de novo review, see *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010), we agree.

Throughout the pendency of these proceedings, the mother failed to consistently demonstrate an ability to meet the child's needs. Though at times the mother appeared able to properly care for the child, at other times, she lost focus and could not provide for the child's needs. In her report to the court, the DHS caseworker assigned to this case stated that DHS could not decrease the supervision level of the mother's visits "due to [the mother's] inconsistencies in her parenting, attention, safety of the child, and alertness during visits."

In addition, the mother's behavior outside of visits suggested the mother had not made the decisions necessary to make the child a priority in her life. As the DHS caseworker assigned to this case noted, "[The mother] makes poor and impulsive choices which could also put [the child] at risk. . . . [The mother] intentionally lies . . . so she can spend time with her boyfriend and meet her own personal needs versus having the insight to see the long-term impact of her choices."

The mother made little progress until roughly the last month before trial, aside from obtaining steady employment. Unfortunately, the mother's delayed efforts leave us unconvinced that the need for the child's removal will no longer exist in six months. See Iowa Code § 232.104(2)(b). Service providers agreed, recommending against additional time. They noted the mother had only recently made improvements and the improvements had been inconsistent. They further expressed doubt that the mother would be able to resolve her problems within the next six months. We are unable to find the child could be returned to the mother's care within six months without further jeopardizing the child's physical and emotional well-being. "[P]atience with parents can soon translate into intolerable hardship for their children." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). The juvenile court properly denied the mother's request for additional time.

III. Best Interests and Parent-Child Bond

The mother asserts the juvenile court erred in finding termination of her parental rights was in the child's best interests. The mother does not contest that she was unable to have the child returned to her care at the time of trial and

therefore termination of her parental rights was proper under section 232.116(1)(h). We find termination is in the child's best interests, as determined under section 232.116(2).

The child has become integrated into and bonded with the foster family and is doing well in their care. See Iowa Code § 232.116(2)(b). The child's foster parents have provided a stable environment and have expressed an interest in adoption. See *id.* As discussed above, the mother has not shown she is capable of providing for the child's long-term needs. "[W]e cannot deprive a child of permanency . . . by hoping someday a parent will learn to be a parent" *P.L.*, 778 N.W.2d at 41. Using the framework provided in section 232.116(2), we conclude a termination of the mother's parental rights best provides for the child's safety, long-term growth, and physical, mental, and emotional needs.

The mother also asserts termination is not in the child's best interests because of her close bond with the child. A juvenile court need not terminate if the court finds "termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." Iowa Code § 232.116(3)(c). The factors in section 232.116(3)(c) are permissive, and it is in the court's discretion, based on the unique circumstances of the case and the best interests of the child, to apply such factors. *In re A.J.*, 553 N.W.2d 909, 916 (Iowa Ct. App. 1996). A review of the record reveals a bond exists between the mother and her child, and it is clear the mother loves her child very much. Unfortunately, that bond is outweighed by the mother's inability to care for the child and to put her child's needs first, as discussed above. We cannot find that termination of the

mother's parental rights would be detrimental to the child due to the closeness of the parent-child bond.

AFFIRMED.