

IN THE COURT OF APPEALS OF IOWA

No. 3-1161 / 13-1704
Filed December 18, 2013

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

**L.M., Mother,
Appellant.**

Appeal from the Iowa District Court for Wright County, Paul B. Ahlers,
District Associate Judge.

A mother appeals the termination of her parental rights to her one-year-old
daughter. **REVERSED AND REMANDED.**

Barbara J. Westphal, Belmond, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Eric R. Simonson, County Attorney, for appellee.

Douglas Cook, Jewell, attorney and guardian ad litem for minor child.

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

TABOR, J.

A twenty-year-old mother, L.M., contests the termination of her parental rights to her one-year-old daughter, B.M. The State's case for termination focused on the mother's failure to meet a number of expectations set by the Department of Human Services (DHS). But the DHS did not ask L.M. to sign its "Contract of Expectations" until three days before the termination hearing. While both the case worker and L.M. testified to generally discussing DHS expectations earlier in the case, we find the belated effort to verify L.M.'s full appreciation of the listed expectations is cause for concern.

At the termination hearing, L.M. asked for additional time to work on her mental health issues and gain the stability necessary to act as a parent for her child. Her attorney noted L.M.'s progress in maintaining steady employment and finding housing. Although recommending termination, the child's guardian ad litem acknowledged L.M. was "somewhat getting her life on track."

The juvenile court nevertheless concluded: "the Mother's alternative request for another six months before termination is not warranted. The Mother points to nothing significant in her progress, her character, or her level of effort that will make things any different in six months." In our de novo review, we respectfully disagree. We acknowledge L.M.'s shortcomings as a parent are plain on the record. She has not taken full advantage of the visitations offered, and, thus, has not developed a strong bond with her daughter. She has placed a relationship with her boyfriend before her role as a parent. And most glaringly, she did not pursue mental health treatment until the eve of termination.

Nonetheless, she has shown some promise in holding down a job and finding an affordable rental house. She has no substance abuse issues. And she has agreed to pursue mental health treatment after earlier expressing her reluctance to seek help. We reverse the termination and remand for the mother to be afforded an additional six months to work toward reunification with her daughter. See Iowa Code § 232.104(2)(b) (2013).

I. Background facts and proceedings

L.M. is a young mother. She was nineteen years old when she gave birth to B.M. in August of 2012. On November 2, 2012, L.M. was angry with her own mother for not allowing her go to Mason City for the evening and punched the window in the back door of the mother's house. Shattered glass fell within a few inches of the infant, who was sitting nearby in her car seat. L.M.'s mother called the police who arrested L.M. for criminal mischief. L.M.—who has been diagnosed with bipolar disorder, depression, oppositional defiance disorder, and attention deficit disorder—reported blacking out during the incident. L.M. agreed to voluntarily place B.M. in the care of the child's maternal grandmother. B.M. has lived with her grandmother and step-grandfather for the duration of the case.

The county attorney filed a child-in-need-of-assistance (CINA) petition on December 20, 2012. Because of efforts to determine B.M.'s paternity¹ and other delays, the juvenile court did not adjudicate B.M. as a CINA until May 13, 2013. In that CINA order, the court directed L.M. to participate in all recommended

¹ Two potential candidates identified by the mother were excluded by paternity testing. No father has been identified. Notice to all putative fathers was published in the local paper without response. The juvenile court terminated the parental rights of any putative father.

mental health counseling and treatment. The order also addressed the Contract of Expectations as follows:

Any person who seeks placement of a child or closure of the case shall enter into a Contract of Expectations with DHS. The Contract of Expectations shall be written in an easy-to-understand language and shall set for the specific actions expected of the person in order for DHS to recommend that the Court take the requested action. It shall also set for the specific services to be provided. The parties are advised that the Court intends to refer to the Contract of Expectations when measuring success or failure in this matter. **To make it easier to find the Contract of Expectations, the parties shall separately file each Contract of Expectations so that it appears as a separate docket item in the online court filing system.**

Despite the court's order, the DHS worker did not present L.M. with the Contract of Expectations until October 11, 2013, the Friday before the Monday, October 14, 2013 termination hearing.

