

IN THE COURT OF APPEALS OF IOWA

No. 1-789 / 11-1304
Filed November 23, 2011

**IN THE INTEREST OF J.T.,
Minor Child,**

**M.T., Mother,
Appellant.**

Appeal from the Iowa District Court for Linn County, Barbara Liesveld,
District Associate Judge.

A mother appeals from the termination of her parental rights to her child.

AFFIRMED.

Kara L. McFadden, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Jerry Vander Sanden, County Attorney, and Kelly Kaufman,
Assistant County Attorney, for appellee.

Julie Trachta, Cedar Rapids, attorney and guardian ad litem for minor
child.

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

TABOR, J.

A mother challenges the order terminating her parental rights to her eight-year-old son, J.T. She claims she can safely care for her son despite her mental health issues and termination is not in his best interests. In our de novo review, we find clear and convincing evidence the mother's chronic and stubborn mental illness stands in the way of reuniting with J.T. Given the threat to the child posed by the mother's delusional beliefs, the child's best interests are served by moving toward a permanent, adoptive home.

Wendy is the mother of two sons. Only the youngest, J.T., is the subject of this appeal. J.T.'s father committed suicide in December 2008. In January 2010, J.T.—who was in the first grade—started seeing a therapist. By April 2010 the therapist diagnosed J.T. as having a “major depressive disorder.” He lost interest in his daily activities; he missed school because he could not get out of bed and, when at school, would cry and curl up in a fetal position under his desk. J.T. reported that his mother would call him “stupid” and tell him he could not do anything right. An investigation by the Department of Human Services (DHS) resulted in a founded child abuse report against the mother for inflicting a mental injury on her son.

The juvenile court adjudicated J.T. as a child in need of assistance (CINA) in June 2010. At that time, Wendy reported to social workers that she suffered from a manic depressive disorder. The mother also explained she “hears voices” despite taking medication to address the problem. The DHS placed J.T. with relatives. The DHS also provided assistance to the family, including family

safety, risk, and permanency services; parenting instruction; mental health evaluations and treatment; sibling contact; and family team meetings.

Wendy underwent a psychological evaluation in August 2010. The psychologist's report detailed a lengthy history of difficulty with her mental health. Her condition required hospitalization on five or six occasions, usually involving suicide attempts. The psychologist diagnosed Wendy as having schizoaffective disorder, bipolar type, and a personality disorder, not otherwise specified. He expressed concern about her hearing voices:

She presents a lot of psychotic symptomatology. Particularly prominent are what sounds like a fairly fixed systemic delusional system involving communications from God. Of particular concern is her conviction that her youngest son is the Antichrist. While she does not seem to see this as posing a problem to her son, clearly it could pose a number of risks and problems.

The evaluation recommended a STEPPS (Systems Training for Emotional Predictability and Problem Solving) program, which offers a cognitive-behavioral skills training approach. Instead of the STEPPS program, Wendy initially pursued individual counseling.

On October 25, 2010, the juvenile court held a hearing to review the progress of the case. Wendy was hospitalized at the time of the proceeding for "hearing voices and hallucinations." The DHS could not recommend J.T. be reunited with his mother "due to concerns about Wendy's mental health, and her unrealistic ideas about having the boys returned to her." Instead, the DHS recommended J.T. remain in the care of his great aunt and uncle.

Wendy's mental health stabilized after her hospitalization, but the social workers continued to worry about her long-term motivation and ability to attend to

her psychological needs. She did not start the STEPPS program at the Abbe Center until December 2010. Wendy's visits with J.T. went well, but remained fully supervised during late 2010 and early 2011. The social workers expressed concern Wendy continued to report hearing voices on a "consistent and regular basis" including the persistent notion that J.T. was "the Antichrist" and that he will be "overcome with evil" in his early twenties. The social workers also told the court J.T. was "thriving" in his relative placement.

The State filed a petition to terminate parental rights on May 13, 2011. At the June 30, 2011 termination hearing, the juvenile court heard testimony from two DHS case workers. The mother did not testify. On August 3, 2011, the court issued its ruling terminating the mother's parental rights based on the statutory grounds in Iowa Code section 232.116(1)(f) and (k) (2011). The court noted Wendy's mental health issues "only responded in a limited way to medication management" and she "has currently been missing counseling with her therapist." The court concluded: "Even when addressing her mental health issues appropriately, she lacks the capacity to safely parent [J.T.]" The juvenile court also found termination was in J.T.'s best interests under the factors in Iowa Code section 232.116(2).

