

IN THE COURT OF APPEALS OF IOWA

No. 7-016 / 06-2008
Filed February 14, 2007

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

**A.M., Mother,
Appellant.**

Appeal from the Iowa District Court for Scott County, John G. Mullen,
District Associate Judge.

A.M. appeals from the termination of her parental rights to S.S.

AFFIRMED.

Catherine Alexander, Davenport, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, William E. Davis, County Attorney, and Gerda Lane, Assistant
County Attorney, for appellee State.

Katherine Teel, Davenport, for minor child.

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

HUITINK, J.

A.M. appeals from the juvenile court's order terminating her parental rights concerning her child, S.S. She argues the State failed to meet its burden to prove the statutory grounds for termination by clear and convincing evidence. She also argues that termination of her parental rights is not in the best interests of S.S. We review her claims de novo. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

A.M.'s parental rights were terminated pursuant to Iowa Code sections 232.116(1)(d) (2005) (child CINA for physical or sexual abuse (or neglect), circumstances continue despite receipt of services), 232.116(1)(e) (child CINA, child removed for six months, parent has not maintained significant and meaningful contact with the child), and 232.116(1)(h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home). When the trial court terminates on more than one statutory ground, we need only find termination is proper on one ground. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

There is no dispute concerning the sufficiency of the evidence supporting the first element of section 232.116(1)(d). A.M. was adjudicated a child in need of assistance (CINA) under sections 232.2(6)(b) (parent has physically abused or neglected child (or is imminently likely to do so)) and 232.2(6)(c)(2) (child is likely to suffer harm due to parent's failure to exercise care in supervising child). The factual basis for the adjudication was chronic physical abuse of S.S. by A.M.'s boyfriend, J.S., as well as A.M.'s inability or unwillingness to protect S.S. from abuse by J.S.

The fighting issue is, therefore, whether the circumstances which led to S.S.'s adjudication continue to exist. "A parent's failure to address his or her role in the abuse may hurt the parents' chances of regaining custody and care of their children." *In re C.H.*, 652 N.W.2d 144, 150 (Iowa 2002). "It is essential in meeting a child's needs that parents recognize and acknowledge abuse." *In re L.B.*, 530 N.W.2d 465, 468 (Iowa Ct. App. 1995). "Meaningful change cannot occur without this recognition." *Id.* A parent's failure to follow the Iowa Department of Human Services' plan "can be considered evidence of the parent's attitude toward recognizing and correcting the problems which resulted in the loss of custody." *In re J.L.P.*, 449 N.W.2d 349, 352 (Iowa 1989).

As stated earlier, S.S. was adjudicated CINA because he was physically abused by J.S. and A.M. was either unwilling or unable to protect S.S. The record indicates that A.M. initially denied but later admitted she was aware J.S. was abusing S.S. Testimony by caseworkers indicates that A.M. continues to misrepresent the nature of her relationship with J.S. Despite A.M.'s claims to the contrary, she has not terminated her abusive and controlling relationship with J.S. A.M. has also told a caseworker that domestic violence counseling is unnecessary. Moreover, A.M. accepted services only after she realized the real prospects of termination if she did not. Because A.M. has failed to terminate her abusive relationship with J.S. or otherwise demonstrate her ability to protect S.S. from further physical abuse, we conclude the circumstances necessitating S.S.'s adjudication continue to exist. We accordingly affirm on this issue.

The court can deny the State's requested termination of parental rights if circumstances indicate that termination is not in the child's best interests. *See In*

re A.L., 492 N.W.2d 198, 200 (Iowa Ct. App. 1992) (noting that the juvenile court was not convinced that the children could not be reunited with the parents). Termination is not in the child's best interest if "[t]here is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." Iowa Code § 232.116(3)(c). The factors under section 232.116(3) have been interpreted by the courts as being permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa 1993). The appellate court has deferred to the trial court in such matters because the trial court is closer to the parties and is able to observe the family dynamic. *In re D.E.D.*, 476 N.W.2d 737, 738 (Iowa Ct. App. 1991).

Although caseworkers testified that there is clearly a bond between S.S. and A.M., A.M.'s decisions nevertheless have not served the best interests of S.S. For the same reasons cited earlier, we conclude termination of A.M.'s parental rights is in S.S.'s best interests. *In re J.E.*, 723 N.W.2d 793, 801-02 (Iowa 2006) (Cady, J., concurring specially) (a child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests). We accordingly affirm the district court's decision terminating A.M.'s parental rights with respect to S.S.

AFFIRMED.