

**IN THE COURT OF APPEALS OF IOWA**

No. 3-775 / 13-0970  
Filed August 7, 2013

**IN THE INTEREST OF K.S.,  
Minor Child,**

**A.S., Mother,  
Appellant,**

**R.S., Father,  
Appellant.**

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Appeal from the Iowa District Court for Black Hawk County, Daniel L. Block, Associate Juvenile Judge.

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

Nina Forcier of Nydle & Forcier, P.L.L.C., Waterloo, for appellant mother.

Thomas Harbaugh, Waterloo, for appellant father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kathleen Hahn, Assistant County Attorney, for appellee State.

Linnea Nicol of the Juvenile Public Defender's Office, Waterloo, attorney and guardian ad litem for minor child.

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

**DOYLE, J.**

A mother appeals from the juvenile court's order terminating her parental rights to seven-year-old K.S. We affirm.

***I. Background Facts and Proceedings***

This family came to the attention of the Iowa Department of Human Services in November 2010 after a founded child protective assessment determined the father was responsible for physically abusing the child. The mother eventually obtained a no contact order against the father and he moved to Arkansas. The mother and father are married; their relationship "permeate[s]" with domestic violence.

The mother has a lengthy history of substance abuse, mental illness, and unhealthy relationships. An extensive array of services has been offered to the mother to eliminate the need for DHS involvement. Unfortunately, the mother "lacks insight into her own significant mental health needs and has limited coping and decision making skills." In February 2012, due to chronic unsanitary and unsafe conditions in the mother's home and the mother's substance abuse and unmet mental health needs, the child was removed from her care.<sup>1</sup> The child was adjudicated in need of assistance in March 2012.

Between March 2012 and August 2012, there were three child protective assessments founded with the child as the victim and the mother as the perpetrator.<sup>2</sup> The mother was ordered to participate in substance abuse

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<sup>1</sup> Prior voluntary placement with family members was unsuccessful.

<sup>2</sup> An unsuccessful trial home placement in August 2012 resulted in one of these assessments when the child was discovered in the care of a ten-year-old boy (whose name was unknown to the mother) while the mother was using drugs and alcohol.

treatment and mental health counseling. She did not consistently avail herself of these services. The mother is currently diagnosed with bipolar disorder, posttraumatic stress disorder, and depression. Her history of mental illness has included hospitalizations and episodes of suicidal ideation.

The father returned to Iowa in September 2012. He participated in visitation with the child until November 2012, when visitations were suspended at the request of the child's therapist. Visitations with the mother were also suspended around this same time at the request of the child's therapist. K.S. has significant mood and behavioral difficulties. All professionals working with K.S. agree the child is "in dire need of permanency and is adoptable."

The State filed a petition to terminate parental rights in January 2013. The termination hearing was held in April 2013. The record before the juvenile court indicated the mother had recently completed outpatient substance abuse treatment. However, the mother was pregnant and unable to take her psychotropic medications due to her pregnancy. She admitted the use of cocaine and marijuana while pregnant. In addition, the mother noted concerns in regard to the putative fathers of the baby. The juvenile court observed the father had moved back into the mother's home, "without warning to any of the professionals working with [them]," and that he was not participating in couples counseling. The mother and father did not believe K.S. could be returned to their care at that time, but believed there was a reasonable likelihood the child could return home "within the next six months."

Following the termination hearing, the court entered its order terminating the mother and father's parental rights pursuant to Iowa Code sections 232.116(1)(d) and (f) (2013). The mother appeals.<sup>3</sup>

## **II. Scope and Standard of Review**

We review proceedings to terminate parental rights de novo. *In re A.B.*, 815 N.W.2d 764, 773 (Iowa 2012). We give weight to the juvenile court's factual findings, especially when considering the credibility of witnesses, but we are not bound by them. *Id.* We will uphold an order terminating parental rights if there is clear and convincing evidence of grounds for termination under Iowa Code section 232.116. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). Evidence is clear and convincing when there are no serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence. *Id.*

## **III. Discussion**

### **A. Grounds for Termination**

At the outset, we must determine whether a ground for termination under section 232.116(1) is established. *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). The mother does not dispute the statutory grounds under sections 232.116(1)(d) or (f) have not been proved by clear and convincing evidence.<sup>4</sup> Indeed, the mother admitted at the termination hearing that the child could not be returned

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<sup>3</sup> The father's appeal was dismissed.

