

IN THE COURT OF APPEALS OF IOWA

No. 6-705 / 06-1030
Filed September 21, 2006

IN THE INTEREST OF A.C.D., Minor Child,

M.R.F., Mother,
Appellant.

Appeal from the Iowa District Court for Clarke County, John D. Lloyd, Judge.

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

Monty Franklin of Franklin Law Office, Humeston, for appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Elisabeth Reynoldson, County Attorney, for appellee.

Patrick Greenwood, Lamoni, guardian ad litem for minor child.

Considered by Sackett, C.J., and Huitink and Vaitheswaran, JJ.

SACKETT, C.J.

A mother appeals from the juvenile court order terminating her parental rights. She contends clear and convincing evidence does not support the statutory ground for termination and termination is not in her child's best interest. On de novo review, see Iowa R. App. P. 6.4, we affirm.

The child, born in November of 2004, was removed from his mother's care in August of 2005, after the mother tested positive for methamphetamine use. During the pendency of this case, the mother did not successfully complete substance abuse treatment. At the time of the termination hearing in May of 2006, the mother was incarcerated, awaiting trial on forgery charges. The juvenile court found clear and convincing evidence to support termination under Iowa Code section 232.116(1)(h) (2005) (child 3 or younger, CINA, removed from home for 6 of last 12 months, and cannot be returned home at the time of the hearing). The court also found insufficient evidence to support termination under sections 232.116(1)(b) (abandonment) or 232.116(1)(f) (child CINA, parent has substance abuse problem, child cannot be returned within a reasonable time). The court carefully weighed the evidence and alternatives and found termination to be in the child's best interest.

On appeal, the mother contends the evidence does not support termination under section 232.116(1)(h) and that termination is not in the child's best interest. She argues the child could be returned to her within a reasonable period of time and that termination is not in the child's interest because of the strong bond between them.

The service worker testified she believed it would be at least three months, but more likely six months before any reunification might occur once the mother was

released from jail. She also testified the mother probably does not have the ability to act in her child's best interest over her own interest. The guardian ad litem stated the mother understood her problems and how to solve them, but simply had not done anything. He opined reunification was farther away at the time of the termination hearing than it was in September of 2005, just after the child's removal. He recommended termination.

Because of the mother's incarceration, the child could not be returned to her at the time of the termination hearing. The evidence supports termination under Iowa Code section 232.116(1)(h). The juvenile court faced a difficult decision in determining the child's best interest. The child is bonded with the mother and with the foster mother. At the time of the termination hearing, the child was only eighteen months old. Although reunification could be possible, it could not occur for probably six months after the mother's release from jail, assuming she complied with case permanency plan requirements. "At some point, the rights and needs of the child must rise above the rights and needs of the parent." *In re J.O.*, 675 N.W.2d 28, 30 (Iowa Ct. App. 2004). We, like the juvenile court, find that time has come and termination is in the child's interest.

AFFIRMED.