

IN THE COURT OF APPEALS OF IOWA

No. 3-925 / 13-1248
Filed October 2, 2013

**IN THE INTEREST OF M.R. JR.,
Minor Child,**

A.T., Mother,
Appellant.

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

A mother appeals from the order terminating her parental rights.

AFFIRMED.

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

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kathleen A. Hahn, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Danilson and Tabor, JJ.

DANILSON, J.

A mother appeals the termination of her parental rights to her son, M.R.¹ M.R.'s mother has failed to participate in services as ordered, to attend M.R.'s medical appointments, to establish a permanent residence, and to secure employment. Because she has not shown she is ready to be a full-time mother, we affirm.

I. Background Facts and Proceedings.

M.R. was born prematurely and with multiple health concerns in November 2011.² The mother was a sixteen-year-old minor at the time of M.R.'s birth.

Medical personnel became concerned M.R.'s health problems were not being monitored properly by his parents and believed his lack of adequate weight gain was due to denial of critical care. As a result, the personnel contacted the Iowa Department of Human Services (DHS) in May 2012. DHS began monitoring the family.

Although the mother was cooperative with DHS in the beginning, she failed to exhibit understanding of the severity of M.R.'s health concerns. His doctors explained that he had to be on oxygen at all times in order to facilitate his necessary weight gain and further development, but the mother reported to DHS M.R. no longer had to be on oxygen and cancelled the service for it.³ M.R.'s

¹ The father's parental rights were also terminated. He does not appeal.

² M.R. was born with both lung and heart concerns. He was required to be on oxygen at all times as an infant.

³ M.R. was weaned from oxygen after being hospitalized for that purpose in August 2012.

doctors explained this failure could affect every part of his body, including his brain growth and development. DHS then completed a founded child abuse assessment in June, 2012.

From June to September 2012, the mother changed residences several times. M.R. continued to have issues with weight gain. Although the mother agreed to move in with her parents and keep a written log of M.R.'s feeding schedule, she did not comply with either requirement.

On September 6, 2012, the mother agreed to a safety plan, which put M.R. in the care of his maternal grandmother. The mother agreed to remove M.R. from his grandmother's care only with her knowledge and agreement.

On September 14, 2012, the grandmother reported to DHS the mother had violated the safety plan. The in-home nurse also noted that M.R. had lost weight. At that time, M.R. was considered failure to thrive and removed from the mother's care. He was placed in his grandmother's care.

On October 16, 2012, M.R. was adjudicated a child in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(c)(2) (2011). At the request of his parents, M.R. was removed from his grandmother's care and placed in family foster care. The mother was ordered to undergo a substance abuse evaluation and comply with any requests for drug testing. She was also ordered to complete a mental health evaluation. She was encouraged to meet with the medical professionals working with M.R.

The dispositional hearing was held on November 29, 2012. The court found it was contrary to the best interests of the child to return him to the care of

his parents. The mother was again ordered to participate in child welfare services and to comply with any requested drug tests.

At the permanency hearing, on March 28, 2013, the State advised the court it was intending to file a petition for termination of parental rights. The mother requested the court defer proceedings for six months. The court declined to do so, stating:

The court, having listened to the statements of the parties and having reviewed the reports filed herein, finds the child has been removed from the parent's care for six months. Ongoing concerns exist with regard to the parent's ability to care for the child and the ability to maintain a safe and stable home environment. . . . The mother's participation in services has been inconsistent and no showing has been made that the child could be returned to the mother's care in the next six months based upon her participation in services.

The State filed a petition for termination of parental rights on April 3, 2013. The termination hearing was originally scheduled for June 4, 2013. Because the mother had a criminal trial set for the same day, the termination hearing was continued and rescheduled for July 11, 2013. At the hearing, the court terminated the mother's parental rights, reciting the following facts and reasons:

[The mother] receives four supervised visitations per week. Each visitation is two to three hours in length. Because of poor attendance at visitations, [the mother] is required to confirm visits before the child is transported. [The mother's] attendance at visitation has been poor and inconsistent. [She] has failed to confirm visits on twenty-seven occasions, therefore, no visit occurred. [She] has cancelled ten visits reportedly due to illness. [She] confirmed seven visits, only to later cancel. [She] ended twelve visits early upon her own request. Visits ended early were often due to [the mother] not wanting to deal with the child misbehaving in some fashion. . . . [She] is clearly not ready to be a full-time mother.

