

IN THE COURT OF APPEALS OF IOWA

No. 3-927 / 13-1245
Filed October 23, 2013

**IN THE INTEREST OF C.M.E.,
Minor Child,**

**C.E., Mother,
Appellant.**

Appeal from the Iowa District Court for Jones County, Angie Wilson,
District Associate Judge.

A mother appeals termination of parental rights to a child. **AFFIRMED.**

Melody J. Butz of Butz Law Offices, P.C., Center Point, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Phil Parsons, County Attorney, and Emily Stork, Assistant
County Attorney, for appellee.

Robert Davison, Cedar Rapids, attorney and guardian ad litem for minor
child.

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

MULLINS, J.

A mother appeals from a juvenile court order terminating her parental rights to C.M.E. (born September 2010) under Iowa Code sections 232.116(1)(h) and (l) (2013). She argues the state failed to prove the grounds to terminate, the juvenile court abused its discretion in denying her motion to continue the termination hearing, and termination is not in the child's best interest because of her bond with the mother. We affirm.

I. Background Facts and Proceedings

C.M.E. was born in September 2010. Shortly before her birth, the mother and father ended their relationship. The father has had only sporadic contact with C.M.E. since her birth, has not participated in services, and consented to termination of his parental rights. He is not a party in this appeal.

C.M.E. first came to the attention of the Department of Human Services (DHS) in August 2011, when she was eleven months old. The maternal grandmother and grandfather,¹ discovered the mother and her boyfriend passed out in their home while caring for C.M.E. The grandfather had to crawl through a window to reach C.M.E., who was crying. The mother and her boyfriend did not wake up even when shaken. A child abuse investigation found the mother had denied critical care and failed to provide proper supervision. The mother agreed to participate in services, and the State did not file a child in need of assistance petition at that time. However, the mother failed to comply with services, including drug testing, and did not maintain contact with DHS. In April 2012, the

¹ Although he is the mother's stepfather, she considers him to be her father, and therefore we refer to him as grandfather to C.M.E.

mother was arrested for driving while barred. The maternal grandmother's petition for a substance abuse commitment was granted. During this time the mother was living between the maternal grandmother's home and friends' homes in Lisbon whom DHS feared were drug users. The mother sometimes kept C.M.E. with her during these stays and occasionally left her with the father. On May 10, 2012, while C.M.E. was at her father's home, DHS began another investigation after allegations arose that the mother was using methamphetamine. The second allegation of denial of critical care and failure to provide adequate supervision was later founded. On the same day, the mother began hospitalization for her substance abuse commitment. Upon being admitted the mother tested positive for alcohol, marijuana, and methamphetamine. She acknowledged using marijuana but denied using methamphetamine. When contacted by DHS, the father indicated he was unable to care for C.M.E. during the mother's hospitalization. On May 16, 2012, the court ordered removal of C.M.E. from the father's care and placed her with the maternal grandmother.

Following the mother's consent, on August 14, 2012, the court adjudicated C.M.E. a child in need of assistance under Iowa Code sections 232.2(6)(c)(2) and 232.2(6)(n) (2011). The court ordered the mother to get a substance abuse evaluation and follow through with all recommended treatment, comply with drug testing, get a mental health evaluation and follow through with treatment, find employment, and find an apartment. C.M.E. remained with the maternal grandmother, and the mother received two supervised visits per week.

The mother did get a substance abuse evaluation and completed inpatient dual diagnosis treatment. However, her attendance at follow-up outpatient treatment was sporadic. She attended some sessions but stopped going after December 2012, stating she felt the counselors were “picking on” her. The substance abuse counselor was concerned from the outset that the mother was underreporting her drug use. The mother continued to show physical signs of methamphetamine use, such as sores, picking behavior, fatigue, and poor hygiene. She missed nine out of ten drug testing dates. The mother complains that she could not get drug testing because of her lack of transportation and limited testing options in Jones County. However, the family advocate testified that although the mother was offered various options, including having a mobile drug test unit go to wherever she was staying, the mother always came up with excuses why they would not work. She also denied any drug use during the case, insisting she was sober. She obtained a mental health evaluation but never completed the recommended treatment. DHS was unable to communicate with the mother because her address kept changing as did her phone number. She reported she was working on but unable to secure stable housing. The mother continued to associate with drug users. The DHS worker testified that when the mother went to live with her friends her drug use increased. In November 2012, the mother was staying in a house that was raided by police. She was convicted of possession of drug paraphernalia as a result of the raid. The mother also reported a domestic assault against her by a boyfriend.

By the time of the review hearing on February 12, 2013, the mother had made very little progress. C.M.E. had been out of her care for nine consecutive months. The court therefore directed the State to file a termination petition and set a trial date for May 14, 2013. The State filed its petition March 25, 2013.

On the morning of the termination hearing, the mother appeared with counsel, and stated that she had been assaulted the day before and needed to go to the hospital for medical treatment, requesting a continuance. The court denied the request for a continuance but ordered that the record would be kept open and set another hearing date for May 29 at 11:00 a.m. so that the mother could give her testimony. Upon admission to the hospital, the mother tested positive for methamphetamine.

