IN THE COURT OF APPEALS OF IOWA

No. 3-1231 / 13-1703
Filed January 23, 2014

IN THE INTEREST OF A.S.,
Minor Child,

T.S., Mother,
Appellant.

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights. **AFFIRMED.**

John T. Nemmers of Reynolds & Kenline, L.L.P., Dubuque, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd and Janet L. Hoffman, Assistant Attorneys General, Ralph Potter, County Attorney, and Joshua Vander Ploeg, Assistant County Attorney, for appellee State.

Denis D. Faber Jr., Dubuque, for minor child.

Considered by Danilson, C.J., and Vaitheswaran and Potterfield, JJ.

DANILSON, C.J.

A mother appeals from the order terminating her parental rights pursuant to Iowa Code section 232.116(1)(h)[1] and (*l*)[2] (2013). Upon our de novo review, *In re A.B.*, 815 N.W.2d 764, 773 (Iowa 2012), we find clear and convincing evidence to support termination under section 232.116(1)(h), and thus, need not discuss the other statutory ground. *See id*. at 774 ("When the juvenile court terminates parental rights on more than one statutory ground, we may affirm the juvenile court's order on any ground we find supported by the record."). The mother has failed to address her mental health needs and substance abuse issues and we can discern no reason to afford her an extension of time. We also find no prejudice by the State's late filing of its witness and exhibit list. We affirm the termination of the mother's parental rights.[3]

I. Background Facts.

The child was born in November 2012. The mother, who had an extensive personal history with the department of human services (DHS), turned eighteen in January 2013. The child was removed from the mother's custody in February 2013 when the maternal grandfather contacted DHS: he reported the mother had left the child in his care (leaving in the middle of the night and not telling him), he did not know the mother's whereabouts, and he was unable to

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[1] Section 232.116(1)(h) allows termination of parental rights where a child three or under has been adjudicated a child in need of assistance (CINA), has been out of the parent's custody for at least six months, and cannot be returned at present.

[2] Section 232.116(1)(*l*) allows termination of parental rights where a child has been adjudicated a CINA and removed from the parent's care, and the parent has severe substance-related disorder and presents a danger to self or others, and there is clear and convincing evidence the child will not be able to be returned within a reasonable period of time.

[3] The father's rights were also terminated. He does not appeal.

care for the infant long-term. Upon removal, the child tested positive for THC (marijuana).

The mother states she has an apartment and income (SSI and her boyfriend's income).

The mother has not addressed her mental health issues. The mother has several diagnoses and a long history with services as a juvenile, which we need not cover here. Although she was ordered in April 2013 to get a mental health evaluation, she did not set up the evaluation until after the July disposition hearing, and she failed to follow through with the evaluator's request to observe a parent-child interaction before completing the evaluation report. The evaluation report noted the mother has significant mental health issues and is in need of treatment. Though the mother said at the termination trial that she would be willing to attend therapy, her actions speak louder than words. *See In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000) ("The future can be gleaned from evidence of the parent[']s past performance and motivations.").

Nor has the mother addressed her substance abuse issues. The child tested positive for THC when removed from her care. The mother admits marijuana use. A substance abuse evaluation—which the mother did not schedule until July 2013 despite weekly reminders to do so—resulted in a recommendation of extensive outpatient treatment. She attended one group session. When she told the counselor she did not feel comfortable in a group setting, individual sessions were arranged. The mother attended only two sessions and no more. She states she has not used marijuana for two weeks. She insists she can stay clean without treatment and that she is sober, but her

two-week period of claimed sobriety is not sufficient in light of her five-year history of admitted marijuana usage.[4] *See In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998).

The mother has not been consistent in visiting her child—having her scheduled visits decreased from three per week early in the CINA proceedings to just one per week as a result of her inconsistent attendance. The mother attended only fifteen of forty-four scheduled visits or appointments. The appointments were the child's medical appointments and the mother failed to attend most of them (attending for the first time in August 2013). She was not employed, and no work schedule kept her from visits. At the time of the termination trial, the mother had not seen her child for three weeks. Because she sees her child infrequently, she must be prompted as to the child's needs.

The mother has a suitable apartment and income (SSI in the sum of $710 per month and some financial help from her boyfriend). However, we note her father paid the apartment rent for six months and furnished the apartment.

II. Iowa Code section 232.116(1)(h).

The mother contests only the fourth element of section 232.116(1)(h), arguing there is not sufficient evidence the child could not be returned to her presently. The record establishes that despite the mother's love for the child and her ability to care for the child for a three-hour period with full supervision, the

[4] The social worker involved in this case was also the mother's social worker when she was a juvenile. The social worker testified the mother had struggled with marijuana usage since the age of thirteen. The mother was pregnant at the time of the termination hearing and testified that before she was pregnant, her marijuana usage "was horrible." She acknowledged buying $120 of marijuana per day for over a month after receiving a large amount of money ($8000 from SSI and $5000 from her father).

child cannot be returned to her at present without risk of harm or neglect to the child. She had made little, if any, progress over the course of eight months and, at best, has shown only sporadic responsibility to parent the child. At some juncture in her life she must address her mental health needs and substance abuse issues. Her use of marijuana while this action was pending, and during her current pregnancy, is indicative of placing her own desires above any responsibilities.

Giving primary consideration to "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), we conclude termination and adoption here best provide the stability and security this child deserves. A.S. has been in the care of the same pre-adoptive foster family for almost a year. The child is integrated into that home and is doing well there.

The mother does not argue, and we do not find any exception or factor in section 232.116(3) applies to make termination unnecessary. *See In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010); *see also In re D.S.*, 806 N.W.2d 458, 474–75 (Iowa Ct. App. 2011) (noting the factors weighing against termination in section 232.116(3) are permissive, not mandatory).

III. Supervised Visits.

The mother argues visits should have been changed from fully supervised to semi-supervised. For the same reasons noted above, we disagree. The mother's own inconsistencies in visits and her failure to follow through with

required services and recommendations weigh heavily against providing less supervision during visits.

IV. Additional Time.

The mother contends the juvenile court erred in not allowing additional time to seek reunification. Our review of this record finds no request for additional time, and an issue cannot be raised for the first time on appeal. *See In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003) ("Even issues implicating constitutional rights must be presented to and ruled upon by the district court in order to preserve error for appeal.").

In any event, "[w]e have repeatedly followed the principle that the statutory time line must be followed and children should not be forced to wait for their parent to grow up." *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998).

V. Exclusion of Evidence.

Finally, the mother argues the court erred in denying her request to exclude the State's exhibits and witnesses because they were untimely (having been provided five days before trial, rather than seven). The trial court fully addressed this matter, noting the appropriate remedy would be a continuance, not exclusion of evidence. *See In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996) (noting juvenile court has discretion to grant a continuance). The mother's remedy for this late notice was a continuance to prepare for trial. She was offered a continuance but did not accept the offer. She was not surprised by the witnesses or exhibits. All but one of the exhibits was a prior exhibit in the CINA proceedings. *See In re Adkins*, 298 N.W.2d 273, 277–78 (Iowa 1980) (stating

that it is permissible for the trial court in a termination proceeding to take judicial notice of the prior CINA case, including the evidence). We affirm.

AFFIRMED.