

**IN THE COURT OF APPEALS OF IOWA**

No. 3-921 / 13-1180  
Filed October 2, 2013

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

**C.D.M., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Colin Witt, District Associate Judge.

A mother appeals from the order terminating her parental rights.

**AFFIRMED.**

Thomas P. Graves of Graves Law Firm, P.C., Clive, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, John Sarcone, County Attorney, and Michelle Chenoweth, Assistant County Attorney, for appellee.

Deborah Johnson of Deborah L. Johnson Law Office, P.C., Altoona, for father.

Congarry Williams of the Public Defender's Office, Des Moines, attorney and guardian ad litem for minor child.

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

**BOWER, J.**

A mother appeals from the order terminating her parental rights to her youngest child, contending termination is not in the child's best interests because of the parent-child bond and because the child was in the custody of a relative. She also contends she "was not afforded effective assistance of counsel" when the court denied the request for new counsel she made at the beginning of the termination hearing. We affirm.

The child, born in 2004, was removed from the mother's care and placed with the father in June 2012 based on the mother's unresolved mental health and substance abuse issues, allegations of physical abuse of the child by the mother's paramour, and continued contact between the child and the mother's paramour in violation of a no-contact order.<sup>1</sup> Following a contested adjudicatory hearing in July, the court adjudicated the child in need of assistance and continued the child's placement with the father. A few days later, the mother moved to Texas, where she remained throughout these proceedings. She did not attend or participate in the September dispositional hearing. The mother participated in a January 2013 review hearing by telephone.

In March 2013 the State petitioned to terminate the mother's parental rights under Iowa Code section 232.116(1)(b), (d), and (e) (2013). The petition was heard in July. The mother appeared and testified at the hearing. The court found clear-and-convincing evidence supported termination under section 232.116(1)(d) and (e), found termination was in the child's best interests, and

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<sup>1</sup> An older half-sibling also was removed and placed with the younger child's father. A guardianship was established and the older child is not at issue in this appeal.

chose not to avoid termination based on the child's placement with the father. The mother appeals.

We review terminations de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We examine both the facts and law, and we adjudicate anew those issues properly preserved and presented. *In re L.G.*, 532 N.W.2d 478, 480-81 (Iowa Ct. App. 1995). We accord considerable weight to the findings of the juvenile court, especially concerning the credibility of witnesses, but are not bound by them. *Id.* at 481. Our main concern lies with the child's welfare and best interests. *In re L.G.*, 532 N.W.2d 478, 480-81 (Iowa Ct. App. 1995).

On appeal, the mother does not contest the statutory grounds for termination. Instead, the mother contends termination is not in the child's best interests because of "the relationship between the child and [the] mother and how much is lost because of its termination." See Iowa Code § 232.116(3)(c). When determining whether termination is in a child's best interests, we "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." Iowa Code § 232.116(2). The child's physical, mental, and emotional needs are being met by the father. The mother has not addressed her mental health or substance abuse issues. Not terminating the mother's parental rights would be detrimental to the child's mental and emotional needs. The mother moved to Texas soon after the adjudicatory hearing and appears to be living with the paramour who abused the child. The mother is not able to provide for the child's safety and is not the best placement

for furthering the child's long-term nurturing and growth. We agree with the juvenile court that termination of the mother's parental rights is in the child's best interests and affirm on this issue.

Section 232.116(3) gives the juvenile court discretion not to terminate parental rights in certain circumstances. As noted above, the mother mentions the parent-child relationship. Section 232.116(3)(c) allows the court to prevent termination if it finds "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." There is some evidence a parent-child bond existed at the time of the initial removal. Since then, the child has expressed feelings the mother deserted the child and chose the paramour instead. The mother offers no evidence termination would be detrimental to the child because of the closeness of the parent-child relationship. This claim fails.

Section 232.116(3)(a) allows the court to avoid termination if "a relative has legal custody of the child." The court considered this exception and, based on the unique circumstances of the case and the best interests of the child, exercised its discretion not to avoid termination in the interest of safety and stability for the child. See *In re D.S.*, 806 N.W.2d 458, 475 (Iowa Ct. App. 2011). We find no abuse of discretion and affirm on this issue.

The mother also claims she did not receive effective assistance of counsel because the court denied her request for a new attorney. The mother is not truly challenging the representation she received, but rather the court's denial of her request for a new attorney. We review the court's denial of the mother's request

for an abuse of discretion. See *State v. Martin*, 608 N.W.2d 445, 449 (Iowa 2000). The mother made the request orally at the beginning of the termination hearing. On appeal, she asserts she “should have been afforded new counsel upon request” based on the importance of the rights involved. In the hearing, the court, after noting the case was fourteen months old, denied the motion, stating “I believe you are being ethically and competently represented from a legal perspective.”

The reasons given by the mother for requesting a new attorney were “I just don’t feel that I am being represented,” her inability to contact the department of human services or the child, and her inability to get records from the House of Mercy. Most of the mother’s complaints are the result of her choice to move to Texas and the difficulty of participating in the case from there.

There was no good cause to replace the mother’s attorney. If the court had granted the mother’s wish, it would have had to continue the termination hearing, and the delay would not have been in the child’s best interests. See *In re T.D.H.*, 344 N.W.2d 268, 271 (Iowa 1983). We find no abuse of discretion.

**AFFIRMED.**