

IN THE COURT OF APPEALS OF IOWA

No. 2-814 / 12-1054
Filed September 6, 2012

**IN THE INTEREST OF T.H.C.,
Minor Child,**

T.C., Mother,
Appellant.

Appeal from the Iowa District Court for Webster County, James A. McGlynn, Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Christopher O'Brien, Fort Dodge, for appellant mother.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant Attorney General, and Ricki Osborn, County Attorney, for appellee State.

Marcy Lundberg, Fort Dodge, for minor child.

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

EISENHAUER, C.J.

A mother appeals from the order terminating her parental rights to her child, contending the State did not prove she abandoned the child and termination is not in the child's best interests. On our de novo review, *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011), we affirm.

The mother's parental rights to two older half-siblings of this child were terminated in February 2011. Both children were adopted by the same family. One evening in July 2011, when this child was just seven weeks old, the mother contacted the family who had adopted her other children to ask if they would take this child so he could be raised with his siblings. The Iowa Department of Human Services (DHS) was contacted. The next day the mother gave the child, his clothes, stroller, car seat, and all other baby supplies to the DHS worker. The mother stated her intention to give the child up for adoption. She also indicated she did not want any reunification services. This was the third time the mother had voluntarily relinquished custody of a child. The child was placed in foster care with the family who had adopted his two siblings, where he has remained. For the next seventy days, the mother had no contact with the child and did not participate in or request any services to work toward reunification. In early August a petition was filed alleging the child to be a child in need of assistance.

The mother appeared at the child-in-need-of-assistance adjudicatory hearing in October and informed the court she wanted to participate in services and work toward reunification with this child. The court adjudicated the child in need of assistance under Iowa Code section 232.2(6)(c)(2) (2011) and ordered services for the mother. In November, the State sought a waiver of reasonable

efforts. Following a combined dispositional and waiver-of-reasonable-efforts hearing in December, the court continued the child's placement in foster care. The court also waived reasonable efforts pursuant to Iowa Code section 232.102(12) based on the prior termination of the mother's parental rights to two children, the mother's dangerous pattern of involvement with abusive men, her voluntary surrender of custody of this child and of the two older siblings, her history of mental health issues, her inability to cope with caring for young children, her abandonment of this child, and a finding continued services would not likely correct the circumstances leading to the child's removal. The mother was pregnant at the time of the hearing. She told her DHS caseworker she did not want any more visits with the child, and she had a final visit.

In early January 2012 the mother changed her mind and said she wanted visitation. She was provided weekly two-hour visits. She continued to receive in-home services from Family Foundations, both for this child and for her unborn child. She also completed a parenting class with Children and Families of Iowa.

In March the State petitioned to terminate parental rights under Iowa Code section 232.116(1)(a), (b), and (g).¹ The court considered both abandonment and desertion under section 232.116(1)(b) and also the grounds set forth in (g). The court found clear and convincing evidence the mother had abandoned the child as defined in section 232.2(1), but had not deserted the child as defined in section 232.2(14). The court also found clear and convincing evidence supported all the statutory grounds in section 232.116(1)(g).

¹ Although the petition does not cite section 232.116(1)(g) expressly, paragraph thirteen alleges the grounds contained in that section.

Concerning the child's best interests, the court considered the placement best suited to provide for the child's safety, his long-term nurturing and growth, and his physical, mental, and emotional needs. The court considered whether the parent's ability to provide for the child is affected by the parent's mental capacity or condition. It also considered the child's current foster placement with the siblings, his bond with the foster family, and the family's willingness to integrate the child permanently into the family. The court found termination of parental rights was in the child's best interests.

On appeal, the mother contends the State did not prove she abandoned the child. See Iowa Code §§ 232.2(1), 232.116(1)(b). She does not challenge the termination under section 232.116(1)(g). She also contends termination is not in the child's best interests "as this child's needs can be best met by this mother, who has clearly expressed her desire to receive services and to be reunited with her son."

When the court terminates a parent's rights on more than one statutory ground, we may affirm if any of the grounds cited is supported by clear and convincing evidence. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). This child was adjudicated in need of assistance in October 2011. A court had already terminated the mother's parental rights concerning two other children. The mother has a history of mental health issues and continues to lack the ability or the willingness to respond to services that would allow reunification. She has received services since January 2008. The mother's established patterns of violent relationships, including the father of one of her children who sexually abused another of her children, and of giving up her children indicate an

additional period of rehabilitation would not correct the situation. Clear and convincing evidence supports termination of the mother's parental rights under section 232.116(1)(g), which the mother does not challenge. We affirm this statutory ground for termination.

Once a statutory ground for termination exists, the court may terminate parental rights. *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010). In considering whether to terminate, the court must then apply the best-interests framework established in section 232.116(2). *Id.* This section highlights as primary considerations: 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. Iowa Code § 232.116(2). "A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests." *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially). We determine those best interests by looking at both the child's long-range and immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). We consider what the future likely holds for the child if returned to a parent. *In re J.K.*, 495 N.W.2d 108, 110 (Iowa 1993). We gain insight into that determination from evidence of the parent's past performance, for that performance can indicate the quality of future care the parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493–94 (Iowa 1990).

We agree termination is in this child's best interests. The pre-adoptive foster family can provide a safe, permanent home for this child with his siblings—something the mother has not and cannot provide. We conclude termination of the mother's parental rights and freeing this child for adoption best provides for

this child's safety, his nurturing and growth, and his physical, mental, and emotional needs.

AFFIRMED.