

**IN THE COURT OF APPEALS OF IOWA**

No. 3-628 / 13-0820  
Filed July 10, 2013

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

**M.B., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

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

Mark J. Neary, Muscatine, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Alan Ostergren, County Attorney, and Oubonh P. White, Assistant County Attorney, for appellee.

Joan Black, Iowa City, attorney and guardian ad litem for minor child.

Considered by Doyle, P.J., and Danilson and Mullins, JJ.

**MULLINS, J.**

A mother appeals from a juvenile court order terminating her parental rights to her child, P.K., under Iowa Code section 232.116(1)(h) (2013). The mother contends clear and convincing evidence did not support the statutory grounds for termination, and the juvenile court erred in refusing to allow an additional six months to work toward reunification. We affirm.

**I. Background Facts & Proceedings**

When the mother was fifteen years old she gave birth to P.K. (born March 2012). After learning she was pregnant during her sophomore year of high school, the mother dropped out of school and never returned. Paternity testing excluded the putative father as the child's biological father, and the identity of P.K.'s father remains unknown.

Before learning she was pregnant, the mother had been adjudicated as a child in need of assistance. In the mother's child-in-need-of-assistance case, she refused recommended substance abuse treatment. The mother admits to having ongoing anger issues. In addition, she is on medication for mental health issues and has been diagnosed with "ADHD, ADD, OCD, ODD, bi-polar disorder, multi-personality disorder, anxiety, depression, and anti-social behaviors."

In July 2012, this case came to the attention of the Department of Human Services (DHS) when the mother engaged in a physical altercation with her grandfather. The grandfather reportedly broke the mother's nose during the altercation. At the time of the altercation P.K. was only a few feet away. A few days later the mother assaulted her sister, P.K.'s aunt. During the assault the

mother punched the sister in the face repeatedly while the sister was holding P.K. The DHS then received a report that the mother had been sexually abused by her grandfather. The DHS also received reports that the mother angered quickly and coped with parenting P.K. by screaming at P.K. The DHS attempted to investigate the reports. In a meeting with a DHS worker and a local sheriff's deputy, the mother became upset and screamed obscenities at the DHS worker and the deputy. The State then filed a petition for temporary, emergency removal. The juvenile court subsequently ordered removal. P.K. was then placed in family foster care.

Later in August 2012, the State filed a petition to adjudicate P.K. as a child in need of assistance. The court found that P.K. had suffered or was likely to suffer harm from the mother's failure to exercise a reasonable degree of care in supervising the child. The court adjudicated P.K. as a child in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) (2011).

In November 2012, the juvenile court held a contested dispositional hearing. The court ordered the mother to complete a psychological evaluation. The court also adopted the DHS case plan, ordering the mother to undergo medication management, comply with substance abuse treatment, submit to random drug testing, and attend parenting sessions.

After the dispositional hearing, the mother remained resistant to services designed to improve her parenting skills. Specifically, she refused to engage in therapy and substance abuse treatment on a consistent basis. The mother struggled to learn basic parenting skills. She also refused to submit to drug

testing because, as she later explained, she knew she would test positive for marijuana. In December 2012, the mother submitted to drug testing and tested positive for marijuana. The DHS attempted to increase the mother's visits with P.K. but the mother was resistant and became bored during the visits.

In February 2013, the mother was arrested for assault and criminal mischief due to an incident that occurred at the putative father's home. The State then filed a petition to terminate the mother's parental rights. Although the mother was aware of the impending termination proceedings, she continued to abuse marijuana and alcohol and became noncompliant with substance abuse treatment. In March 2013, she was unsuccessfully discharged from substance abuse treatment.

In May 2013, the juvenile court held contested termination of parental rights proceedings. During the termination proceedings, a service provider testified that the mother still struggled with basic parenting skills, including how to pick up the child properly. The court found the service provider's testimony that P.K. could not be returned to the mother's care at the time of the termination hearing credible.

The mother also testified at the termination proceedings. The mother refused to look at the assistant county attorney who asked her questions. The court found the mother's tone was agitated while she testified.

At the conclusion of termination hearing, the State, the DHS, the court appointed special advocate (CASA), and the guardian ad litem all recommended terminating the mother's parental rights. The court found that, based on the lack

of progress toward reunification, there is no reasonable expectation that the child could be returned to the mother's care at any time in the near future. The juvenile court then terminated the mother's parental rights to P.K. under Iowa Code section 232.116(1)(h) (2013).

The mother appealed the termination of her parental rights.

## **II. Standard of Review**

Our review of termination of parental rights proceedings is 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 finds, especially when determining witness credibility. *Id.* In reviewing the termination of parental rights, our utmost concern is the child's best interest. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

## **III. Analysis**

To terminate parental rights under section 232.116(1)(h), the court must find clear and convincing evidence that (1) the child is three years old or younger, (2) has been adjudicated a child in need of assistance, (3) has been removed from the parent's physical care for the requisite period of time (at least six months), and (4) cannot be returned to the parent's custody at the time of termination. See Iowa Code § 232.116(1)(h). The mother concedes the State proved the first three elements of section 232.116(1)(h) by clear and convincing evidence. See *id.* § 232.116(1)(h)(1)–(3). The mother contests the fourth element, arguing the court should have allowed additional time for reunification. See *id.* § 232.116(1)(h)(4). Thus, we will focus our attention on whether clear and convincing evidence supports the juvenile court's finding that the child could

not be returned to the mother's custody at the time of the termination hearing, and whether the court should have allowed additional time to work toward reunification. *See id.*

After many months the mother still struggles with basic parenting skills and has refused to engage in services designed to improve those skills. More specifically, the mother failed to follow through with therapy and substance abuse treatment on a consistent basis. Even after the State filed a petition to terminate her parental rights, the mother continued to abuse marijuana and alcohol.

Despite the offer of services to help the mother manage anger and cope with her parental responsibilities, the mother has not progressed toward reunification. She demonstrated a tendency to respond to frustration with violence and verbal aggression without regard for the child's safety. As recent as February 2013, the mother was arrested for assault and criminal mischief after a violent outburst. It is clear that the mother continues to struggle with anger and mental health issues and those issues continue to place the child in danger.

We find clear and convincing evidence supports the finding that the child could not be returned to the mother's custody at the time of the termination hearing. Indeed, the mother does not even assert that the child could have been returned to her custody at the time of the termination hearing, only that the child could be returned to her in the near future. Given the mother's defiant behavior and lack of progress toward reunification throughout the course of this case, we find there is insufficient evidence to support any reasonable expectation of meaningful progress toward reunification within the next six months. And we find

that refusing to grant an additional six months to work toward reunification is in the child's best interest.

Upon our de novo review of the entire record, we find terminating the mother's parental rights best protects the child and furthers the child's long-term nurturing and growth considering the child's physical, mental, and emotional needs. See *id.* § 232.116(2). The mother does not assert a statutory exception to preclude termination, and we find no statutory exception applicable. See *id.* § 232.116 (3). Accordingly, we affirm.

**AFFIRMED.**