

IN THE COURT OF APPEALS OF IOWA

No. 1-651 / 11-0957
Filed September 8, 2011

**IN THE INTEREST OF A.W.,
Minor Child,**

**K.E.W., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Colin J. Witt, District Associate Judge.

A mother appeals the district court's order terminating her parental rights to her daughter. **AFFIRMED.**

Christopher Kragnes, Sr. of Kragnes & Associates, P.C., Des Moines, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Michelle Chenoweth, Assistant County Attorney, for appellee State.

Jane A. Orlanes of Orlanes Law Office, P.L.C., Des Moines, for appellee father.

Charles S. Fuson of Youth Law Center, Des Moines, attorney and guardian ad litem for minor child.

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

VAITHESWARAN, J.

A mother appeals the termination of her parental rights to her daughter, born in 2008. She does not contest the grounds for termination. Instead, she argues that (1) termination was not in the child's best interests and (2) the district court should have applied certain "exceptions" to termination.

I. The best interests standard is set forth in Iowa Code section 232.116(2) (2011), which provides:

In considering whether to terminate the rights of a parent under this section, the court shall give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child.

See also In re P.L., 778 N.W.2d 33, 39 (Iowa 2010). The mother contends the district court failed to balance these factors. On our *de novo* review, we disagree. *See id.* at 40 (setting forth standard of review).

The mother has a history of substance abuse, which resulted in the filing of two child-in-need-of-assistance petitions. The first was based on the parents' use and sale of marijuana out of the home. The child was removed for a period of time but was returned after the mother "made great strides" towards recovery.

The second petition was filed in July 2010 after the Iowa Department of Human Services discovered that the mother had resumed her drug use. Specifically, the mother admitted to intravenously injecting prescription pain medications including Vicodin, Dilaudid, and OxyContin. The child was again removed and was ultimately placed with her paternal grandparents.

The mother was ordered to participate in a substance abuse treatment program. A month before the termination hearing, she had not completed a

program or provided consistent drug screens. She had also long since curtailed her participation in other reunification services offered by the department, including visits with her child. Her last visit took place in August 2010.

The mother did not appear for the termination hearing in March 2011. At the hearing, her attorney advised the court that she had apparently entered a treatment program a month earlier. The attorney stated he had no verification of her participation in the program and he conceded the child could not be returned to the mother's custody within a reasonable period of time.

With this background, we turn to the district court's ruling. Contrary to the mother's contention on appeal, the court cited and applied the best interests factors set forth in Iowa Code section 232.116(2) as follows:

The best interests cannot be met by any biological or legal parent on this record. The Mother drug her feet significantly in even beginning to engage in services. The Mother in essence quit on substance abuse treatment twice in a two-month period of time at the end of 2010 and beginning of 2011.

The record supports this assessment. The safety of the child was compromised at the time of the child's removal and would have been compromised at the time of termination had the child been returned to the mother's care. The mother was afforded numerous opportunities to alter this trajectory by completing a substance abuse treatment program. She did not avail herself of these opportunities, leaving one of several such programs as recently as January 2011. Based on this record, we agree with the district court that termination of her parental rights was in the child's best interests.

II. Iowa Code section 232.116(3) sets forth certain exceptions to termination. See *id.* at 41. The mother contends the district court should have

invoked two of those exceptions. The first allows a court to defer termination if a relative has legal custody of the child. Iowa Code § 232.116(3)(a). The second allows a court to defer termination if there is a close bond between the parent and child. *Id.* at 232.116(3)(c). The district court concluded neither of these exceptions applied. We agree.

The child had significant developmental delays at the time of removal. Under the care of her grandparents, she made progress “in the areas of speech and socialization.” She also considered her paternal grandparents her family. At the time of the termination hearing, the mother had not visited the child for seven months. While notes of visits prior to that period indicated the child was excited to see her, the mother failed to maintain and foster that bond. Under these circumstances, a deferral of termination was not warranted.

We affirm the termination of the mother’s parental rights to her child.

AFFIRMED.