From December 2012 through September 2013, DHS offered L.M. a total of ninety-three visits arranged by the Family Safety, Risk, and Permanency Services worker (FSRP). But L.M. attended only thirty-seven sessions. When asked why she missed so many visits, L.M. said: "I don't have an excuse, I should have been there." The FSRP worker expressed concern that when L.M. did show up, she was preoccupied with sending or receiving text messages and did not devote her full attention to B.M.

The main distraction for L.M. was her boyfriend Cory. L.M. lived with Cory and his parents, and even stayed with his parents by herself when Cory was in jail. The case worker and L.M.'s mother believed Cory was controlling and emotionally abusive to L.M. Cory had not developed a relationship with B.M.

L.M. did not seek the recommended mental health treatment during the course of the CINA case. L.M. was taking medication for depression, but was reluctant to get counseling, saying: "I just don't like talking to people I don't know about my problems when I can fix them myself." But she confirmed at the termination hearing that she wanted to get help for her mental health issues. While she procrastinated in doing so, L.M. did try to contact a mental health provider before the termination hearing.

L.M. was receiving medical treatment in Iowa City for several conditions, including ulcers, a bacterial infection, and a cyst. L.M. did not have any difficulty with substance abuse. She has been able to maintain sobriety during the case. She also was able to find steady employment that enabled her to provide for herself and her child. The FSRP worker helped L.M. develop a budget for her spending.

For much of the case, L.M. lived with her boyfriend at his parents' home. When asked why she did not arrange to live with her own mother, L.M. explained: "Because she told me that I was not allowed to come back." While it came late in the case, L.M. was able to arrange for a rental house that she could afford that was available by the time of the termination hearing.

The DHS Contract of Expectations, presented to L.M. just days before the termination hearing, notified L.M. she could not allow anyone with a criminal history to be in her home without prior approval from DHS. Cory had a criminal record of theft. L.M. testified she was not familiar with the restriction before seeing the DHS contract on October 11, 2013.

During the past year, B.M. has developed a strong bond with her grandparents, but not with her mother, L.M. The child is comfortable living with her grandparents and is on target developmentally. B.M. has developed an allergy, which has required emergency care. While L.M. is aware of the condition, she has not been involved in seeking medical treatment for her daughter.

The State filed a petition requesting termination of parental rights on July 23, 2013. The court held a hearing on the petition on October 14, 2013. Two days later, the juvenile court issued its order terminating L.M.'s parental rights. L.M. filed a timely petition on appeal.

II. Scope of Review

We exercise de novo review in termination appeals. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We give weight to the juvenile court's findings of fact, but are not bound by them. *Id.*

Even when the State satisfies the statutory grounds for termination under section 232.116(1), the decision to terminate parental rights must reflect the child's best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). The best interest determination focuses on the child's safety; her physical, mental, and emotional condition and needs; and the placement which best provides for her long-term nurturing and growth. Iowa Code § 232.116(2); *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010) (holding "there is no all-encompassing best interest standard to override the express terms" of the statute). In addition, termination is not

mandatory when the child is in the legal custody of a relative. Iowa Code § 232.116(3)(a)

III. Analysis

A. The State satisfied the statutory grounds for termination.

The juvenile court granted the State's petition to terminate L.M.'s parental rights based on Iowa Code sections 232.116(1)(e)² and (h).³ We may affirm the termination order on any statutory ground supported by clear and convincing evidence. *D.W.*, 791 N.W.2d at 707.

L.M. argues the State did not present clear and convincing evidence that B.M. could not be returned to her custody at the present time. She points out she had lined up housing and could financially provide for the child.

While L.M. made some strides toward stability, a wealth of factors weighed against her readiness to be a full-time parent at the time of the termination hearing. The greatest strike against L.M. was her failure to seek mental health treatment to address her anger and depression. At the termination

² The court finds that all of the following have occurred: (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96. (2) The child has been removed from the physical custody of the child's parents for a period of at least six consecutive months. (3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so

³ The court finds that all of the following have occurred: (1) The child is three years of age or younger. (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 six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days. (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

hearing, L.M. was half-hearted in her assertion she could presently resume B.M.'s custody. When asked at the termination hearing if she was "in a position to take back [B.M.] today?" L.M. answered: "Yes and no." She explained that although she was on medication and had "learned how to control" herself, she could use more time to achieve stability in her mental health. We agree with the juvenile court that L.M. has "demonstrated no ability to care for the Child on a short-term or long-term basis."

