

IN THE COURT OF APPEALS OF IOWA

No. 3-736 / 13-0616
Filed August 7, 2013

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

**A.M., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Constance C. Cohen,
Associate Juvenile Judge.

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

Charles Isaacson, Des Moines, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John Sarcone, County Attorney, and Stephanie Brown,
Assistant County Attorney, for appellee State.

Cynthia Lange of Sporer & Flanafan, P.L.L.C., West Des Moines, for
father.

Brent Pattison of the Drake University Legal Clinic, Des Moines, attorney
and guardian ad litem for minor child.

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

POTTERFIELD, P.J.

A mother appeals the termination of her parental rights to her son, X.M.W., who was born in July 2012 testing positive for marijuana. Because there was no good cause to delay the termination hearing and statutory grounds for termination exist, we affirm the termination of the mother's parental rights.

I. Background Facts.

In September 2012, the mother stipulated to the removal of the infant from her custody. The child was placed with his great-aunt.

In October, the mother was in jail. At the adjudication hearing, she acknowledged she had mental health and substance abuse issues. The mother stipulated to the adjudication of her child as a child in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(c)(2), (n), and (o).¹

In November, a dispositional hearing was held. The guardian ad litem noted the parents were not participating in services and that visits were not regular or frequent. The mother and father had recently been asked to leave a shelter and their living arrangements were "day-to-day." The mother had been placed on probation for two years for a recent conviction. The court ordered an attachment assessment and again ordered the parents to complete their social history packets.

At the January 2013 review hearing, the mother reported she had been arrested December 31 on an outstanding warrant and she was presently incarcerated. She hoped to enter a woman's residential facility when released.

¹ As there have been no substantive changes to the pertinent statutes, all citations will be to the 2013 Iowa Code.

She had yet to complete the attachment assessment. The court reminded the mother that the permanency hearing was scheduled for about six weeks. The court noted the mother had obtained a substance abuse evaluation, but while in jail. The court stated to the mother, "You've been in and out of jail like a revolving door in a department store. It's not conducive to building a relationship with your child."

The permanency hearing was held on February 19, 2013. The mother was awaiting placement at a woman's community correctional facility.² The State reported it intended to file a petition to terminate parental rights.

The termination hearing was held on April 3, 2013. The mother's attorney stated he had filed an application to continue the hearing because the mother had been placed in the women's community correctional facility on March 25,³ and "is now at a point where she's really in a healthy place to access services." The court denied the mother's motion to continue, stating "I cannot find that the parent[s] eleventh-hour actions are good cause to continue the proceedings or that delaying permanency for this young child is in his best interest."

The mother testified at the termination hearing. She stated she was at a women's correctional facility as a term of her probation. The facility had a seventy-two-day program, which she hoped to complete sooner because she could "phase up" more quickly due to having two jobs. She acknowledged she did not have consistent contact with X.M.W. even in the two months in which she was not incarcerated during the pendency of the juvenile proceedings. She also

² The mother reported she was five-months pregnant.

³ The mother was in jail prior to placement.

acknowledged she was using methamphetamine daily beginning in September 2012 until October 5, 2012. The mother stated she had not used since that date, though we note she had not submitted to drug testing. She reported that she started substance abuse treatment the week before the termination hearing. The mother conceded she was “at the beginning” of addressing her mental health and substance abuse issues. Even though the mother’s probation officer would not allow a relationship with the father “[b]ecause she thinks he’s a trigger for me to commit crimes and relapse,”⁴ the mother testified she intended to be in a relationship with the father as soon as she was released from the correctional facility.

The juvenile court terminated the mother’s parental rights pursuant to Iowa Code section 232.116(1)(d) (child was previously adjudicated a child in need of assistance (CINA), services have been offered to the parents, and the circumstances that led to the adjudication continue to exist); (e) (child adjudicated CINA, has been removed for six consecutive months, and parent has not maintained significant and meaningful contact with the child during the previous six consecutive months and made no reasonable efforts to resume care of the child despite being given the opportunity to do so); (h) (child under the age of three who has been adjudicated CINA and removed from the parent’s care for at least the last six consecutive months cannot be returned to the parent’s custody at the time of the termination hearing); and (l) (parent has severe

⁴ The mother testified she used illegal substances with the father. The mother and father’s relationship was punctuated by domestic violence. The father was placed on probation due to a charge of domestic abuse causing injury and was incarcerated at the time of the termination hearing as a result of a probation violation.

substance-related disorder and prognosis indicates child cannot be returned within reasonable period of time).

II. Discussion.

[T]he proper analysis under section 232 is first for the court to determine if a ground for termination exists under section 232.116(1). If a ground exists, the court may terminate a parent's parental rights. Iowa Code § 232.116(1). In considering whether to terminate, "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." *Id.* § 232.116(2). Any findings in this regard should be contained in the judge's decision. Finally, before terminating a parent's parental rights, the court must consider if any of the exceptions contained in section 232.116(3) allow the court not to terminate. *Id.* § 232.116(3).

In re P.L., 778 N.W.2d 33, 39 (Iowa 2010).

The mother does not contest that grounds for termination exist.⁵ We therefore need not address this step. See *id.* at 40 (stating that where a parent does not dispute that statutory grounds exist, we need not address this step in the three-step analysis).

The mother contends termination of parental rights was not in the child's best interest and the juvenile court erred in denying her motion to continue the termination hearing. She argues her enrollment in substance abuse and mental health programming—just eight days before the termination hearing—and following seven months of "dismal progress"—should be viewed by this court as good cause to continue the permanency decision and provide the mother with additional time to seek reunification. We disagree.

⁵ The mother does state that her "progress towards reunification" indicates there is not clear and convincing evidence to support termination, but she does not contend statutory grounds for termination do not exist.

Because X.M.W. had already been out of the home for more than six months at the time of the permanency hearing, we view the proceeding with a sense of urgency. See Iowa Code § 232.116(1)(e), (h) (both set out a six-month statutory time period); *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (“Time is a critical element. A parent cannot wait until the eve of termination, after the statutory time periods for reunification have expired, to begin to express an interest in parenting.”). In order to continue placement for six months, Iowa Code section 232.104(2)(b) requires the court to make a determination the need for removal will no longer exist at the end of the extension. See *In re A.A.G.*, 708 N.W.2d 85, 92 (Iowa Ct. App. 2005).

We adopt the juvenile court’s finding:

The Court is unable to find any reasonable likelihood that either parent’s behaviors will change to the extent that they can provide [X.M.W.] with a safe and stable drug-free home in the foreseeable future. The only time that they are paying attention to matters involving [the child] or their own well-being is when they are in jail or otherwise confined. Neither parent ever responded to efforts of the Court Appointed Special Advocate to engage them, even when they were not in jail. And they were in jail often during the short time this case has been before the Juvenile Court.

Upon our de novo review, see *P.L.*, 778 N.W.2d at 40, we find no reasonable basis to conclude that the need for removal will no longer exist at the end of six months. As noted by the juvenile court, “The Court must base its findings on past performance, not future promises.” See *C.B.*, 611 N.W.2d at 495 (“Insight for the determination of the child’s long-range best interests can be gleaned from ‘evidence of the parent’s past performance, for that performance may be indicative of the quality of the future care that parent is capable of providing.’” (quoting *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981))).

The child is doing well in his placement. He is bonded to his care-giver and is thriving. Considering the child's safety, the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child, we conclude termination of the mother's parental rights is in the child's best interests. See Iowa Code § 232.116(2).

We affirm.

AFFIRMED.