

IN THE COURT OF APPEALS OF IOWA

No. 2-482 / 12-0806
Filed June 27, 2012

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

**D.K.M., Mother,
Appellant.**

Appeal from the Iowa District Court for Story County, Victor G. Lathrop,
Associate Juvenile Judge.

A mother appeals the termination of her parental rights to her child.

AFFIRMED.

Kate R. Lyon of K. Lyon Law, P.L.L.C., Ames, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Stephen Holmes, County Attorney, and Tiffany Meredith,
Assistant County Attorney, for appellee.

Lucas Richardson, Ames, for father.

Shannon M. Leighty, Assistant Public Defender, Nevada, attorney and
guardian ad litem for minor child.

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

BOWER, J.

A mother appeals from the order terminating her parental rights to her child. She does not dispute the State proved the grounds for termination by clear and convincing evidence. Instead, she argues termination of her parental rights is detrimental to the child. Because the child is not so closely bonded to the mother that termination would be detrimental to the child, we affirm.

I. Background Facts and Proceedings.

The child at issue was born in May 2009 and tested positive for marijuana. The mother admitted smoking marijuana the weekend before the child was born and a child protective investigation report was founded against the mother for denial of critical care-failure to provide proper supervision. The mother agreed to voluntarily participate in services at that time.

The mother continued to use marijuana, and a second child protective investigative report was founded against her in August 2009 for this reason. A third report was founded against the mother for denial of critical care following a domestic violence incident in June 2010 between the mother and the child's father. The child witnessed the incident, for which the mother was arrested.

A petition alleging the child to be in need of assistance was filed in July 2010, pursuant to Iowa Code sections 232.2(6)(c)(2) and (n) (2009). In a September 13, 2010 order the juvenile court adjudicated the child in need of assistance pursuant to section 232.2(n). Following an October 6, 2010 dispositional hearing, it was ordered the child remain in the mother's care and custody under the supervision of the Iowa Department of Human Services

(DHS), provided the mother accept and cooperate with the services offered to her. These services included drug screens, drug treatment (including inpatient treatment if recommended), individual counseling, and obtaining and maintaining a home and employment.

The mother failed to meet the expectations placed upon her. Although she completed an inpatient drug treatment program in January 2011, she continued to use marijuana. She also remained homeless and unemployed. In February 2011 the State filed a motion to modify the dispositional order. Following a hearing the juvenile court entered its March 23, 2011 order modifying disposition and placed the child in family foster care.

An uncontested review hearing was held in August 2011. The mother continued to use marijuana and remained homeless and unemployed. The court continued the child's placement in foster care. The parties accepted the DHS's recommendations and no other services were requested.

A petition to terminate parental rights was filed on October 12, 2011. Following the January hearing, the juvenile court entered its order terminating the mother's parental rights on April 16, 2011.

II. Scope and Standard of Review.

We review termination of parental rights proceedings de novo. *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011). We give weight to the juvenile court's findings of fact, although we are not bound by them. *Id.* This is especially true when assessing witness credibility. *Id.* Our paramount concern is the child's best interests. *Id.*

III. Analysis.

Iowa Code section 232.116 follows a three-step analysis for termination of parental rights. *In re P.L.*, 778 N.W.2d 22, 40 (Iowa 2010). First, the court must determine whether the ground for termination under section 232.116(1) has been established. *Id.* If so, we then decide whether termination is in the child's bests, giving "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); *P.L.*, 778 N.W.2d at 40. The final step is to consider if any of the factors set forth in section 232.116(3) weigh against termination of parental rights. *P.L.*, 778 N.W.2d at 41.

The mother does not dispute sufficient grounds exist to terminate her parental rights under section 232.116(1)(h). The sole question on appeal whether there is clear and convincing evidence that termination would be detrimental to the child because of the closeness of the parent-child relationship. See Iowa Code § 232.116(3)(c). The considerations set forth in section 232.116(3) are permissive, not mandatory. *D.S.*, 806 N.W.2d at 474-75. The court has the discretion whether to apply the factors in this section to preserve the parent-child relationship. *Id.* This determination is to be made based on the unique circumstances of each case and the child's best interests. *Id.* at 475.

Because of the child's young age at the time of termination any bond that exists between the mother and child is limited. The child was not yet two years old at the time she was removed from the mother's care and placed in foster

care. The child had been out of the mother's care for nearly ten months at the time of the termination hearing. Although the mother had supervised visitation with the child, the mother had not seen the child in over a month leading up to the termination hearing.

We find termination of the mother's parental rights would not be detrimental to the child. The juvenile court found, and we agree, that "[t]he parents are bonded to [the child] much more than she is bonded to them. Any disappointment in the short term is far offset by the benefits in the long term." The child has already benefited from being placed out of the mother's care with her speech improving so she could speak "in normal two-year-old sentences." The foster family also provides the child with routine and structure the mother is unable to give. Terminating the mother's parental rights will allow the child permanency, which she desperately needs. Accordingly, we affirm the order terminating the mother's parental rights.

AFFIRMED.