

IN THE COURT OF APPEALS OF IOWA

No. 2-695 / 12-1115
Filed August 22, 2012

**IN THE INTEREST OF L.B.,
Minor Child,**

**J.B., Mother,
Appellant.**

Appeal from the Iowa District Court for Black Hawk County, Daniel L. Block, Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Christopher Nydle of Nydle & Forcier, P.L.L.C., Waterloo, for appellant mother.

Linda Hall of Gallagher, Langlas & Gallagher, Waterloo, for father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Steven Halbach, Assistant County Attorney, for appellee State.

Andrew Abbott of Abbott Law Office, P.C., Waterloo, 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 one of her children. She contends the court erred in finding (1) the State proved statutory grounds for termination, (2) termination was in the child's best interests, and (3) no exceptions served to preclude termination of her parental rights. On de novo review, *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010), we affirm.

The child, born in March 2011, was removed from the mother's care in August when the mother tested positive for amphetamine and methamphetamine and the child tested positive for cocaine and methamphetamine. The child was placed in family foster care with an older half-sibling, where the child has remained. The mother has a history of mental health and substance abuse issues and continued to struggle with them throughout this case.

The court entered a permanency order in March 2012 deferring permanency as to the older half-sibling because of efforts to place that child with that child's father, but directing the county attorney to file a petition for termination of the parents' parental rights as to this child.

After a trial, the court entered an order finding clear and convincing evidence supported terminating the mother's parental rights under Iowa Code section 232.116(1)(e), (h), and (l) (2011). The court also found termination was in the child's best interests "[b]ecause of the child's age, the parents' lack of participation in services, history of substance abuse, chaotic lifestyle choices" and the parents' lack of availability and limited parenting skills. The court concluded deferring permanency for six months was not in the child's best interests because the mother "has not demonstrated by her behaviors or her

follow through with services that a significant likelihood exists that the child could be returned to her care in six months. The father consented to termination of his parental rights and did not appeal.

Statutory Grounds for Termination. The mother contends the court erred in finding clear and convincing evidence for termination under Iowa Code section 232.116(1)(h) or (l). She does not challenge termination under section 232.116(1)(e), and we affirm on that ground. See *D.W.*, 791 N.W.2d at 706; *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). We also affirm the termination under section 232.116(1)(h). Only the fourth element is in any dispute. We find, as did the juvenile court, the child could not be returned to the mother's care at the time of the termination hearing. See Iowa Code § 232.116(1)(h)(4). This element is proved when the evidence shows the child cannot be returned to the parent without remaining in need of assistance. *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa Ct. App. 1995). The mother had only recently completed substance abuse treatment and had not demonstrated any period of sobriety. She missed numerous visits with the child, even during the weeks just preceding the termination hearing. The mother's housing was uncertain. The child would be subject to abuse or neglect if returned to her care.

Throughout her petition on appeal the mother argues the court should have deferred permanency because the child could be returned to her care within a reasonable time. In order to delay permanency the court must be able to "enumerate the specific factors, conditions, or expected behavioral changes which comprise the basis for the determination that the need for removal of the child from the child's home will no longer exist at the end of the additional six-

month period.” Iowa Code § 232.104(2)(b). The court determined the mother had not “demonstrated by her behaviors or follow through with services that a significant likelihood exists that the child could be returned to her care in six months.” We agree the mother’s behavior and lack of follow through with services prevented a finding a six-month delay in permanency would allow her to achieve reunification with the child. We affirm the court’s determination not to defer permanency.

Best Interests. The mother also contends the court erred in finding termination was in the child’s best interests. She mixes her best-interest claim under section 232.116(2) with an argument concerning one of the discretionary exceptions to termination in subsection (3). The mother argues she is best suited to meet the child’s physical, emotional, and mental needs. She also argues there is a strong parent-child bond and it would be detrimental to the child to sever that bond. See Iowa Code § 232.116(3)(c). She further argues separating the child from the half-sibling is not in the child’s best interests. We address the section 232.116(3) arguments in the next section.

Once a statutory ground for termination exists, the court may terminate a parent’s parental rights. *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010). In considering whether to terminate, the court must then apply the best-interests framework established in section 232.116(2). *Id.* The Iowa Code highlights as primary considerations: the child’s safety, 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. Iowa Code § 232.116(2). “A child’s safety and the need for a permanent home are now the primary concerns when

determining a child's best interests." *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially). Those best interests are determined by looking at both the child's long-range and immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). We consider what the future likely holds for the child if returned to the parents. *In re J.K.*, 495 N.W.2d 108, 110 (Iowa 1993). We gain insight into that determination from evidence of a parent's past performance, for that performance may be indicative of the quality of the future care that a parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493–94 (Iowa 1990).

We conclude termination of the mother's parental rights is in the best interests of the child. The mother had only recently taken any significant step toward addressing her substance abuse issues. She did not have stable housing, was not taking her mental health medication as directed, and had not consistently exercised visitation—even when termination of her parental rights was imminent. The child has done well in foster care. "It is well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child." *P.L.*, 778 N.W.2d at 41. "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). We conclude terminating parental rights and freeing the child for adoption will best promote the child's safety; long-term nurturing and growth; and physical, mental, and emotional needs. See Iowa Code § 232.116(2).

Exception to Termination. The mother also contends the court should not have terminated her parental rights because termination will be detrimental to the child because of the closeness of the parent-child relationship. See *id.* § 232.116(3)(c). The mother's sister, who supervised some of the mother's visitation with the child, testified there is a parent-child bond. The case manager testified the mother loves the child and the child loves the mother. The child has a close bond with the half-sibling.

The court did not address this issue in its order terminating the parents' parental rights. It does not appear the mother filed a motion to amend or enlarge the court's order. This issue is not preserved for our review. Even if it were properly before us, our "consideration must center on whether the child will be disadvantaged by termination, and whether the disadvantage overcomes" the parent's inability to provide for the child's developing needs. *D.W.*, 791 N.W.2d at 709. Nothing in the record before us convinces us the parent-child bond is so close that severing it will be detrimental to the child.

Concerning separating the half-siblings, the permanency plan for the older half-sibling is placement with that child's father, which will separate the children. We do not find this separation to be a basis for avoiding an otherwise appropriate termination of the mother's parental rights to this child.

AFFIRMED.