. . . .

[The mother] is now eighteen years old. [She] was a child herself throughout the majority of these proceedings. [She] has a history of marijuana use since she was fourteen. [The mother] has refused to provide random drug testing on seventeen separate occasions. [She] denies any current substance abuse. . . . [The mother] met with the parent skill professional one time and has attended parenting groups on two occasions. [She] has not demonstrated any meaningful attempts at educating herself about parenting or being willing to make the commitment to be a full-time parent.

[The mother] is without a permanent residence and has consistently bounced between family members and friends. At the time of hearing, [she] is living back at her mother's home. [She] has a conflictual relationship with her mother and other family members. . . . [She] acknowledges during the hearing that the police were recently called to the home after [she] slapped her older sister while in the home.

[The mother] had demonstrated repeatedly her willingness to put her own needs above those of her child. [She] has failed to attend medical appointments and visitations with her child. [She] has not actively pursued her high school diploma, is unemployed and without stable residence. [The mother] is unwilling to make changes in her lifestyle that would assist her in being able to parent the child.

Upon these facts and conclusions, the court determined that M.R. could not be returned to his mother's custody at that time. Her parental rights were then terminated pursuant to Iowa Code sections 232.116(1)(e) and 232.116(1)(h) (2013). The mother appeals.

II. Standard of Review.

Our review of termination decisions is *de novo*. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We give weight to the juvenile court's findings, especially assessing witness credibility, although we are not bound by them. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under section 232.116. *Id.* 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.

Iowa Code chapter 232 termination of parental rights follows a three-step analysis. *P.L.*, 778 N.W.2d at 39. The court must first determine whether a ground for termination under section 232.116(1) has been established. *Id.* If a ground for termination has been established, the court must apply the best-interest framework set out in section 232.116(2) to decide if the grounds for termination should result in termination of parental rights. *Id.* Finally, if the statutory best-interest framework supports termination of parental rights, the court must consider if any of the statutory exceptions set out in section 232.116(3) weigh against the termination of parental rights. *Id.*

A. Grounds for Termination.

When the juvenile court terminates parental rights on more than one statutory ground, we may affirm the order on any ground we find supported by the record. *D.W.*, 791 N.W.2d at 707. Iowa Code section 232.116(1)(h) provides that termination may be ordered when there is clear and convincing evidence the child is three years or age or younger, has been adjudicated a child in need of assistance, has been removed from the physical custody of the parent for at least six of the last twelve months, and cannot be returned to the parent’s custody at the time of the termination hearing.

In this case M.R.’s mother only disputes the court’s determination he could not be returned to her custody at the time of the termination hearing. She

contends she “made reasonable attempts to comply with the requirements of DHS.” She also contends she was able to show the court, through her own testimony and that of her witnesses, she is able to fulfill the duties of being a parent, including feeding M.R. appropriate meals, bathing him, diapering him, holding him, and showing him affection.

Because of his ongoing medical concerns, M.R. needs specialized care and extra attention. His mother has not shown that she can meet those demands. She has not attended the various doctor appointments as ordered by the court. She has also failed to attend parenting classes as ordered. The court was clear in its finding that the mother loves M.R. and has been able to show her ability to care for him at times, for short periods. However, she has not shown she has a better understanding of M.R.’s continued medical needs or that she is ready to accept the responsibility of full-time parenting.

