

IN THE COURT OF APPEALS OF IOWA

No. 3-159 / 12-2257
Filed February 27, 2013

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

**C.H., Mother,
Appellant.**

Appeal from the Iowa District Court for Woodbury County, Mary Jane Sokolovske, Judge.

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

Joseph W. Kertels, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Patrick Jennings, County Attorney, and J. Aaron Kirsch, Assistant County Attorney, for appellee.

Tod J. Deck, Sioux City, for father.

Joseph Flannery, LeMars, attorney and guardian ad litem for minor child.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

DANILSON, J.

A mother appeals the termination of her parental rights, contending termination was not in the child's best interests and should not occur due to the parent-child bond. We affirm, and conclude the mother has shown no ability to overcome her substance abuse issues notwithstanding numerous opportunities and services provided to her.

B.B. was born in January 2010 and removed from his mother's custody in August 2011 after testing positive to exposure to methamphetamine. In her brief to this court, the mother specifically states she adopts the juvenile court's findings in the first forty-four numbered paragraphs of the termination ruling. Included in those adopted findings is the summary of the mother's long history of substance abuse:

[The mother] has engaged in drug/alcohol abusing behaviors since she was at least 12 years of age (by her own admission). Despite efforts by her parents, the Department of Human Services, and numerous treatment programs, [she] has been unable to overcome her addictions. Since the initiation of these proceedings in August 2011, [the mother] has been provided with numerous assessments/treatment opportunities through Integrated Counseling Practice, Jackson Recovery Centers Women & Children's Program, Synergy Center, Family Treatment Court, Marianne Manor Half-Way House, and YWCA Half-Way House in Fort Dodge. Several other treatment opportunities were explored; however, [she] chose not to take advantage of those opportunities.

[B.B.] has been removed from [the mother's] custody on two separate occasions in the past 14 months as [the mother] has been unable to demonstrate an ability to provide for her own basic needs, much less [B.B.'s] basic needs. She has been unable to obtain/maintain stable employment or housing. She has relapsed on numerous occasions, failed to report her relapses independent of positive drug tests, and engaged in behaviors that would continue to place [B.B.] at risk of harm should he be returned to [her] care. The prognosis for [the mother's] success at overcoming her severe and chronic substance abuse problems in the

foreseeable future is poor. Despite the offer/receipt of numerous services and treatment programs, [B.B.] cannot be returned to [her] care now or at any time in the foreseeable future.

The mother does not contest that statutory grounds for termination exist.¹ See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010) (stating that where a parent does not dispute that statutory grounds exist, we need not address this step in the three-step analysis). She contends that in light of the court allowing the *father* six additional months to seek reunification, her rights need not be terminated and the court “did not need to address all the ‘best interest issues.’” She asserts there is no urgency in terminating her parental rights. Our statutory framework and case law is to the contrary. See *In re C.B.*, 611 N.W.2d 489, 494-95 (Iowa 2000) (“[T]he legislature incorporated a . . . six-month limitation for children in need of assistance aged three and below. . . . Once the limitation period lapses, termination proceedings must be viewed with a sense of urgency.”); see also Iowa Code § 232.104(2)(b) (stating that in order to continue placement for an additional six months, the juvenile court “shall enumerate the specific factors, conditions, or expected behavioral changes which comprise the basis for the determination that the need for removal of the child from the child’s home will no longer exist at the end of the additional six-month period”).²

The father’s parental rights were not terminated because the court found that the department of human services had made minimal efforts to locate him and had not made reasonable efforts to reunify the father and child. See Iowa

¹ The mother’s parental rights were terminated pursuant to Iowa Code section 232.116(1)(d), (h), (i), and (l) (2011).

² The mother testified that “I realized that recovery . . . moves way slower than DHS, than the law.” Our concern at this juncture is the *child’s* best interests—not the parent’s.

Code § 232.102(7) (requiring the department to make every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interests of the child"); *C.B.*, 611 N.W.2d at 493 ("The State must show reasonable efforts as a part of its ultimate proof the child cannot be safely returned to the care of a parent.").

But one parent's custody does not preclude termination of a noncustodial parent's rights. *In re N.M.*, 491 N.W.2d 153, 155 (Iowa 1992) (noting that "[t]he healing process of a child suffering from abuse by a noncustodial parent may in some cases be aided by the finality of the termination"). Here, we agree with the juvenile court that terminating the mother's parental rights would allow B.B. to have "the opportunity to grow and mature in a safe, healthy and stimulating environment." B.B. has waited long enough for his mother's maturity: he is entitled to have his healing process begin. See *C.B.*, 611 N.W.2d at 494 (stating "[t]he crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems" (internal quotation marks and citation omitted)).

Iowa Code section 232.116(3) provides factors that the juvenile court may consider to avoid termination even where statutory grounds exist. The mother invokes section 232.116(3)(c) ("There is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship."). The factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The court has discretion, based on the unique

circumstances of each case and the best interests of the child, whether to apply the factors in this section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993).

The juvenile court noted there was a bond between the mother and child, but the court found the bond was “not healthy and only exists when [the mother] is clean and sober.” Unfortunately, the mother has not been clean or sober “[f]or much of [B.B.’s] life.” Moreover, the court concluded and we agree that termination of the mother’s parental rights will permit the child “to grow and mature in a safe, healthy and stimulating environment.” We therefore affirm.

AFFIRMED.