

IN THE COURT OF APPEALS OF IOWA

No. 2-1108 / 12-1842
Filed January 9, 2013

**IN THE INTEREST OF L.V.,
Minor Child,**

**K.G., Mother,
Appellant.**

Appeal from the Iowa District Court for Marshall County, Stephen A. Owens, District Associate Judge.

A mother appeals the termination of her parental rights. **AFFIRMED.**

Kevin M. O'Hare of Peglow, O'Hare & See, P.L.C., Marshalltown, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, Jennifer Miller, County Attorney, and Joshua Vander Ploeg, Assistant County Attorney, for appellee.

Jennie Wilson-Moore, Marshalltown, for father.

Mary Cowdrey of Public Defender's Office, Marshalltown, attorney and guardian ad litem for minor child.

Considered by Doyle, P.J., and Mullins and Bower, JJ.

MULLINS, J.

A mother appeals from a juvenile court order terminating her parental rights. The mother alleges error on (1) the failure of the Department of Human Services (DHS) to make reasonable reunification efforts, (2) the State's failure to present clear and convincing evidence that the child could not be returned to the mother's custody, (3) the court's refusal to grant additional time, and (4) the court's finding that termination was in the child's best interest. We affirm.

I. Background Facts & Proceedings

L.V. was born in July 2007. L.V.'s mother struggles with substance abuse issues including the use of methamphetamine spanning the course of a decade. L.V.'s father was incarcerated throughout much of these proceedings.

In January 2011, this case first came to DHS's attention on a report that the mother was caring for L.V. while using methamphetamine. The mother initially agreed to provide a drug screen. Three days after the initial agreement, the mother refused to provide a hair stat test and had trimmed the hair on the back of her head to less than an inch in length. At that time, she admitted to smoking marijuana and stated she "could have been around people that were using methamphetamine." The mother voluntarily signed a safety plan. The safety plan placed L.V. with the child's aunt and uncle, with whom L.V. had been living for the past three months.

The State filed a child in need of assistance petition on June 16, 2011. The juvenile court held a contested adjudication hearing on August 23, 2011. Despite having notice of the hearing, the mother did not appear. The court

adjudicated L.V. a child in need of assistance under Iowa Code section 232.2(6)(c)(2) and (n) (2011).

In October 2011, the mother had her first substance abuse evaluation. She tested positive for methamphetamine. In January 2012, the mother had her second substance abuse evaluation. She admitted to continued drug use. The substance abuse evaluation recommended an in-patient drug treatment program. After DHS made repeated attempts to secure treatment for the mother, she finally agreed to enter an in-patient treatment program in April 2012. After only two days in the program, the mother left against medical advice. Two days after leaving the program, the mother tested positive for amphetamine, methamphetamine, and cocaine. In May 2012, the mother tested positive for amphetamine, methamphetamine, and opiates.

The mother failed to provide drug screens on June 25, July 2, July 11, and July 21, 2012. The mother later testified that she refused drug tests utilizing the patch or hair stat method because such methods were inaccurate. She testified, “[S]omeone could actually bump into you and they have particles of methamphetamine on them and it can come into your system.” In August 2012, DHS switched to urine analysis drug testing at the mother’s request. She then failed to provide urinalysis tests on August 13, August 18, August 20, September 1, September 5, and September 17, 2012.

The mother was diagnosed as bipolar with a borderline personality disorder. The mother disputes these diagnoses, and refuses to manage the administration of prescription drug medication to treat these disorders

Throughout the pendency of these proceedings, the mother lived with various friends and family members. In the six months leading up to the termination hearing, the mother had three different residences. She currently lives with her mother and grandmother.

On October 1, 2012, the juvenile court held contested termination of parental rights proceedings. In its well-reasoned decision, the juvenile court found,

Despite the substantial support for reunification provided by the State, the mother never made even minimal progress towards reunification with the child. She never established a stable home. She consistently refused drug screening. She did not make additional requests for services. In fact, the only bright spot throughout the entire proceedings was that she usually made regular effort at participating in supervised visitation with the child. But again, her refusal to address her substance abuse and mental health meant she was never able to move beyond mere supervised visitation with her child.