<sup>4</sup> Specifically, the mother does not dispute the grounds to terminate her parental rights under section 232.116(1)(f), and we affirm that finding of the juvenile court. Under that section, termination may be ordered when there is clear and convincing evidence a child age four or older, who has been adjudicated CINA and removed from the parents' care for the last twelve consecutive months, cannot be returned to the parents' custody at the time of the termination hearing. Iowa Code § 232.116(1)(f); see also *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2000) ("We only need to find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm its ruling.").

home at that time, but stated she believed the child could return home “within the next six months.” On appeal, the mother submits:

that she was not ever truly given the opportunity to have the child placed back with her after her drug relapse and cancellation of her trial home placement in August 2012 so as to prove herself to DHS and the Court, that she was capable of successfully parenting her child. . . . [The mother] testified to her ability and willingness to continue to participate in substance abuse programming and other services which would correct the situation. The [mother] would submit to the court that the evidence presented did not show “. . . that the child will not be able to be returned to the custody of the parent within a reasonable period of time” (Iowa Code 232.116(1)(3)).

We construe this assertion to be a claim that the mother was not provided reasonable reunification because her visitation with K.S. was suspended, and we will address it as such.

The State’s duty to make reasonable efforts toward reunification is not “a strict substantive requirement of termination.” *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). “Instead, the scope of the efforts by the DHS to reunify parent and child after removal impacts the burden of proving those elements of termination which require reunification efforts.” *Id.* “A child’s health and safety shall be the paramount concern in making reasonable efforts.” Iowa Code § 232.102(10)(a).

The mother acknowledges her “visits were reduced to play therapy sessions only and then ultimately stopped at the request of the child’s therapist, around December 2012/January 2013,” but claims the visits were stopped only “because the child was having difficulties not related to the actions of the mother.” Unfortunately, this could not be further from the truth. This seven-year-old child’s mental diagnoses include posttraumatic stress disorder and reactive attachment disorder. The child has exhibited troubling behaviors including

cruelty to animals, aggression to other children, defiance, flashbacks, nightmares, sexually acting out, masturbating, tantrums, bed-wetting, and general anxiety. The child's significant behavioral and mood difficulties are unquestionably a direct result of the child's tumultuous and traumatic childhood experiences. Clearly these experiences were caused in large part by the actions (or inactions) of the mother.

The juvenile court noted that if the child were returned to the mother's care, "the child would be placed at imminent risk of further abuse or neglect." We agree. Considering the mother's unresolved mental health issues, unhealthy relationships, lengthy history of substance, impaired decision-making, and continued placement of her needs above the needs of the child, we find the State made reasonable efforts to reunite her with the child.

*B. Best Interests*

Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of section 232.116(2). *P.L.*, 778 N.W.2d at 37. In determining the best interests, this court's primary considerations are "the child's safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child." *Id.*

We agree with the juvenile court's finding that termination of the mother's parental rights is in the best interests of K.S. and would best provide for the child's long-term nurturing and growth. As the court observed:

Because of the child's age, the parents' history of domestic violence and unstable relationships, history of substance abuse, mental health needs and inability to place the needs of the child

above their own, the Court finds that it is clearly in the child's best interests and the community's best interests that the Petition for Termination of Parental Rights is granted. . . . Because of the child's age, length of placement outside the care of a parent and lack of progress by either parent, that permanency through adoptive placement is the most permanent and appropriate long-term placement option. The child's safety can best be ensured by a termination of parental rights. The best placement for furthering the long-term nurturing and growth of the child is through adoption. The physical, mental, emotional needs of the child can also best be met by adoption. The child is in dire need of permanency. The child is adoptable.

Furthermore, we agree with the juvenile court that a delay of another six months is not in the best interests of the child. "It is well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child." *Id.* at 41; *see also In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997) (finding that when considering what the future holds if the child is returned to the parent, we must look to a parent's past behavior because it is indicative of the quality of care the parent is capable of providing in the future). Here, the mother is unable to assume custody of the child now or at any time in the foreseeable future. Children are not equipped with pause buttons. "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987).

*C. Factors Against Termination*

Finally, we give consideration to whether any exception or factor in section 232.116(3) applies to make termination unnecessary. 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), *overruled on other grounds by P.L.*, 778 N.W.2d at 39. Termination is not mandatory when clear and convincing evidence is found that termination would be detrimental to the child due to the closeness of the parent-child relationship. Iowa Code § 232.116(3)(c).

We have 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). Although the mother clearly loves K.S., there is no evidence the mother's relationship with the child is one that is so close it would be detrimental to the child if termination occurred. And no other exception or factor contained in section 232.116(3) applies to make termination of the mother's parental rights unnecessary.

#### **IV. Conclusion**

There is clear and convincing evidence that grounds for termination exist, reasonable efforts were made to reunite the mother with the child, termination of parental rights is in the child's best interests, and no consequential factor weighing against termination requires a different conclusion. Accordingly, we affirm termination of the mother's parental rights.

**AFFIRMED.**