

IN THE COURT OF APPEALS OF IOWA

No. 3-238 / 13-0163
Filed March 13, 2013

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

M.B., Mother,
Appellant.

Appeal from the Iowa District Court for Clinton County, Phillip J. Tabor,
District Associate Judge.

A mother appeals from the termination of her parental rights. **AFFIRMED.**

Victoria D. Noel of The Noel Law Firm, P.C., Maquoketa, for appellant
mother.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant
Attorney General, Mike Wolf, County Attorney, and Cheryl Newport, Assistant
County Attorney, for appellee State.

Marsha Arnold, Davenport, for appellee father.

Lucy Valainis, Davenport, attorney and guardian ad litem for minor child.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ. Tabor, J., takes
no part.

DOYLE, J.

A mother appeals from the order terminating her parental rights to her child, B.B. She claims the State failed to prove the grounds for termination by clear and convincing evidence, and the juvenile court abused its discretion in not granting her additional time for continued reunification services. We review her claims de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

The mother has a long history of alcohol abuse and domestic violence incidents. She also has a history of involvement with the Iowa Department of Human Services (Department), relating back to a 2008 founded child abuse report for denial of critical care to her other child, after that child witnessed the mother assault a relative while the mother was intoxicated.¹ The mother received services from the Department from November 2008 until April 2009.

The mother gave birth to B.B. in early March 2012. The day following the child's birth, the child was admitted to the University of Iowa's Children's Hospital Neonatal Intensive Care Unit after he suffered respiratory distress. The hospital's report noted the child's respiratory distress symptoms suggested drug withdrawal or intoxication. The hospital also noted in its past medical and social history report that the mother had presented to the emergency room in Clinton, Iowa, in November 2011, while she was pregnant with the child, after a domestic assault. The mother had a blood alcohol level of .254 at that time. The history report further noted a history of domestic violence between the parents, and also the mother's mental illness was not well controlled.

¹ The mother's parental rights to that child are not at issue here.

In late March 2012, another domestic incident was reported between the child's parents to law enforcement.² The mother had a broken orbital socket and hemorrhaging behind her eye, caused allegedly by the father's repeated punching of the mother in her face. The child was present for this altercation, and a child abuse assessment was initiated thereafter, when the Iowa Department of Human Services (Department) learned of the incident. A no-contact order was put in place between the parents, and the child remained in the mother's care.

In May 2012, the mother violated the no-contact order, resulting in her punching the father in the nose and subsequent police involvement. The child was again present when the assault occurred. Following this incident, the child was removed from the mother's care and placed in foster care, where he has since remained.

In November 2012, the State filed its petition for termination of the mother's parental rights. Following a hearing, the mother's parental rights were terminated pursuant to Iowa Code section 232.116(1) paragraphs (d), (e), (h), (i), and (j) (2011). We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

We choose to focus our attention on section 232.116(1) paragraph (h). Under that paragraph, parental rights may be terminated if the court finds by clear and convincing evidence that the child is three years of age or younger, has been adjudicated a CINA, has been removed from the physical custody of his parents for at least six months of the last twelve months, and there is clear and

² The father has not appealed the termination of his parental rights.

convincing evidence that the child cannot be returned to the custody of the child's parents at the present time. Iowa Code § 232.116(1)(h). The mother concedes the first three elements were proved; it is the last element the mother challenges here. Upon our de novo review, we find the State has met its burden.

While the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," this patience has been built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). The legislature incorporated a six-month limitation for children adjudicated CINA aged three and younger. See Iowa Code § 232.116(1)(h)(2), (3). Our supreme court has stated that "the legislature, in cases meeting the conditions of [the Iowa Code], has made a categorical determination that the needs of a child are promoted by termination of parental rights." *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990) (discussing Iowa Code section 232.116(1)(e)). The public policy of the state having been legislatively set, we are obligated to heed the statutory time periods for reunification.

Here, the mother is not a stranger to involvement with the Department. In this case, after B.B. was adjudicated a CINA in June 2012, the mother was offered services, including substance abuse treatment. The very next month the mother was charged with public intoxication after she was found passed out in an alley with a blood alcohol concentration of .350; yet, she denied having a problem with alcohol. It was recommended throughout the case the mother participate in inpatient treatment, which would have allowed the mother to work towards sobriety and alleviate both her lack of housing and transportation issues,

but the mother rejected the inpatient options. In the outpatient treatment program the mother did enter, she only participated minimally for a short time.

The mother was also offered mental health treatment. However, the mother failed to address her mental health issues throughout the case, canceling many appointments with her therapist and failing to take her prescribed medication consistently. The mother was offered visitation with B.B., but she did not attend the visitation consistently.

Additionally, the mother was offered domestic violence counseling, but she failed to complete the counseling. Throughout the case she continued to see the father off and on, despite the existence of the no-contact order. Another domestic incident occurred between the parents in October 2012, resulting in charges against the father. The mother was also assaulted in September 2012 by her brother, who she was staying with at the time. The assault resulted in injuries to the mother, and her brother was charged with domestic assault as a result of the incident.

Despite her overall lack of participation in necessary services during the pendency of the case, the mother claimed at the termination hearing that she would now be able to complete substance abuse treatment and other aspects of her case plan because she had moved into her cousin's residence in January 2013. Although we hope this is true for the mother, her latest assurance that she is now interested in treatment is simply too little, too late in B.B.'s case. A parent cannot sit back and "wait until the eve of termination, after the statutory time periods for reunification have passed, to begin to express an interest in

parenting.” *C.B.*, 611 N.W.2d at 495. As stated above, we are obligated to heed the statutory time periods for reunification.

Upon our *de novo* review of the record, we find the State proved by clear and convincing evidence that the child could not be returned to the mother’s care at the time of the termination hearing. Accordingly, we agree with the juvenile court that termination of the mother’s parental rights was proper under Iowa Code section 232.116(1)(h).

The mother also argues the juvenile court abused its discretion in not granting her additional time to continue participating in reunification services. A juvenile court has the discretion to continue a child’s placement out of the home for an additional six months if it determines the need for removal will no longer exist at the end of the additional period. See Iowa Code § 232.104(2)(b). However, the evidence in this record does not allow such a determination. We find no abuse of discretion under the circumstances of this case.

AFFIRMED.