

IN THE COURT OF APPEALS OF IOWA

No. 8-101 / 08-0032
Filed March 14, 2008

**IN THE INTEREST OF J.M.C.,
Minor Child,**

**A.R.C.-R., Mother,
Appellant.**

Appeal from the Iowa District Court for Pottawattamie County, Gary K. Anderson, District Associate Judge.

A mother appeals from the order terminating her parental rights to one of her children. **AFFIRMED.**

Phil R. Caniglia, Council Bluffs, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Matthew Wilber, County Attorney, and Dawn M. Landon, Assistant County Attorney, for appellee.

Marti Nerenstone, Council Bluffs, guardian ad litem for minor child.

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

SACKETT, C.J.

Amanda appeals from the order terminating her parental rights to her child. She contends the statutory grounds for termination are not supported by clear and convincing evidence and termination is not in the child's best interests. We affirm.

I. Background.

Joel, born in 2003, was removed from Amanda's custody in June of 2006 after a drug screen that Amanda provided to her probation officer¹ tested positive for methamphetamine, amphetamine, and opiates. At the time of Joel's removal, Amanda was six months pregnant. Before his removal, Joel lived with Amanda's aunt, Laura,² who was guardian of Amanda's three older children. Amanda spent most days there, but few nights. After removal, Joel was placed with Laura and his half-siblings. All four children were removed from Laura's care in March of 2007 after Joel was found by police riding his big wheel in the middle of the street two blocks from Laura's home and the home was found to have broken windows and to be in a filthy condition.

At the time of the termination hearing in September of 2007, Amanda was incarcerated and had not complied with the requirements of the case permanency plan, such as substance abuse evaluation and treatment, obtaining and maintaining employment, or providing suitable housing for herself and Joel. She testified she was scheduled to be released on parole soon and planned to enter the House of Mercy, where Joel could live with her. The juvenile court

¹ Amanda was on probation for forgery and driving while barred charges.

² The record frequently refers to Laura as Joel's maternal aunt, but she is Amanda's maternal aunt—Joel's great-aunt.

terminated Amanda's parental rights to Joel under Iowa Code sections 232.116(1)(d), (e), (f), (i), and (l) (2007).

Amanda filed a motion for new trial and a motion to amend or enlarge the ruling, offering an exhibit that detailed her release on parole, her employment, the classes she took while incarcerated, and her participation in substance abuse counseling. Following a hearing, the court denied the motions, but made the exhibit a part of the record for appeal.

II. Scope of Review.

We review orders terminating parental rights de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We give weight to the juvenile court's findings of fact, especially when considering credibility of witnesses, but are not bound by them. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). "To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence." *Id.* Our review of the court's rulings on post-trial motions is for an abuse of discretion. *See In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996).

III. Discussion.

Post-trial Motions. The State first contends our review should be limited to the evidence introduced at the termination hearing because the court denied the motions for new trial and to amend or enlarge its order. Amanda's petition on appeal is full of references to evidence that is not in the record and that occurred after the termination hearing. The petition does not distinguish between the evidence before the juvenile court at the termination hearing and the post-termination evidence. Although her notice of appeal references the court's

rulings on her motions, she does not challenge the court's denial of her motions in her petition on appeal. Any challenge to the denial of the motions and the express ruling on the proffered evidence is waived. Iowa R. App. P. 6.14(1)(c) ("Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue."). In any event, we would not find an abuse of discretion in not amending or enlarging the termination order based on events after the termination hearing. "Motions under rule [1.904(2)] are permitted so that courts may enlarge or modify findings based on evidence already in the record. They are not vehicles for parties to retry issues based on new facts." *In re Marriage of Bolick*, 539 N.W.2d 357, 361 (Iowa 1995).

Statutory Grounds. The juvenile court terminated Amanda's parental rights to Joel under Iowa Code sections 232.116(1)(d), (e), (f), (i), and (j). When the juvenile court terminates parental rights on multiple statutory grounds, we may affirm if any of the grounds are supported by clear and convincing evidence. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999); *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

Amanda's substance abuse prompted Joel's removal. Even before Joel's removal, Amanda basically had abdicated her parental responsibilities and had relied on her aunt to care for all of her children. Between Joel's removal in June of 2006 and Amanda's incarceration in March of 2007 Amanda had one supervised visit with Joel in November of 2006. Amanda did not maintain contact with the Department of Human Services or comply with random drug screens as ordered by the court. At the time of the termination hearing Amanda was incarcerated, but believed she would be released soon. We find clear and

convincing evidence Amanda did not maintain significant and meaningful contact with Joel after his removal and that he could not be returned to her care at the time of the termination hearing. A parent cannot wait until the eve of termination, after the statutory time periods for reunification have expired, to begin to express an interest in parenting. *C.B.*, 611 N.W.2d at 495. Clear and convincing evidence supports termination of Amanda's parental rights under Iowa Code sections 232.116(1)(e) and (f).

Joel's Best Interest. Amanda contends the State did not prove termination of her parental rights would further Joel's best interests. She argues she is "very bonded" to Joel. She further argues it is not in his best interests "to be permanently separated from [his] mother, who has received services and has maintained a drug-free lifestyle."

Even if the statutory requirements for termination of parental rights are met, the decision must still be in the child's best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). We look to both long-range and immediate interests, considering what the future holds for the child if returned to the parent. *J.E.*, 723 N.W.2d at 798. We examine a parent's past performance in termination cases because that performance may be indicative of the quality of the future care that parent is capable of providing. See *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992); *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990). A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests. *J.E.*, 723 N.W.2d at 801 (Cady, J., concurring specially). Amanda has not provided Joel or her other children with safety or a permanent home. The record before us convinces us it is unlikely

Amanda would be able to provide Joel with the safety, security, and permanency he needs and deserves. The juvenile court correctly found termination of Amanda's parental rights was in Joel's best interests.

Termination may be avoided if the court finds "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 in section 232.116(3) are permissive, not mandatory, and it is in the court's discretion, based on the unique circumstances of the case and the best interests of the child, whether to apply such factors. *In re A.J.*, 553 N.W.2d 909, 916 (Iowa Ct. App. 1996). We find no abuse of discretion in the circumstances before us.

AFFIRMED.