

IN THE COURT OF APPEALS OF IOWA

No. 2-651 / 12-1100
Filed August 8, 2012

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

**S.B.-S., Mother,
Appellant.**

Appeal from the Iowa District Court for Van Buren County, Gary R. Noneman, District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

William C. Glass, Keosauqua, for appellant mother.

Margaret E. King, Cantril, for father.

Thomas J. Miller, Attorney General, Amy Licht, Assistant Attorney General, and H. Craig Miller, County Attorney, for appellee State.

Stephan H. Small, Fairfield, 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 to her daughter. She argues the court should not have terminated her rights because the child is in the father's care and this protects the child from any harm threatened by the mother. We affirm.

When the child was born in November 2009, the child and her parents lived with the paternal grandparents. In February 2010, the mother moved to Montana with a new boyfriend and missed a March 2010 Child in Need of Assistance (CINA) adjudication hearing (child to father's care) and a May 2010 CINA disposition hearing (custody and guardianship to father, mother ordered to participate in services). When the mother returned to Iowa in June 2010, she cancelled a June supervised visit.

In August 2010, the mother moved to North Dakota without notifying the Iowa Department of Human Services (DHS) or providing a forwarding address. She returned to Iowa in November 2010. During the mother's visit with the child in February 2011, the provider had to coax her to interact with the child. Also in February 2011, the mother moved to California without notifying DHS. She lived in California at the time of the termination trial.

While living outside of Iowa, the mother never visited the child, inquired about the child, or sent letters, cards, or financial support. She did not attend an August 2011 permanency and review hearing. The juvenile court noted the mother "essentially abandoned" the child. In September 2011, pursuant to a grant of concurrent jurisdiction, the district court placed the child in the sole guardianship/custody of the father and specifically denied visitation rights to the

mother. The mother was ordered to pay ten dollars of monthly child support. She has not made any payments. In total, the mother has attended three or four supervised visits with the child. DHS was unable to provide the mother with the recommended services (mental health, anger management, substance abuse) because she so frequently left the state without providing notice or contact information.

In January 2012, the State petitioned to terminate the mother's rights, asserting she abandoned her child. In May 2012, after hearing, the juvenile court terminated the mother's parental rights, stating:

[The mother] has not taken care of [the child] for over two years. She has had only sporadic contact with [the child] since the child was first placed in [the father's care] in March of 2010. Over that period, [the mother's] life, travels, and behavior have been a travelogue of instability. She has roamed from state to state, relationship to relationship, and has avoided her responsibilities under both the orders of the juvenile court and the district court.

. . . .
 [The mother] obviously has serious personal, behavioral, personality, and mental health problems Two previous children were removed from her care and her parental rights to those children were terminated. She has a personal history fraught with instability, has demonstrated no capacity for parenting, taking care of her daughter's needs, or for providing any type of stability Setting all of this history of dysfunction aside, however, the single most striking thing about her testimony . . . was the fact that every aspect of her testimony and conduct was about *herself*. . . .

Nothing in this record gives the court any reason to believe [the mother's] obsession with self and inattention to her parental duties will change now or at any time in the future. Maintaining a parent-child relationship between [the mother and the child] will only subject [the child] to the spinning and uncertain roulette wheel of [the mother's] life. [She] has demonstrated sufficient behavioral and mental instability that two courts—the juvenile court and the district court—have both barred her from visitation with the child. Given [the mother's] history of departing for parts unknown with men who the DHS has no contact with or control over, a real and substantial risk of abduction of the child from [the] father's care is possible. For [the child], the relationship with her mother, to the

extent it exists at all, is meaningless and potentially dangerous to the child.

. . . .
A clearer record of abandonment and desertion could hardly be said to exist [The child's] maturation into adulthood [is] greatly enhanced if [the mother] is not involved in her life.

The juvenile court concluded the statutory grounds for termination were met and termination was in the child's best interests.

On appeal, the mother does not argue statutory grounds for termination do not exist. Rather, she argues the court should have granted her motion to dismiss the CINA and termination proceedings. The mother argues termination is unnecessary because the child is in the father's care and this protects the child from any alleged harm from her.

The State argues termination is necessary to permanently assure the mother cannot disrupt the child's life by bringing future legal challenges to gain custody and visitation. Such security is necessary due to the mother's long history of untreated mental health problems and unpredictable behavior. The State contends termination of the mother's parental rights will ensure the child has a permanent and secure home with her father and will not be subject to the mother's ever-changing plans and whims. The father makes the same argument and notes his custody of the child is pursuant to Iowa Code section 600B (2011), which would allow the mother to seek custody of the child in the future.

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.*

The court need not terminate parental rights if a relative has legal custody of the child. Iowa Code § 232.116(3)(a). However, the “factors weighing against termination in section 232.116(3) are permissive, not mandatory.” *In re D.S.*, 806 N.W.2d 458, 474-75 (Iowa Ct. App. 2011). Accordingly, 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.” *Id.* at 475.

After our de novo review of the record, we conclude the court did not abuse its discretion in denying the mother’s motion to dismiss. See *In re N.M.*, 491 N.W.2d 153, 156 (Iowa 1992) (ruling children “deserve to be able to look forward to a positive future with their father without further disruptions by the mother”). We recognize a 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). There is no bond between the mother and the child, the mother has not utilized services to improve her stability and parenting, and the mother’s involvement serves only as a source of continued uncertainty and disruption. We affirm termination of the mother’s parental rights.

AFFIRMED.