On May 29, the mother failed to appear. Her counsel explained the mother had entered inpatient substance abuse treatment less than one week earlier. Counsel had been unable to call because confidentiality prevented the clinic from acknowledging the mother's presence there. The mother's counsel was able to leave a message for the mother about the hearing continuance date. The mother's Parent Partner also sent an email to the substance abuse counselor about the hearing date, but received no acknowledgement. The State resisted the motion to continue, stating that C.M.E. had been removed from the mother's home for over a year, well past the statutory guideline for termination, and that giving additional time to the mother would be unfair to C.M.E. who needed permanency. The guardian ad litem held the same opinion. The court denied the motion to continue. On July 23, 2013, the court filed its ruling,

terminating the mother's parental rights under Iowa Code sections 232.116(1)(h) and (l) (2013). The mother appeals.

II. Standard of Review

We review a juvenile court order terminating parental rights de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We give weight to the factual determinations of the juvenile court but are not bound by them. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Our primary concern is the best interests of the child. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

III. Analysis

The mother appeals making three claims: (1) The court erred in refusing to give the mother additional time because the state failed to prove the mother was offered sufficient services and circumstances leading to the removal still existed. (2) The juvenile court abused its discretion in denying the mother's motion to continue the termination hearing. (3) The court erred in determining it was in the child's best interests to terminate parental rights because there is a strong bond between the mother and child.

A. Error Preservation

The mother's first claim states, "[T]he State failed to prove that: (1) . . . the mother was offered and/or received services to correct the circumstances leading to adjudication; and (2) the circumstances still exist." The State argues that the mother failed to preserve error in asserting these claims because they address the termination ground under Iowa Code section 232.116(1)(d),² which was not

² Iowa Code section 232.116(1)(d) requires the court to find both of the following:

one of the grounds of termination in the juvenile court. Upon our review, we agree with the State. Parental rights may be terminated under section 232.116(1)(h) when the child is three years or younger, has been adjudicated in need of assistance, has been removed from the physical custody of the parent for at least six of the last twelve months, or the last six consecutive months, and there is clear and convincing evidence that the child cannot be returned to the custody of the parent. Parental rights may be terminated under section 232.116(1)(l) when the child has been adjudicated a child in need of assistance and custody has been transferred from the parent, the parent has a severe substance-related disorder and presents a danger to self and others as evidenced by prior acts, and there is clear and convincing evidence that the parent's prognosis indicates that the child will not be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home. The mother is not challenging any element of the grounds upon which her rights were terminated. "We will not speculate on the arguments [appellant] might have made and then search for legal authority and comb the record for facts to support such arguments." *Hylar v. Garner*, 548

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

N.W.2d 864, 876 (Iowa 1996). Consequently, this issue was not preserved for appeal.

B. Denial of Motion to Continue

The mother argues it was error for the court to deny her motion to continue the second day of the termination hearing. Denial of a motion to continue is reviewed for abuse of discretion. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996). The ruling will be reversed only if “injustice will result to the party desiring the continuance.” *Id.* “Denial of a motion to continue must be unreasonable under the circumstances before we will reverse.” *Id.* The mother argues there were findings of fact that she “would have persuasively disputed or alternatively would have explained in a way that would have put a more favorable light on the subject” but fails to specify what this testimony would have been. The hearing had already been extended from the first day due to the mother’s need for medical treatment. The court set a new date specifically so the mother could give her testimony. Although the mother entered inpatient drug treatment less than one week before the hearing, the record does not indicate that she could not have attended the hearing. Multiple messages were left for her giving the new trial date. The mother’s counsel could provide no other explanation for why the mother was not present. By the statutory guidelines, the termination could have been completed six months earlier. The mother tested positive for methamphetamines during the first termination hearing. Under the circumstances, it was not unreasonable for the juvenile court to deny the motion

to continue. The court did not abuse its discretion in denying further delays in the hearing.

C. Exceptions to Termination.

When the juvenile court determines that factors exist that require a termination of parental rights, the court must also determine if there is an applicable exception under Iowa Code section 232.116(3). *In re P.L.*, 778 N.W.2d 33, 38 (Iowa 2010). The court need not terminate the relationship between the parent and child if the court finds 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. Iowa Code § 232.116(3)(c). “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 D.S.*, 806 N.W.2d 458, 475 (Iowa Ct. App. 2011). The mother argues there is a strong bond between C.M.E. and her, and the court erred in determining that it was in C.M.E.’s best interest to terminate parental rights. According to the family advocate’s and DHS worker’s testimony, a bond exists between the mother and child. However, existence of a bond is not alone sufficient to make a finding that terminating parental rights would be more detrimental to C.M.E. than not terminating. C.M.E. has been out of the mother’s care for over a year. The mother has only had supervised visitation with her in that time. The mother’s drug and mental health issues are unresolved and continue to present a danger to herself and to C.M.E. C.M.E. requires stability and permanency in her life that the mother cannot provide, despite their bond.

Therefore, the juvenile court correctly determined that the statutory exception was not satisfied.

IV. Conclusion

We find the mother's first issue was not properly preserved for appeal, the district court correctly denied her motion to continue, and the exception to termination under Iowa Code section 232.116(3)(c) is not satisfied. We affirm.

AFFIRMED.