B. An additional six months is warranted in this case.

Now that we have determined statutory grounds for termination exist, we must still decide if terminating L.M.'s parental rights is in B.M.'s best interests. See Iowa Code § 232.116(2); see also *In re A.B.*, 815 N.W.2d 764, 776–77 (Iowa 2012). L.M. asserts the juvenile court erred in finding it was in B.M.'s best interests to terminate her mother's parental rights.

In evaluating best interests, our first concern is the child's safety. See *A.B.*, 815 N.W.2d at 777. In this case, L.M.'s act of breaking a window in a fit of rage—which prompted DHS involvement—obviously posed some risk to her infant daughter who was in close proximity. But the record does not reveal any additional conduct by L.M. during the course of the CINA case that endangered B.M. It may be fair to view the one incident as the isolated act of an impulsive teenager in need of counseling. Cf. *State v. Null*, 836 N.W.2d 41, 55 (Iowa 2013) (noting body of psychosocial studies showing "the human brain continues to mature into the early twenties" and tracing development to the prefrontal cortex

that governs “executive functions,” such as planning, anticipation of consequences, and impulse control).

Our best-interest evaluation also focuses on the optimal 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. *P.L.*, 778 N.W.2d at 39. We cannot disagree with the juvenile court’s assessment that as circumstances now stand, the best placement for B.M. is with the grandmother rather than L.M. B.M. is doing well in the home of her grandmother. But we are unwilling to conclude B.M.’s long-term nurturing and growth could not be best accomplished in L.M.’s care if L.M. were given clear expectations and had six more months to meet them.

Once the State has established a ground for termination under section 232.116(1) and even if the factors in section 232.116(2) favor termination, the court must still decide if any reason listed in section 232.116(3) suggests ending the parent-child relationship may not be necessary. *A.B.*, 815 N.W.2d at 778 n.8. One of those reasons is that a relative has custody of the child. See Iowa Code § 232.116(3)(a). Here, the maternal grandmother has custody of B.M. Under the circumstances existing in this case, that relative placement is cause for not terminating L.M.’s parental rights at this time. We do not anticipate B.M.’s development or sense of permanency will be hindered by continuing visitation with her mother while being cared for by her grandmother.

While time is of the essence in achieving permanency for children like B.M., we cannot lose sight of the competing principle that “termination is an

outcome of last resort.” *In re B.F.*, 526 N.W.2d 352, 356 (Iowa Ct. App. 1994). “The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State.” *Santoksky v. Kramer*, 455 U.S. 745, 753 (1982). The need to hurriedly reach that outcome of last resort is less compelling here because B.M. remains in the custody of her maternal grandmother. See Iowa Code § 232.116(3)(a).

We conclude the juvenile court erred in declining L.M.’s request for a six-month extension to move toward reunification. See Iowa Code § 232.104(2)(b) (authorizing a court to postpone the “placement of the child for an additional six months at which time the court shall hold a hearing to consider modification of its permanency order.”). In its CINA order, the juvenile court placed great stock in the Contract of Expectations, requiring it to be drafted so that L.M. could plainly understand what the DHS required of her. The court also said it would measure L.M.’s success or failure based on that contract. But the DHS worker did not present that contract to L.M. for her signature until three days before the termination hearing. The juvenile court noted it did not “condone” the DHS failure to have L.M. sign the contract earlier in the case, but found L.M. was “well aware of what was expected of her.”

We are less certain that the nineteen-year-old mother fully appreciated the many hurdles she was required to clear before she could regain custody of her daughter. L.M. testified that until she read the Contract of Expectations she was not aware she “had to have permission to do pretty much everything.”

We reverse and remand this case for the juvenile court to enter an order granting the mother's request for six more months to work toward reunification. L.M. took positive steps in maintaining employment and locating housing. But like the juvenile court expressed in the termination order, we believe it is critical that L.M. engage in mental health treatment. If L.M. does not make progress in addressing her depression and anger-management issues, B.M. cannot be safely returned to her care. In addition, L.M. must show her commitment to the other recommendations in the signed contract. L.M. testified she would "do anything to get [her] child back." If she is sincere in that sentiment, L.M. must waste no more time before developing the parenting skills and the bond with her daughter necessary to regain custody.

REVERSED AND REMANDED.