

IN THE COURT OF APPEALS OF IOWA

No. 2-453 / 12-0710
Filed June 27, 2012

**IN THE INTEREST OF G.M.,
Minor Child,**

**C.M.M., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Constance Cohen,
Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Jesse A. Macro Jr. of Gaudineer, Comito & George, L.L.P., West Des
Moines, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Stephanie Brown,
Assistant County Attorney, for appellee-State.

Kimberly Ayotte of the Youth Law Center, Des Moines, for minor child.

Considered by Vaitheswaran, P.J., and Doyle and Danilson, JJ.

DANILSON, J.

A mother appeals the termination of her parental rights to her son, G.M., born in November 2011. The mother contends the State failed to prove the grounds for termination by clear and convincing evidence and termination is not in the best interests of the child. Upon our de novo review, we conclude the mother, who has had another child adjudicated a child in need of assistance (CINA) and her rights terminated, has been unable to develop and retain parenting skills to safeguard G.M. The mother also continues to show poor judgment in connection with paramours placing the child at risk. During these proceedings, the mother was offered and received services to correct the circumstances that led to G.M.'s adjudication, and the circumstances continue to exist in spite of the services received. We affirm.

I. Background Facts and Proceedings

G.M.'s mother, C.M., had previously been a CINA herself. As a parent, C.M. has struggled. C.M.'s parental rights to her first son were terminated in June 2008 pursuant to Iowa Code section 232.116(1)(h).¹ G.M. was born to C.M. and an unknown father in November 2011.

Within a few days following his birth, G.M. was placed in foster care by a temporary removal order. The order was entered due to C.M.'s unresolved mental health issues, domestic violence in relationships, and homelessness, which had persisted since the previous juvenile court proceedings regarding her

¹ Even though a different code year was applicable to this earlier termination proceeding, no pertinent changes to the section have occurred, and all citations will be to the 2011 Iowa Code. Section 232.116(1)(h) authorizes termination of parental rights where a child under three has been adjudicated CINA, has been out of parent's custody for at least six of previous twelve months, and cannot be returned safely.

first child. The State subsequently filed a petition alleging G.M. to be a CINA as provided in Iowa Code section 232.2(6)(c)(2) and (n) (2011).

C.M. continued to be involved in a highly abusive relationship with one man while attempting to divorce another man to whom she was still legally married. At that time C.M.'s paramour was in jail for an assault perpetrated on C.M. while she was pregnant with G.M. This inability to abstain from domestically violent and unstable relationships continued to jeopardize C.M.'s role as a safe caregiver for the child. Additionally, poor judgment and lack of improvement on mothering skills impaired C.M.'s progress.

Following an uncontested hearing in December 2011, G.M. was adjudicated a CINA and required to remain in foster care. G.M. did well in a concurrent plan placement, and C.M. began taking parenting classes, receiving family, safety, risk and permanency (FSRP) services, and assistance from the Iowa Department of Human Services (DHS). A dispositional hearing was held on February 14, 2012, after which the court adopted the State's recommendations in the case plan. The court noted the State had filed a petition to terminate parental rights on January 24, 2012.

During this time, C.M. continued taking parenting and domestic abuse classes to address her numerous violent abusive relationships. She was employed, had her own apartment, and was making some progress with other services and resources offered by DHS and FSRP. However, C.M failed to grasp the importance of becoming independent of her reliance on others, when those relationships had a negative impact on her life and her ability to care for G.M.

C.M. attended therapy to assist with her own numerous mental health diagnoses, but has struggled in these sessions and in finding a therapist who is acceptable to her. C.M. resists dealing with issues from her own past, and has even sought out a new therapist to avoid doing so. Despite the numerous FSRP services, adult services, therapy, parenting classes, and a psychological evaluation offered to C.M., she still could not meet G.M.'s basic needs for safety and well-being.

C.M. continued to attend supervised visits with G.M., as well as his doctor appointments. However, when C.M. attended a March 13, 2012 session with G.M., she was accompanied by a man who had moved in with her only days before, and who was a stranger to her DHS worker and her son.

C.M. has also not been able to understand G.M.'s developmental stages, and has not responded well to input from workers critical of her parenting skills, often times ignoring it. She also needs constant supervision while spending time with G.M. and requires frequent reminders regarding his basic care and physical needs.

