

IN THE COURT OF APPEALS OF IOWA

No. 8-197 / 08-0215

Filed April 9, 2008

**IN THE INTEREST OF C.L.W.-M., a/k/a C.M.,
Minor Child,**

A.C.M., Father,
Appellant,

S.W., Mother,
Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Kathleen Kilnoski, District Associate Judge.

A mother and father appeal from the termination of their parental rights.

AFFIRMED.

William F. McGinn of McGinn, McGinn, Springer & Noethe, Council Bluffs, for appellant mother.

Scott D. Strait, Council Bluffs, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Matthew Wilber, County Attorney, and Eric Strovers, Assistant County Attorney for appellee State.

Marti Nerenstone, Council Bluffs, for minor child.

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

VAITHESWARAN, J.

Sheila and Anthony appeal the termination of their parental rights to C.M., born in 2002.

I. Background Facts and Proceedings

C.M. was removed from Sheila's care in 2005 after the Department of Human Services learned that she used prescription drugs belonging to her grandmother, as well as marijuana. Sheila also tested positive for methamphetamine. C.M. was placed in foster care, where he remained until May 2007. At that time, the child was returned to Sheila's care. Just two months later, C.M. was again removed after Sheila was found intoxicated.

Anthony lived with Sheila and C.M. until C.M. was two years old. After that, he only had sporadic contact with the child. When child-in-need-of-assistance proceedings were initiated, his whereabouts were unknown. Within a year of the first removal, he had acquired counsel, who appeared in the proceedings on his behalf. Anthony did not express an interest in reunification with C.M. until October 2007.

The juvenile court eventually terminated both parents' rights to C.M. This appeal followed.

II. Analysis***A. Father***

The court terminated Anthony's parental rights pursuant to Iowa Code sections 232.116(b), (d), and (f) (2007). When the juvenile court terminates parental rights on more than one statutory ground, we may affirm if we find evidence to terminate under any one of the cited sections. *In re S.R.*, 600

N.W.2d 63, 64 (Iowa Ct. App. 1999). On our de novo review of the record, we find clear and convincing evidence to support termination under Iowa Code section 232.116(1)(f) (requiring proof of several elements including proof that “at the present time the child cannot be returned to the parent’s custody”).

We begin with Anthony’s argument that the Department failed to make reasonable efforts toward reunification. This is a part of the State’s ultimate proof that a child cannot be returned to a parent’s custody. See *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). The Department became aware that Anthony had a history of drug use. He was instructed to submit to a chemical dependency evaluation and random drug testing. Anthony failed to follow through with these services. Anthony did cooperate with a home study of his Nebraska residence, but he did not attempt to address perceived deficiencies with the home. A Department social worker testified that, if Anthony had asked to correct the shortcomings, the Department would have worked with him in providing services. The social worker noted that, by the time of the adjudicatory hearing, Anthony had not indicated “that he really wanted to proceed with any reunification.” Based on this record, we are not persuaded the Department failed to make reasonable efforts towards reunification.

We turn to the question of whether C.M. could be returned to Anthony’s custody at the time of the termination hearing. The record is clear he could not. At a permanency review hearing in late October 2007, Anthony confirmed he was still using drugs. He stated, “I quit using [marijuana] every day, like, three years ago, but I still have smoked here and there.” Anthony also confirmed he would be unable to assume C.M.’s care until sometime in 2008, after he received his

tax refund and used it to place a down payment on a house. At the termination hearing approximately two months later, a Department social worker testified the child could not be returned to Anthony's care. He cited Anthony's "lack of cooperation with the court orders, the lack of contact with the department," and the lack of "officially sanctioned" contact with the child. This amounts to clear and convincing evidence in support of termination under section 232.116(1)(f).

The final issue is whether termination of Anthony's parental rights was in the best interests of the child. *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa Ct. App. 1995). We agree with the district court that it was. C.M. had been in foster care for approximately sixteen-and-a-half of the eighteen months preceding the termination hearing. He was five at the time of the termination hearing and Anthony had not seen him regularly since he was two. C.M. required consistent and stable care to address behavioral issues that surfaced in foster care. Anthony was not in a position to provide such care. Accordingly, termination of Anthony's parental rights was in C.M.'s best interests.

B. Mother

As a preliminary matter, Sheila takes issue with the juvenile court's admission of an exhibit. That exhibit was a single-page letter from the child's therapist. The juvenile court admitted the letter over objections, but disregarded the therapist's opinion on termination of Sheila's parental rights. We discern no abuse of discretion in the court's ruling. As the court noted, the letter was cumulative of other record evidence concerning C.M.'s sexualized behavior. Additionally, the therapist's recommendation concerning the outcome of the termination proceedings was disregarded, as she had not worked with Sheila.

We turn to the grounds for termination. Sheila's parental rights to C.M. were terminated pursuant to Iowa Code sections 232.116(1)(d) and (f). As noted, we may affirm a termination ruling if we find clear and convincing evidence to support either of the grounds. *In re S.R.*, 600 N.W.2d at 64. Sheila challenges one of the elements of section 232.116(1)(d) but she does not take issue with the juvenile court's determination under section (1)(f) that C.M. could "not safely be returned to her care at this time." Therefore, we affirm the juvenile court's ruling under this provision.

We are left with Sheila's argument that C.M.'s best interests would have been served by deferral of the termination decision. We agree with the juvenile court's detailed ruling rejecting this argument. Sheila had more than a twenty-year history of drug use. She first used marijuana at the age of nine, began using alcohol at age eleven, and added cocaine and amphetamines at the age of fourteen. Sheila did not show that she had seriously addressed these addictions. As the juvenile court stated, C.M. "would be at risk of abuse or neglect if returned to Sheila now, before she demonstrated sustained sobriety and a commitment to making him a priority in her life." We conclude immediate termination of her parental rights was warranted under these circumstances.

AFFIRMED.