Furthermore, although the mother had recently reached majority at the time of the termination hearing, she had not completed her high school diploma, obtained a job, or found steady housing. She asked the court to grant her an extension to remedy these concerns, however the court did not find any evidence that showed the extra time would be beneficial. As we have previously stated:

We find no provision in the statute purporting to extend the time interval for teenage parents, and we decline to furnish one. The Iowa legislature has determined that a child’s rights in this regard are not a function of his [or] her parent’s age. Termination should occur if the statutorily prescribed interval has elapsed and the parent remains unable to care for the children.

In re M.R., 487 N.W.2d 99, 103 (Iowa Ct. App. 1992).

There is clear and convincing evidence that M.R. cannot be returned to his mother's custody at this time and the grounds for termination, pursuant to section 232.116(1)(h), have been met.

B. Best Interest of the Child.

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 interest of the child, 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 conditions and needs of the child.” See Iowa Code § 232.116(2).

We agree with the juvenile court’s finding that termination of the mother’s parental rights would best provide for M.R.’s long-term nurturing and growth.

The court reached this conclusion, reasoning:

Because of the child’s age, the parents’ lack of participation in services, history of instability, chaotic life choices and unavailability, 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 and length of placement outside the care of a parent, that permanency through adoptive placement is the most permanent and appropriate long-term placement option. The best placement for furthering the long-term nurturing and growth of the child is through adoption. The physical, mental, and emotional needs of the child can also best be met by adoption. The foster parents have been very supportive of the mother and her efforts towards reunification. The child has thrived in his current foster home.

At the time of the termination hearing, M.R. was approximately twenty months old and had been living outside of his mother’s home for the previous ten months. His current foster parents were aware of his medical needs and able to provide

him with the necessary care. They expressed desire for M.R. to be placed with them permanently. They also expressed willingness to allow the mother to maintain a relationship with M.R. should her rights be terminated and they be allowed to adopt him.

The mother claims that reunification is possible with additional time to obtain employment and housing. M.R. should not have to suffer further instability because his mother delayed in taking advantage of the time initially provided to her. "A parent cannot wait until the eve of termination . . . to begin to express an interest in parenting." *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000).

The mother also contends, in the alternative, that placement of M.R. with his maternal grandmother is in the child's best interest. However, at the time of the termination hearing, M.R.'s grandmother had not yet enrolled in or completed the courses necessary to obtain guardianship of M.R. Furthermore, the mother had already caused M.R. to be removed from the grandmother's care at one time during the proceedings due to family conflict.⁴ The legislature has determined the interval for which patience may last; "this period must be reasonably limited because patience . . . can quickly translate into intolerable hardship for children." *In re R.J.*, 436 N.W.2d 630, 636 (Iowa 1989).

We agree with the district court that it is in M.R.'s best interest to terminate the mother's parental rights.

⁴ The grandmother may remain an option for adoption, however we express no opinion regarding who the ultimate adoptive parent or parents should be.

C. Exceptions or Factors against Termination.

Finally, we consider whether any exception or factor in section 232.116(3) weighs against termination of parental rights. *P.L.*, 778 N.W.2d at 39. 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 facts in the section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993).

The mother contends termination of her parental rights is not necessary because of the closeness of the parent-child relationship between M.R. and herself. See Iowa Code § 232.116(3)(c). The record does not support the assertion M.R. is so bonded to his mother that termination of her parental rights would be detrimental to him. Although the court found it was clear the mother loved M.R., as stated above, she often missed visitations with him. Although there were instances when she claimed this was due to sickness, she often simply failed to confirm visits or cancelled them after confirming. She also ended several visits early. At the time of the termination hearing, M.R. was only twenty months old and had spent half of his life living outside of his mother's care. Furthermore, the current foster parents have stated their willingness to adopt M.R. and allow the mother to continue a relationship with him.

We conclude no exception or factor in section 232.116(3) applies to make termination unnecessary.

IV. Conclusion.

There is clear and convincing evidence that grounds for termination exist under section 232.116(1)(h), termination of parental rights in is the child's best interests pursuant to section 232.116(2), and no consequential factor weighing against termination in section 232.116(3) requires a different conclusion. Accordingly, we affirm termination of the mother's parental rights.

AFFIRMED.