The court terminated the mother's parental rights under section 232.116(1)(f) and (j). Under section 232.116(1)(j), the court found:

The mother has a severe, chronic substance abuse problem and presents a danger to self or others as evidenced by prior acts. There is clear and convincing evidence that the mother's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

The mother appeals. Additional facts and circumstances will be developed as necessary in the analysis section below.

II. Standard of Review

We review termination of parental rights de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We give non-binding deference to the juvenile court's

finding of fact. *Id.* If there is clear and convincing evidence of a ground for termination, we will uphold the juvenile court's order. *Id.* The State presents "clear and convincing" evidence "when there are no 'serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.'" *Id.* (internal citations omitted). Our primary concern is the best interests of the child. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

III. Analysis

A. Preservation of Error

The mother argues the State and DHS failed to make reasonable reunification efforts. Although "the State has the obligation to provide reasonable reunification services, the [parent] ha[s] the obligation to demand other, different, or additional services prior to the termination hearing." *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). Upon our de novo review, we find the mother did not request services other than those provided. Thus, we find this issue not properly preserved for appellate review. *See id;* *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994).

B. Grounds for Termination

The mother argues the State failed to present clear and convincing evidence of circumstances preventing the court from returning custody to her as provided in section 232.102.¹ In addition, the mother alleges the juvenile court

¹ The mother's argument effectively concedes the first three grounds under section 232.116(1)(f). Iowa Code section 232.116(1)(f) provides grounds for termination if:

The court finds that all of the following have occurred:
(1) The child is four years of age or older.

erred in failing to grant the mother an additional six months to work toward reunification. To affirm termination we need only find termination proper on one ground. *D.W.*, 791 N.W.2d at 703.

The mother's argument for more time implicitly raises the issue of whether the State presented clear and convincing evidence of statutory grounds for termination under section 232.116(1)(l). Section 232.116(1)(l) permits the court to terminate parental rights if the court finds all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has a severe substance-related disorder and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

The child was adjudicated in need of assistance on August 23, 2011. The mother's appeal does not contend the State failed to present clear and convincing evidence of the mother's severe substance-related disorder presenting a danger to herself or others. Indeed, the record is replete with evidence of the mother's severe and chronic methamphetamine abuse dating back over a decade to her teen years. The mother tested positive for

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(3) The child has been removed from the physical custody of the child's parents 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.

(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.

methamphetamine in October 2011. In January 2012, she admitted to using methamphetamine. On April 26, 2012, she left an in-patient substance abuse clinic against medical advice after only two days of treatment. On April 28, 2012, the mother tested positive for methamphetamine and cocaine, despite insisting she never used cocaine. In May 2012, she again tested positive for amphetamine, methamphetamine, and opiates. She then missed follow-up testing eleven times from June through September 2012.

The mother's well-documented mental health issues exacerbate her substance abuse. Throughout the pendency of these proceedings, the mother has made death threats to service providers and has, at times, become physically animated and combative. The mother even accused the DHS service provider of engaging in illegal drug use. The court found "such allegations to be, at best, the desperate attempt of a mother in the final throes of parenthood to avoid termination and deflect attention from herself, and at worst the ranting of a seriously troubled person." Despite significant evidence of mental health issues, the mother refuses to manage her medications.

We agree with the juvenile court's finding that, "It is clear that [L.V.] cannot be returned to [the mother's] care at this time. The evidence clearly indicates there is virtually no likelihood that an additional period of time would result in changes sufficient to conclude the child could be returned to [the mother's] care." The mother's substance-abuse issues present a clear danger to herself and others. Given the mother's significant substance abuse issues and refusal to seek treatment, we find the State presented clear and convincing evidence the

court could not return the child to the mother's care within a reasonable period of time. Thus, we find termination proper under section 232.116(1)(I), and find no error in the juvenile court's refusal to grant additional time.

C. Best Interests

The mother argues termination is contrary to the child's best interests. Iowa Code section 232.116(2) provides, "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." We will not "deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child." *In re P.L.*, 778 N.W.2d 33, 41 (Iowa 2010). "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987).

L.V. is currently living in a safe, stable, and nurturing environment with the child's aunt and uncle. L.V.'s aunt and uncle are willing to adopt L.V. pending the outcome of these proceedings. Upon our de novo review, we find termination is in the child's best interest.

AFFIRMED.