IN THE COURT OF APPEALS OF IOWA

No. 2-1204 / 12-2084
Filed January 24, 2013

IN THE INTEREST OF H.G.,
Minor Child,

S.Y., Mother,
Appellant.

Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

A mother appeals from the order terminating her parental rights. **AFFIRMED.**

Clayton E. Grueb, Davenport, for appellant mother.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant Attorney General, Alan Ostergren, County Attorney, and Kathleen J. Bragg, Assistant County Attorney, for appellee State.

Douglas Johnston, Muscatine, for appellee father.

Jennifer Olsen, Davenport, attorney and guardian ad litem for minor child.

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

DOYLE, P.J.

A mother appeals from the order terminating her parental rights to her child, H.G. She claims (1) the State failed to prove the ground for termination by clear and convincing evidence, (2) the juvenile court erred in not granting her additional time for continued reunification services, and (3) termination was not in the child's best interests because the child was placed with relatives. We review these claims de novo. *See In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

H.G., born in 2005, came to the attention of the Iowa Department of Human Services (Department) in May 2010, due to the child's parents smoking marijuana while supervising the child. A case plan was established and services were provided to the family. Nevertheless, concerns remained, including the mother's lack of stable housing, mental health issues, failure to participate in substance abuse treatment and provide samples for urinalysis testing, as well as her problems with parenting.

In early 2011, the State filed its petition asserting the child was in need of assistance (CINA). Shortly thereafter, the child was adjudicated CINA and services continued to be offered to the mother. At that time, the child continued her placement in the mother's care. However, the child was removed from the mother's care in May 2011 due to continuing concerns of the mother's lack of participation in services. The child was placed in the home of her paternal grandparents, where she has since remained.

Shortly after the child's removal from her care, the mother discovered she was pregnant with twins, and the mother appeared to be clean and sober at that

time. However, the mother left the state of Iowa and moved in with her parents in Illinois.

Reunification efforts were made throughout the case since the child's removal. Nevertheless, the mother minimally participated in the services offered until the permanency hearing in April 2012. Prior to that time, the mother had not been attending visits with her child. The mother was not addressing her substance abuse issues and was not complying with the case plan.

At the permanency hearing, the mother sought more time for the permanency goals to be met. The mother advised her twins were born in January 2012, and although they were born prematurely, they were born without traces of illegal substances in their bodies. The mother argued the Department had failed to make reasonable efforts, and she asserted she was now recommitted to reunification efforts. In its subsequent ruling, the juvenile court found the Department had provided reasonable services, explaining:

> The mother is the one who voluntarily completely removed herself from [the child's] life for a two month period. She chose to move out of state to live and give birth to her babies (whether this was to avoid the courts placing her in jail as mentioned in the last order, or to have family support as she argues was not proven by the evidence). The mother did not contact the child in any manner; she did not call her, send her cards, send her a birth announcement regarding her new [siblings] or even call the provider or [the Department] to inquire as to [the child's] status and health. Even before she moved she was not consistently attending all the visitations allowed. Any separation anxiety or fear of not seeing the mother again by the child is fully attributable to the mother's behaviors and lifestyle choices not lack of efforts by the Department. Two months is a lifetime to a child of [her] age.

The court directed the State to institute proceedings to terminate the parent-child relationship, "[g]iven the lack of progress made by the parents to rectify the

circumstances which led to the adjudication of the child as a [CINA], . . . and the need to establish permanency for the child."

The State filed a petition to terminate parental rights in June 2012. Following the hearing, the juvenile court entered its order terminating the mother's rights to the child under Iowa Code section 232.116(1)(f) (2011). Termination is appropriate under section 232.116(f) where:

> (1) The child is four years of age or older.
> (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.

Here, the mother does not challenge that the State failed to prove by clear and convincing evidence any of the four elements listed above, and we could affirm the termination based on that ground as urged by the State. *See* Iowa R. App. P. 6.903(2)(*g*)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue."). Nevertheless, we elect to proceed to the merits of termination of the mother's parental rights because we agree with the juvenile court that the State proved the ground for termination.

The legislature incorporated a twelve-month limitation for children in need of assistance aged four or older. *See* Iowa Code § 232.116(1)(f)(3). Our supreme court has stated that "the legislature, in cases meeting the conditions of [the Iowa Code], has made a categorical determination that the needs of a child are promoted by termination of parental rights." *In re M.W.*, 458 N.W.2d 847,

850 (Iowa 1990) (discussing Iowa Code § 232.116(1)(e)). The public policy of the State having been legislatively set, we are obligated to heed the statutory time periods for reunification.

There is no question the first three elements were established; the child was seven at the time of the termination hearing, the child was adjudicated CINA, and the child had been removed from the mother's custody for twelve consecutive months. Upon our de novo review of the record, it is clear that the child could not be returned to the mother's care at the time of the termination hearing, the fourth element of section 232.116(1)(f)(4).

The child had been out of the mother's care since May 2011. The mother minimally participated in services during the pendency of the case. She had minimally addressed her mental health issues and her parenting deficiencies. After the birth of her twins, the mother did not see or contact the child for two months. The mother only began to significantly resume participation in the case after the State filed its petition for termination of her parental rights. The mother had no employment and no housing at the time of the termination hearing. Both the Department's caseworker and the service provider testified that the child could not be returned to the mother's care at the time of the termination hearing. We find the State presented clear and convincing evidence that the mother's parental rights should be terminated pursuant to section 232.116(1)(f).

We further find the best-interest framework in Iowa Code section 232.116(2) supports termination of the mother's parental rights. The record reveals that the child cannot be returned to the mother's care at this time, and the child should not be forced to wait for permanency. *See In re A.C.*, 415 N.W.2d

609, 613 (Iowa 1987) ("[P]atience with parents can soon translate into intolerable hardship for their children."). The Department's caseworker, the service provider, and the child's guardian ad litem all agreed termination of the mother's parental rights was in the child's best interests. The mother's lack of participation in the case and the child's life has demanded the bond between the mother and the child, evidenced by the child's resistance to visitation with the mother. The child has been in the care of her paternal grandparents for a year, and the child has made progress in the stability of their home. *See* Iowa Code § 232.116(2)(b)(1) (stating the court should review the "length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining that environment and continuity for the child"). She has made vast improvements in her education and health since removal from her mother's care. The child enjoys living with her grandparents, and they wish to adopt her. Termination will provide the child with the safety, security, and permanency she deserves. *See P.L.*, 778 N.W.2d at 41.

The mother also argues the juvenile court abused its discretion in not granting her additional time to continue participating in reunification services. A juvenile court has the discretion to continue a child's placement out of the home for an additional six months if it determines the need for removal will no longer exist at the end of the additional period. *See* Iowa Code § 232.104(2)(b). However, the evidence in this record does not allow such a determination. We find no abuse of discretion under the circumstances of this case.

Finally, we consider the mother's argument that the statutory exception to termination in section 232.116(3)(a) should serve to preclude termination of her parental rights. That section states termination is not necessary if the court finds

a relative has legal custody of the child. Iowa Code § 232.116(3)(a). The juvenile court declined to invoke the exception though the child was in the custody of her paternal grandparents. *See In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997) *overruled on other grounds by P.L.*, 778 N.W.2d at 39 (stating section 232.116(3) is "permissive, not mandatory"). We agree with the court's decision for the same reasons expressed above.

We accordingly affirm the juvenile court order terminating the mother's parental rights to H.G..

AFFIRMED.