

**IN THE COURT OF APPEALS OF IOWA**

No. 2-617 / 12-0942  
Filed July 25, 2012

**IN THE INTEREST OF L.C.H.,  
Minor Child,**

**L.K.B., Mother,  
Appellant.**

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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.**

Magdalena Reese of Pargulski, Hauser, & Clarke, P.L.C., Des Moines, for  
appellant mother.

Mark Reed of Marberry Law Firm, P.C., Des Moines, for father.

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

Michelle Saveraid of the Youth Law Center, Des Moines, for minor child.

Considered by Eisenhauer, C.J., and Doyle and Tabor, JJ.

**EISENHAUER, C.J.**

A mother appeals from the order terminating her parental rights. She argues the court should have granted the maternal grandmother a guardianship while continuing her role as the child's mother. She also claims her bond with her daughter prevents termination from being in the child's best interests. The father did not appeal from the termination of his parental rights. We affirm.

When the child was born in August 2011, the mother was incarcerated. At birth, the child tested positive for marijuana. The maternal grandmother cared for the child upon her release from the hospital. The juvenile court entered an order of temporary removal and placed custody with the grandmother. Following an uncontested removal hearing, the juvenile court confirmed the prior removal, finding both parents were still incarcerated.

Following an uncontested adjudication hearing in November 2011, the court found the child to be a child in need of assistance. In December 2011, at the time of the uncontested disposition hearing, the mother was residing in a halfway house and was employed. During her incarceration, the mother completed parenting classes and victim impact classes. She consistently exercised her visitation four times a week while at the halfway house. The court found barriers to reunification remained due to the mother's need to be completely honest about her substance abuse and domestic violence history. The court continued custody with the grandmother.

Two weeks later, in January 2012, the mother was arrested for parole violations and again incarcerated. The mother had tested positive for marijuana and synthetic drugs and was also under the influence of alcohol. In March 2012,

the State petitioned to terminate the parental rights of both parents. The court agreed to hear further permanency matters concurrently with the termination of parental rights litigation.

In May 2012, after hearing, the court terminated the mother's parental rights under Iowa Code sections 232.116(1)(d), (h), (l) (2011). The court noted the mother last saw her child four months before the hearing and found the mother is a person to whom the child "has no significant attachment because of incarceration." It made specific findings the mother "has a severe and chronic substance abuse problem which places herself and others at risk." Further, the court found the mother does not believe she has a substance abuse problem and without "an admission that there is a problem, change is unlikely." The court determined "there is no likelihood that an infant . . . could safely return to her mother within the foreseeable future." Additionally, the court concluded the mother's past criminal history raised "great doubts" about her ability to avoid incarcerations in the future.

Noting the grandmother is the only caretaker the child has ever known, the child has thrived in the grandmother's care, and the grandmother is willing to adopt the child and provide needed stability, the court ruled termination is in the child's best interests. Specifically:

Guardianship is not a preferred outcome for a child so young, especially for a baby whose parents are so inadequately prepared to meet her daily needs now and in the future. Given the chaos that has characterized the parents' lives to date, their ability to contest placement annually would create a harmful disruption to [the child]. There are no compelling reasons to maintain the parent-child relationships and no exceptions which outweigh termination of parental rights being in her best interest.

Our review of termination orders is de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We give weight to the court's findings, especially concerning credibility, but we are not bound by them. *Id.*

Mother argues termination was improper because the maternal grandmother has custody and because of the closeness of the relationship she has with the child and her willingness to fulfill her role as the child's mother. The court need not terminate parental rights if a relative has legal custody of the child. Iowa Code § 232.116(3)(a). Likewise, the court is required to determine if termination would be detrimental to the child at the time due to the closeness of the parent-child relationship. *Id.* § 232.116 (3)(c).

The mother has been under the supervision of the Iowa Department of Corrections for the child's entire life and the juvenile court found no significant attachment exists between the mother and the child. There is a strong bond and attachment between the child and the grandmother who wishes to adopt and who has provided the child's current level of consistency, stability, and predictability, allowing her to thrive. See *id.* § 116.2(b)(1) (considering "length of time child has lived in a stable, satisfactory environment and the desirability of maintaining that environment and continuity for the child"). We do not find clear and convincing evidence "the termination would be detrimental to the child . . . due to the closeness of the parent-child relationship." *Id.* § 232.116(3)(c).

Further, the mother does not recognize her chronic substance abuse problem and has only sought services while incarcerated, not while in the community. We recognize the mother's past performance may be indicative of the quality of future care she is capable of providing. *In re C.B.*, 611 N.W.2d 489,

495 (Iowa 2000). We will not gamble with the child's future by asking her to continuously wait for a stable biological mother, particularly at such a young age. *In re D.W.*, 385 N.W.2d 570, 578 (Iowa 1986). It is not in the best interests of the child to continue in a guardianship when her grandmother is willing to adopt her. *See id.* Termination of parental rights is in the child's best interests.

**AFFIRMED.**