

IN THE COURT OF APPEALS OF IOWA

No. 3-317 / 13-0137

Filed April 10, 2013

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

K.P., Mother,
Appellant.

Appeal from the Iowa District Court for Warren County, Kevin Parker,
District Associate Judge.

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

Jeremy M. Evans of Sporer & Flanagan, P.L.L.C., for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John Criswell, County Attorney, and Tracie Sehnert, Assistant
County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

MULLINS, J.

The mother appeals the termination of her parental rights under Iowa Code section 232.116(1)(b), (e), (h), and (l) (2011). The mother contends the State failed to present clear and convincing evidence to support grounds for termination under section 232.116(1)(e) and (l), and argues termination is not in the child's best interest. We affirm.

I. Background Facts & Analysis

N.B. was born in February 2012. N.B. was born with several health-related issues including an underdeveloped respiratory system and asthma. The mother has a significant history of substance abuse with self-reported drug use starting at age fourteen and methamphetamine use beginning at age seventeen. The mother identified two potential biological fathers for N.B. Subsequent paternity testing confirmed neither man was N.B.'s biological father. Paternity testing for a third potential father was pending at the time of the termination proceedings.

In June 2012, the State filed a child in need of assistance (CINA) petition on the child's behalf after learning the mother and her boyfriend were using methamphetamine. The CINA petition alleged that the mother and the man thought to be N.B.'s father did not have stable housing and lived in four different residences in as many months. The mother admitted to using marijuana and methamphetamine and her boyfriend tested positive for marijuana and methamphetamine. Both the mother and the boyfriend were unemployed and neither had reliable transportation or driver's licenses. The petition further

asserted the mother and the boyfriend had “limited supports and their support network is made up of problematic acquaintances.” The petition concluded that both the mother and the boyfriend were “in need of substance abuse treatment and they cannot provide adequate care to [N.B.] at this time.” One day after the State filed the CINA petition, the mother consented to removal and agreed to undergo a substance abuse evaluation and follow through with treatment.

In August 2012, the mother reported continued use of illegal drugs. Despite the opportunity to visit N.B. every week, the mother exercised a total of three supervised visits with her child. Service providers reported allegations the mother was under the influence of drugs during these visits and was unable to demonstrate even basic parenting skills. The mother did not have consistent access to a telephone and was very inconsistent in maintaining contact with service providers. She remained unemployed and made no attempt to undergo substance abuse treatment prior to October 2012.

In October 2012, the juvenile court held an uncontested adjudication hearing. The juvenile court confirmed the allegations set forth in the CINA petition and adjudicated N.B. as a child in need of assistance pursuant to Iowa Code section 232.2(6)(b) and (n).

Just days after the adjudication hearing, the mother was arrested on charges of first-degree arson, conspiracy to manufacture methamphetamine, and manufacturing methamphetamine. The mother was also charged with forgery for stealing checks from her father in a separate unrelated incident. She admitted to

using illegal drugs just days before her incarceration. While incarcerated, she initiated substance abuse treatment.

In November 2012, the juvenile court held a CINA dispositional hearing. The court found “placement of the child outside of the home is necessary because continued placement in the home would be contrary to the child’s welfare to wit: [the mother] is currently incarcerated and unable to care for [N.B.]” The court then confirmed N.B.’s status as a child in need of assistance.

In December 2012, the State filed a petition to terminate the mother’s parental rights. The petition alleged statutory grounds for termination under section 232.116(1)(b), (e), (h), and (l). The State asserted the mother had been “very inconsistent with services to reunify with [N.B.]” and had little contact with N.B. since June 2012.

The court held a joint permanency/review and termination hearing in January 2012. At the time of the hearing, the mother was incarcerated with criminal charges still pending. The State presented testimony from an in-home family consultant who provided services to the mother throughout the CINA proceedings. From June 2012 until the mother’s arrest in October 2012, the service provider attempted to meet with the mother once a week. The mother met with the service provider only three times during that period. According to the service provider, the mother “struggled with basic parenting skills” including struggling to hold and feed N.B. properly. During this time, the service provider believed the mother was under the influence of drugs. Although the mother admitted she was in no position to resume care of N.B. at the time of the

termination hearing, she requested additional time to work toward reunification. The court found clear and convincing evidence to support statutory grounds for termination under section 232.116(1)(b), (e), (h), and (l), and found termination to be in the child's best interests. The mother filed a timely appeal.

II. Standard of Review

We review decisions to terminate parental rights *de novo*. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We give non-binding deference to the juvenile court's factual findings. *Id.*

III. Analysis

The mother contends the State failed to present clear and convincing evidence of grounds for termination under section 232.116(1)(e) and (l), and termination is not in the child's best interest.¹ The mother does not contest, and so concedes, statutory grounds for termination exist under section 232.116(1)(b) and (h). See Iowa R. App. P. 6.903(2)(g). Thus, our analysis will focus on whether terminating the mother's parental rights was in the child's best interests. See *In re P.L.*, 778 N.W.2d 33, 40–41 (Iowa 2010).

To determine whether terminating parental rights is in the child's best interests, we “give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to

¹ During her consent to removal in June 2012, the mother asserted she was of ten percent Native American heritage—Blackfeet and Cherokee. Other than this vague assertion, the mother set forth no other information and made no claims in this appeal about her heritage. We find this initial statement insufficient to trigger Indian Child Welfare Act (ICWA) notice requirements under Iowa or federal law. See 25 U.S.C. § 1912(a); Iowa Code § 232B.5; see also *In re Z.H.*, 740 N.W.2d 648, 653–54 (Iowa Ct. App. 2007). Accordingly, we do not address the ICWA in this opinion.

the physical, mental, and emotional condition and needs of the child.” *Id.* (quoting Iowa Code § 232.116(2)). Beyond the physical, mental, and emotional needs of all young children, N.B. has unique health concerns. N.B.’s health needs include an underdeveloped respiratory system and asthma. N.B. was also fitted for a special helmet to correct cranial flatness.

Throughout these proceedings, the mother was inconsistent in participating in services designed to reunify her with N.B. Despite the opportunity for weekly visitation, the mother had only three visits with N.B. until her arrest in October 2012. During the mother’s limited supervised visitation, the mother appeared to be high on drugs and struggled with basic parenting skills.

The mother’s substance abuse issues raise significant concerns about her ability to meet N.B.’s long-term needs. Prior to her incarceration for arson, conspiracy to manufacture methamphetamine, and forgery, the mother made no attempt to seek court-ordered substance abuse treatment. Although the mother seemed to make progress toward sobriety after incarceration, her substance abuse issues remain a significant barrier to successful reunification within a reasonable time.

N.B.’s current placement is ready, willing, and able to adopt N.B. pending the outcome of these proceedings. By all accounts, N.B.’s foster family is capable of providing the long-term nurturing and growth this child deserves.

While the law demands a “full measure of patience with troubled parents who attempt to remedy a lack of parenting skills”, our patience must, at some point, give way to the child’s best interests. *See In re C.B.*, 611 N.W.2d 489, 494

(Iowa 2000) (internal quotation marks and citations omitted). In this case, our full measure of patience gives way to the child's need for permanency in a stable, nurturing home. We find terminating the mother's parental rights is in the child's best interest. We find no error in the juvenile court's refusal to grant the mother additional time to work toward reunification. We find no statutory exceptions applicable under section 232.116(3). The pending paternity test does not change this analysis. Accordingly, we affirm the termination of the mother's parental rights.

AFFIRMED.