

IN THE COURT OF APPEALS OF IOWA

No. 2-585 / 12-0935
Filed July 11, 2012

**IN THE INTEREST OF E.W.,
Minor Child,**

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

Appeal from the Iowa District Court for Linn County, Susan Flaherty,
Associate Juvenile Judge.

A mother appeals the district court's order terminating her parental rights.

AFFIRMED.

Natalie H. Cronk of Law Offices of Natalie H. Cronk, Iowa City, for
appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Jerry Vander Sanden, County Attorney, and William C.
Croghan, Assistant County Attorney, for appellee State.

John Bishop, Cedar Rapids, for appellee father.

Jessica L. Wiebrand, Cedar Rapids, attorney and guardian ad litem for
minor child.

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

VOGEL, P.J.

Kassy appeals the district court's order terminating her parental rights. Because we find the State proved the grounds for termination by clear and convincing evidence and because termination is in the best interests of the child, we affirm.

I. Background Facts and Proceedings

Kassy is the mother of E.W., born in 2010. E.W. came to the attention of the Iowa Department of Human Services (DHS) at her birth due to her two older siblings' involvement with DHS, which began in 2007.¹ Kassy and E.W.'s father, Chris,² were separated at the time of E.W.'s birth and divorced shortly thereafter. As part of the family safety plan, Kassy and Chris agreed to have no contact due to a history of domestic violence between them.

On August 3, 2010, a service provider went to Kassy's home to perform a safety check. Chris's vehicle was outside Kassy's home; when the provider inquired about Chris's vehicle, Kassy denied Chris was inside the home. When the provider checked the home, Chris was found hiding behind some boxes in Kassy's basement. Based on Kassy and Chris's violation of their agreement to have no contact with each other under the family safety plan and the condition of the home, DHS applied for and the court granted temporary removal. When a DHS social worker arrived at Kassy's house with the removal order, Kassy and

¹ Kassy became involved with DHS in 2007, regarding her son L.F., born in 2005, due to concerns of domestic violence. L.F. was adjudicated in need of assistance in October 2007, under Iowa Code section 232.2(6)(b) and (c)(2) (2007). A July 2009 permanency order placed L.F. with his father, Jason. In 2010, Kassy's parental rights were terminated as to her second child, T.W., born in 2008.

² Chris is also the father of Kassy's second child, T.W.; he does not appeal the termination of his parental rights as to E.W.

E.W. were gone. Providers called Kassy, telling her to bring E.W. back home; Kassy refused.

A temporary removal hearing was held on August 9, 2010. Kassy was not present for the hearing as she had absconded with E.W.; the court was unsure about their whereabouts at that time. Kassy and E.W. were located in California on September 17, 2010. Kassy and E.W. returned to Iowa shortly thereafter, and E.W. was placed in foster family care on September 21, 2010. In October 2010, the district court adjudicated E.W. a child in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(c)(2) (2009).

During the pendency of this case, Kassy has had difficulty maintaining housing. She has also continued to engage in relationships that she knows are of an abusive nature. Although providers reported that in April 2011 Kassy began to make improvements in that Kassy became employed, completed a mental health evaluation, and secured housing where she could have visits with E.W., they did not believe Kassy demonstrated sufficient stability to warrant returning E.W. to her.

A termination of parental rights hearing was held on May 19 and May 26, 2011, and then resumed on September 9, 2011. On May 1, 2012,³ the district court terminated Kassy's parental rights pursuant to Iowa Code section 232.116(1)(d) (court previously adjudicated this child or a child who is member of same family to be CINA after finding child was physically or sexually abused or neglected by omissions of one or both parents, parents offered or received

³ We find no explanation in the record regarding the gaps in time between the termination hearing dates (May and September 2011), nor the time between the last day of the hearing and the filing of the order in May 2012.

services to correct circumstances that led to adjudication and circumstances continues despite offer or receipt of services), (g) (adjudicated CINA, court has terminated parental rights with respect to another child who is member of the same family, parent continues to lack the ability or willingness to respond to services that would correct situation, additional period of rehabilitation would not correct situation), and (h) (child three or younger, adjudicated CINA, removed from physical custody at least six of last twelve months, child cannot be returned to custody of parents at present time) (2011). Kassy appeals.

II. Standard of Review

Our review of proceedings to terminate parental rights is *de novo*. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). The State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). Evidence is “clear and convincing” when “there are no serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.” *Id.* Where parental rights are terminated on more than one statutory ground, we only need to find grounds under one section to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Our primary concern in termination proceedings is the best interests of the child. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

III. Grounds for Termination

Kassy argues the district court erred in terminating her parental rights under Iowa Code section 232.116(1)(h). While Kassy concedes the first three elements of the statute were proved, she argues the State did not prove by clear

and convincing evidence that E.W. cannot be returned to her custody at the present time. Iowa Code § 232.116(1)(h)(4).

At the termination hearing in May 2011, providers testified that it was only within the preceding month that Kassy had begun complying with the requests of the case plan, such as securing housing and employment, and addressing her mental health issues. Providers also recognized that despite the fact that Kassy made the most progress in the month prior to the termination hearing, her visits with E.W. were still only semi-supervised and could not immediately move to unsupervised. Finally, providers testified regarding their concern with Kassy's lack of progress and inconsistency with services offered, especially since DHS had been involved in Kassy's life and offering her assistance since 2007.

Upon our review of the record, we agree with the district court that the State proved by clear and convincing evidence that E.W. cannot be returned to Kassy's custody at the present time. Because our primary concern in a termination proceeding is the best interests of the child, and the State demonstrated that Kassy's lack of stability and failure to make progress under the case plan made it so E.W. could not be returned to her custody at the present time, we affirm the grounds for termination under Iowa Code section 232.116(1)(h). *J.E.*, 723 N.W.2d at 798.

IV. Best Interests

Kassy further maintains the district court erred in finding termination of her parental rights was in E.W.'s best interests. Our primary considerations in assessing the best interests of the child are the child's safety and the need for a permanent home. *Id.* at 801 (Cady, J., concurring specially). While providers

testified that Kassy had made some progress in addressing the issues set forth in the case plan in the month prior to the May 2011 termination hearing, they voiced concerns regarding her ability to maintain such progress and her overall stability. Based on the evidence in the record, the district court explained, “The court is concerned with Kassy’s method of problem solving has not resulted in her being able to provide the stability necessary for her to safely care for E.W. on a permanent long-term basis.” The district court further concluded that although Kassy made some effort to address the issues in the case plan, “that effort has been inconsistent and sustained progress is not evident.”

On our review of the record, we agree with the district court that Kassy’s failure to maintain stability in her life interferes with her ability to provide a safe and permanent home for E.W. We recognize that “the crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.” *In re D.A., Jr.*, 506 N.W.2d 478, 479 (Iowa Ct. App. 1993). Because E.W.’s need for safety and a permanent home guides our analysis regarding E.W.’s best interests, and the State proved that termination is in E.W.’s best interests, we affirm.⁴ *Id.*

AFFIRMED.

⁴ On appeal, Kassy also maintained the State did not make reasonable efforts in facilitating reunification with E.W. The State asserts error was not preserved. We recognize that the State has an obligation to make reasonable efforts to reunite the child with the parent. *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). However, the parent has the obligation “to demand other, different or additional services prior to the termination hearing.” *Id.* Like the district court, we find that there is no record of any services requested by Kassy that were not provided for, or that appropriate referrals were not provided. We therefore find error has not been preserved for appellate review. See *id.* (finding where mother did not demand services other than those provided prior to the termination hearing, error was not preserved for purposes of appellate review).