

IN THE COURT OF APPEALS OF IOWA

No. 2-612 / 12-0945
Filed August 8, 2012

**IN THE INTEREST OF B.F.,
Minor Child,**

**J.F., Mother,
Appellant.**

Appeal from the Iowa District Court for Story County, Victor C. Lathrop,
Associate Juvenile Judge.

A mother appeals the termination of her parental rights to her child.

AFFIRMED.

Patrick C. Peters of Payer, Hunziker, Rhodes & Peters, L.L.P., Ames, for
appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Stephen Holmes, County Attorney, and Tiffany Meredith,
Assistant County Attorney, for appellee.

Matthew Mauk, Ames, guardian ad litem and attorney for minor child.

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

BOWER, J.

A mother appeals the termination of her parental rights to her child. She contends the State failed to prove the grounds for termination by clear and convincing evidence and that termination is not in the child's best interests.

We conclude the evidence shows the mother has a severe substance abuse problem that presents a danger to the child. Because there is no evidence the child can be safely returned to her care in a reasonable amount of time, we find the grounds for termination have been proved. The child's best interests require termination, and the mother's bond to the child is not so great that the child would be harmed by termination of her parental rights. Accordingly, we affirm.

I. Background Facts and Proceedings.

B.F. was born in May 2009 and came to the attention of the Department of Human Services (DHS) in December 2009 after the parents drank alcohol and fought in his presence. The incident led to a founded report of child abuse assessment, and the father was charged with domestic assault. The DHS began providing services to the parents.

In March 2010, the parents were involved in another physical altercation. Both parents had been consuming alcohol at the time, although they initially denied it. This occurred one day after the parents were informed they were to abstain from the use of alcohol. Another male, who was also intoxicated, removed the child from the parents' home due to concerns about their fighting;

he stated he had never seen a man hit a woman as hard as the father hit the mother.

The State filed a child in need of assistance (CINA) petition. At the June 2010 hearing, the evidence established that the parents abused alcohol on a regular basis and became violent and argumentative while intoxicated. B.F. was adjudicated a CINA pursuant to Iowa Code sections 232.2(6)(c)(2) and (n) (2009). The child remained in the mother's custody, although she was to refrain from substance abuse, keep violence out of the home, and co-operate with the services offered her.

In March 2011, the mother assaulted the father's girlfriend. There was a question as to whether B.F. witnessed the assault. The mother also admitted leaving another child unattended overnight. On April 5, 2011, the mother consented to placing B.F. in foster care.

In June 2011, the mother was arrested after marijuana was discovered in a vehicle in which she was a passenger. By the fall of 2011, the mother was employed at less than part-time, continued to associate with people who had histories of criminal activity and substance abuse, and failed to complete one drug screen. Because the mother did not have health insurance, she was not taking her prescribed medicine for migraines and reported sleeping all the time. She missed visits with B.F. because she was sleeping.

The State filed a petition to terminate the mother's parental rights on October 28, 2011. The termination hearing was held in March 2012. The court found the State proved the grounds for termination under section 232.116(1)(l)

(2011), citing the mother's testimony that she was a drug addict. The court further found termination was in B.F.'s best interests as the mother could not provide B.F. with a safe home, remained unemployed, continued to be involved with controlled substances and persons who abused controlled substances, and suffered from mental health and physical issues that prevented her from being able to parent the child. Finally, the court found no evidence B.F. would suffer harm if termination occurred. The mother's parental rights were terminated.

II. Scope and Standard of Review.

We review termination of parental rights proceedings de novo. *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011). While we are not bound by the juvenile court's fact-findings, we do give them weight, especially when assessing witness credibility. *Id.*

We will uphold a termination order if clear and convincing evidence supports the grounds for termination under section 232.116. *Id.* Evidence is "clear and convincing" where there lacks "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.*

III. Grounds For Termination.

The juvenile court terminated the mother's parental rights pursuant to sections 232.116(1)(*l*). Termination is appropriate under this section where:

- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.
- (2) The parent has a severe substance-related disorder and presents a danger to self or others as evidenced by prior acts.
- (3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to 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.

Iowa Code § 232.116(1)(f). The mother disputes that (1) she has a severe substance-related disorder, (2) she presents a danger to herself or others, and (3) her prognosis indicates B.F. cannot be returned to her custody within a reasonable time.

Our review of the record shows the grounds for termination were proved by clear and convincing evidence. When asked at the termination hearing why she chose to use illegal drugs, the mother testified, "Because I'm a drug addict, and I am trying to get help. You just can't stop." She also admitted to taking prescription drugs for which she did not have a prescription. The mother failed to get a substance abuse evaluation until just days prior to the termination hearing. She testified she had been sober for less than a month and at the time of the hearing she was dating a methamphetamine user. The record shows that when the mother abuses alcohol, she becomes argumentative and violent. Her use of alcohol, marijuana, and prescription drugs endangers the child.

The juvenile court found that while the mother was given from January to March to show additional progress, she chose not to do anything until the eve of termination.

The prognosis for her success is not good at this time. [The mother]'s efforts are simply too little too late and there is far too little time involved to have any confidence that she will be able to maintain sobriety and her commitment to change as well as her mental health issues.

We agree. While the law requires a full measure of patience with troubled parents, this patience is built into the statutory scheme of chapter 232. *In re*

C.B., 611 N.W.2d 489, 494 (Iowa 2000). “[T]he crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.” *Id.* “Time is a critical element. A parent cannot wait until the eve of termination . . . to begin to express an interest in parenting.” *Id.*

The mother had nearly two years in which to make the necessary changes to safely parent B.F. She failed to do anything until just prior to the termination hearing. Based on her brief period of sobriety and last-minute decision to participate in the substance abuse evaluation, as well as her decision to continue involvement with substance abusers, we find her prognosis for continued sobriety is poor. The mother would need a great deal more time to demonstrate she can safely parent B.F.—time that B.F. does not have. The grounds for termination have been proved.

IV. Best Interests of the Child.

If the grounds for termination exist, the court may terminate a parent’s parental rights. *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). In determining 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.* (citing Iowa Code § 232.116(2)).

We find termination is in B.F.’s best interests. As stated above, the mother failed to demonstrate she can safely parent B.F. However, we must also consider if any of the factors contained in section 232.116(3) weigh against termination. *Id.* The mother argues B.F. is bonded to her and a sibling and, as a

result, termination of parental rights would be detrimental to B.F. See Iowa Code § 232.116(3)(c).

The juvenile court found no evidence that B.F. would suffer some harm if the mother's rights were terminated, citing the testimony of the DHS caseworker that B.F. does not rely on the mother for having his needs met. The court opined that the strength of the mother's bond to B.F. appears much stronger than the bond running from B.F. to the mother, and that while termination might cause some initial confusion for B.F., "the benefits of termination of parental rights far outweigh any benefit from continuing the status quo."

We agree with the juvenile court's assessment. Our supreme court has held that it is not in the best interests of children to continue to keep them in foster homes. *In re J.L.P.*, 449 N.W.2d 349, 353 (Iowa 1989). "Child custody should be quickly fixed and little disturbed. Children should not be made to suffer indefinitely in parentless limbo." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). Accordingly, we affirm the termination of the mother's parental rights.

AFFIRMED.