

IN THE COURT OF APPEALS OF IOWA

No. 2-1200 / 12-2081
Filed January 9, 2013

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

STATE OF IOWA,
Appellant,

M.M., Minor Child,
Appellant.

Appeal from the Iowa District Court for Polk County, Romonda D. Belcher,
District Associate Judge.

The State and the child appeal from the dismissal of the State's petition to
terminate the mother's parental rights. **REVERSED AND REMANDED.**

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Kevin Brownell,
Assistant County Attorney, for appellant-State.

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

Jared Harmon of Care & Wright Law Firm, P.L.C., Des Moines, for
appellee mother.

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

EISENHAUER, C.J.

The State and the child appeal from the order dismissing the State's petition to terminate the mother's parental rights, contending (1) the court erred in failing to terminate the mother's parental rights when she did not appear or offer evidence at the termination hearing and (2) termination was in the child's best interests. We reverse the dismissal and remand.

This appeal concerns the mother's seventh child, born in January 2012. For years the mother has struggled with substance abuse issues. The court terminated her parental rights to three children in 2007, to one child in 2008, and to one child in 2011. One other child died of SIDS.

This child was removed from the mother's custody when less than three weeks old, based on neglect and concerns about the mother's long history of unresolved substance abuse issues. The child was adjudicated a child in need of assistance in February. Throughout this case, the child was placed with a woman thought to be the paternal aunt, who had custody of a sibling of the child. Paternity testing later revealed the person the mother identified as the father was not the child's father.

At the permanency hearing in June, the mother asked for an additional six months to work toward reunification. The caseworker testified the mother appeared to be maintaining her sobriety, had adequate parenting skills, and possibly could achieve reunification within six months. The caseworker's concerns were the lack of a support system, the mother's lack of insight how her choices and actions affect the child, the mother's lack of employment or transportation, and the mother's failure to take advantage of increased visitation

opportunities. The court denied the request for an additional six months and directed the State to commence a termination of parental rights action. The State filed a termination petition alleging grounds for termination of the mother's parental rights existed under Iowa Code section 232.116(1)(d), (g), and (h) (2011).¹

The mother did not appear at the termination hearing. The court denied her attorney's oral motion for a continuance. The in-home service provider testified the mother had adequate parenting skills but she allowed unknown and unauthorized persons in the home during visitation, which was a safety concern. The provider also testified the mother was not taking advantage of help to find employment, suitable housing, and transportation. The court considered the prior five terminations, but concluded the mother had matured and had maintained her sobriety and an additional period of rehabilitation would correct the circumstances leading to the child's adjudication. See Iowa Code § 232.116(1)(g). The court did not find the mother's mental capacity or drug use would result in the child not receiving adequate care. See *id.* § 232.116(1)(d).

Concerning section 232.116(1)(h), the court found the first three elements supported by clear and convincing evidence. The court "[did] not find clear and convincing evidence exists that the Child cannot be returned to the custody of the Mother as provided in Iowa Code Section 232.102 at the present time." The court "[did] not find by clear and convincing evidence that this Child would suffer further adjudicatory harm if returned to the Mother." However, the court

¹ The petition also sought termination of all putative and unknown fathers. The court granted the petition as to all fathers. None have appealed.

continued, “This Court is in no way suggesting that the Child can be returned immediately, rather as the Mother continues to avail herself of services, she would be able to provide this Child with a loving, stable, and safe living environment through a transition period.” The court dismissed the petition as to the mother. The State appeals. The child joins the State’s appeal.

We review terminations of parental rights de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We examine both the facts and law, and adjudicate anew those issues properly preserved and presented. *In re L.G.*, 532 N.W.2d 478, 480-81 (Iowa Ct. App. 1995). We accord considerable weight to the findings of the juvenile court, especially concerning the credibility of witnesses, but are not bound by them. *Id.* at 481. In considering whether to terminate, our primary considerations are the child’s safety; the physical, mental, and emotional condition and needs of the child; and the placement that best provides for the long-term nurturing and growth of the child. Iowa Code § 232.116(2); see *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010).

The State contends the court erred in not terminating the mother’s parental rights under section 232.116(1)(d), (g), and (h), “when the mother’s parental rights had previously been terminated to [five] children and she did not appear or offer evidence at the termination hearing.” The State also contends termination is in the child’s best interests.

Statutory Grounds. The first three elements of section 232.116(1)(h) are not in dispute. We find clear and convincing evidence the child could not be returned to the mother’s custody at the time of the termination hearing. See Iowa Code § 232.116(1)(h)(4). Although the mother appeared to be maintaining her

sobriety, she had done so in the past only to relapse. She had not established a positive support system to help her prevent relapse. She had no means to support the child, no suitable housing, and no transportation so she could meet the child's needs. In the time just prior to the termination hearing, the mother was routinely missing one of three weekly supervised visitations and not taking advantage of any opportunities for additional, unsupervised visitation. As we have said many times, "[t]he crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997); *In re D.A. Jr.*, 506 N.W.2d 478, 479 (Iowa Ct. App. 1993). Although the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," the legislature built that patience into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). A child need not endlessly await the maturity of the child's natural parent. *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). Termination should occur if the statutory time period has elapsed and the parent is still unable to care for the child. *Id.* In this case more than six months have passed since removal and the child cannot be returned home. See Iowa Code § 232.116(1)(h)(3)-(4). The elements of section 232.116(1)(h) are satisfied. Termination is proper on this statutory ground.

Best Interests. Once a ground for termination is established, we consider whether termination is in the child's best interests. See *P.L.*, 778 N.W.2d at 40. We consider the factors in section 232.116(2), which requires us to "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 consider what the future likely holds for the child if the child is returned to a parent’s custody. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). Insight for that determination is gained from evidence of a parent’s past performance, for it may be indicative of the quality of the future care the parent is capable of providing. *In re D.W.*, 791 N.W.2d 703, 709 (Iowa 2010); *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994).

The mother has demonstrated over a period of years her inability to maintain sobriety and care for her children. At the time of the termination hearing, she was not in a position to care for this child. The child is in a pre-adoptive placement with a half-sibling. We conclude termination of the mother’s parental rights to free the child for adoption is in the child’s best immediate and long-term interests.

We reverse the dismissal of the petition as to the mother and remand for entry of an order consistent with this opinion, terminating the mother’s parental rights.

REVERSED AND REMANDED.