On appeal, the mother argues the State did not present clear and convincing evidence to support either of the two statutory grounds for termination. When the juvenile court relies on more than one statutory ground, we need only find termination was appropriate under one of the grounds to affirm. *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010).

We find termination to be proper under section 232.116(1)(f). That paragraph has four elements: (1) the child is four years of age or older; (2) the child has been adjudicated a CINA; (3) the child has been removed from the physical custody of the parent for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days; and (4) there is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102. Iowa Code § 232.116(1)(f). The mother contests only the fourth element. She points to evidence her visits with J.T. go smoothly, he is not afraid of her, and he has not come to any harm while in her care.

We agree that during fully supervised visits, J.T. is safe with his mother. But we find social worker Kelly Morgan's testimony to be compelling:

Wendy during a supervised visit does a good job. She's interactive with [J.T.], talks to him, plays with him. She loves him. She, you know, gives him physical love. But I am very concerned about if [J.T.] were to be placed with Wendy long-term, the effects that her mental health would have not only on him, but also on her and what could happen to [J.T.].

Morgan also testified she did not see any indication Wendy's mental health status would improve such that she would develop the capacity to safely parent her son. In reaching our decision, we cannot overlook the mental harm that Wendy caused her son at the start of the case. See *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (noting that a parent's past performance "may be indicative of the quality of the future care that parent is capable of providing").

The psychologist who evaluated Wendy opined that even if she did not take direct action to harm her son, she could damage him psychologically and

emotionally through her delusional belief that he was the Antichrist. Like the juvenile court, we find the record contains clear and convincing proof that J.T. cannot be returned to his mother at the present time. See *In re K.F.*, 437 N.W.2d 559, 563-64 (Iowa 1989) (finding mother's schizophrenia was proper consideration when it contributed to her inability to parent); see also *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994) (finding it proper to consider parents' long-standing mental illnesses in terminating parental rights).

After finding a statutory ground for termination under section 232.116(1), we still must determine whether severing the parental bond is in the child's best interests. *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). In evaluating this issue, we 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." *Id.* (quoting Iowa Code § 232.116(2)).

Wendy points to J.T.'s grief over the death of his father, and argues terminating her parental relationship will "only compound that loss." Social worker Morgan acknowledged at the termination hearing that it would be "pretty emotionally traumatic" for J.T. to have the bond with his mother severed. On the other hand, Wendy's mental illness has in the past clearly taken its toll on J.T. The psychologist who evaluated Wendy believes her condition also poses a threat to J.T. in the future.

J.T.'s placement with relatives during the course of the case has allowed him to blossom both academically and socially. See *In re D.W.*, 791 N.W.2d 703,

709 (Iowa 2010) (considering child's success in pre-adoptive home as factor in best-interests test). The DHS has identified multiple relatives willing to adopt the eight-year-old boy. He deserves the safety and permanency offered by terminating Wendy's parental rights.

Accordingly, we affirm the juvenile court's termination decision.

AFFIRMED.

Vaitheswaran, J., concurs; Sackett, C.J., dissents.

SACKETT, C.J. (dissents)

I respectfully dissent.

I would reverse the order terminating the mother's parental rights. The mother and child both suffered from the husband and father's suicide. The mother, who it is agreed suffers from a disability, mental illness,¹ attempted to handle the child's grief in a manner found to be mental abuse.² The fact the mother continues to have mental problems appears to be the primary reason the termination was ordered by the juvenile court and affirmed by this court. I recognize, as the majority states, there is authority supporting the termination of the parental rights of parents who are disabled because of mental illness. However, I have problems applying that authority here.

There is a bond between the child and his mother. The mother has not inflicted physical harm on the child. She operates appropriately in supervised visits. The child has lost his father. The mother appears to be able to parent the child and avoid termination with some supervision and accommodations to deal with her disability. I have difficulty finding it to be in the best interest of the child that his relationship with his mother be totally severed. I would remand and order that the juvenile court direct that reasonable accommodations be made available to avoid severing the child's parental rights.

¹ The Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 at 328 (1990), addresses mental as well as physical disabilities.

² It is difficult for me to accept that her attempt under these painful circumstances to help her son recover was mental abuse.