On April 4, 2012, the court issued an order terminating C.M.'s parental rights to G.M. pursuant to Iowa Code sections 232.116(1)(d) and (g). The court observed:

There is no evidence to support a conclusion that [the mother] had gained insight into the types of abusive relationships in which she continued to involve herself. She has been in at least four domestically-violent relationships. She is easily persuaded by others and has changed her outlook on her relationship with [H.H.] several times, despite the significant abuse he perpetrated on her. . . .

. . . [The mother] continues to lack basic parenting skills. . . . [She] frequently places [the child] at risk even under this close supervision.

As [the child] becomes older and more mobile, safety issues will increase. His developmental delays will need special attention. . . . [C.M.] has not demonstrated that she can retain the information from one visit to the next . . . in order to recognize [G.M.'s] needs and meet them.

The mother now appeals, contending the trial court erred when it determined that termination of the mother's parental rights was in the best interests of the child pursuant to Iowa Code section 232.116(2). The mother further contends the trial court erred when it determined the elements of sections 232.116(1)(d) and (g) were met by clear and convincing evidence and terminated her parental rights to G.M.

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).

An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under Iowa Code section 232.116. 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." *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010).

III. Analysis

Iowa Code section 232.116, termination of parental rights follows a three step analysis. *P.L.*, 778 N.W.2d at 39. The court must first determine whether a ground for termination under section 232.116(1) is established. *Id.* If a ground for termination is established, the court must then apply the best-interest

framework set out in section 232.116(2) to decide whether the grounds for termination should result in the termination of parental rights. *Id.* If the best-interest framework supports the termination of parental rights, the court must finally determine whether any statutory exceptions detailed in section 232.116(3) weigh against termination of parental rights. *Id.*

A. Grounds for Termination

Although the juvenile court relied on more than one ground to terminate C.M.'s parental rights, we are obligated to affirm if there is clear and convincing evidence supporting a single ground absent any factors or exceptions against termination. *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2000). Iowa Code section 232.116(1)(d) provides that termination may be ordered if (1) the court has previously adjudicated a child who is a member of the same family to be a CINA and (2) subsequent to the CINA adjudication, the parent was offered or received services to correct the circumstance that led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

Here, C.M.'s first child was adjudicated a CINA, and her parental rights to that child were terminated. Notwithstanding services, including one-on-one supervision and training, C.M. remains unable to provide safe care to G.M. in situations potentially harmful to G.M. For example, after many reminders, C.M. frequently fails to support the baby's head and has left the child unattended on a changing table. She has also not improved on her judgment in relationships, is easily persuaded by her paramours, and has ignored guidance from her DHS worker. Because the requirements of section 232.116(1)(d) are satisfied, we need not address section 232.116(1)(g).

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 of the child, this court's primary considerations are the safety of the child, 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.* This consideration may include whether the parent's ability to provide the needs of the child is affected by the parent's mental capacity or mental condition. *Id.*

Due to G.M.'s increasing need for safety and special care, and C.M.'s inability to provide safe, attentive, and stable care on a consistent basis, as well as her lack of basic parenting skills, she is not able to provide for the safety of her child. Nor is she able to provide the best environment for furthering the long-term nurturing and growth of G.M. Over the course of C.M.'s involvement with the FSRP and DHS workers, she has failed to incorporate some of the crucial skills necessary to provide safe care for G.M. While at times she has taken the advice of these workers and been able to properly provide care to G.M., she continues to place G.M. in situations where there is potential for injury. Moreover, she fails to retain her training, showing no growth in her parenting skills. As G.M. grows, the challenges facing C.M. as his caregiver would only increase. G.M. is currently in pre-adoptive foster care with his biological half-sibling. See *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994) (noting that "whenever possible" siblings should be kept together).

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. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997), *overruled on other grounds by P.L.*, 778 N.W.2d at 39. Termination is not mandatory when clear and convincing evidence is found that termination would be detrimental to the child due to the closeness of the parent-child relationship. Iowa Code § 232.116(3)(c). 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). Although C.M. clearly loves G.M., there is no evidence C.M.'s relationship with G.M. is one that is so close it would be detrimental to the child if termination occurred. No other exception or factor contained in section 232.116(3) applies to make termination of C.M.'s parental rights unnecessary.

IV. Conclusion

There is clear and convincing evidence that grounds for termination exist under section 232.116(1)(d). Termination of parental rights is in the child's best interests pursuant to section 232.116(2), and there are no consequential factors negating the need for termination under 232.116(3). We therefore affirm.

AFFIRMED.