

IN THE COURT OF APPEALS OF IOWA

No. 3-237 / 13-0136
Filed March 27, 2013

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

**L.M., Mother,
Appellant,**

**B.M., Father,
Appellant.**

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

A mother and father separately appeal from the termination of their parental rights. **AFFIRMED.**

Michael Bandy of Bandy Law Office, Waterloo, for appellant mother.

Tammy L. Banning of Tammy L. Banning, P.L.C., Waterloo, for appellant father.

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

Melissa Anderson Seeber of Waterloo Juvenile Public Defender Office, Waterloo, attorney and guardian ad litem for minor child.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

A mother and father separately appeal from the termination of their parental rights to a child, S.M. The father argues termination of his rights was not appropriate because S.M. is in the custody of S.M.'s paternal grandparents, and because the court should have deferred permanency. The mother argues termination of her rights was improper because the Iowa Department of Human Services (DHS) raised false barriers to her reunification with S.M. We affirm, finding termination as to both parents is in the best interests of S.M.

I. Facts and Proceedings.

S.M., born in 2011, came to the attention of the DHS after she sustained a spiral fracture to her right leg. During the medical examination of the child as a result of this injury, healing rib fractures were also found. Physicians identified the injuries as non-accidental. Police arrested and charged S.M.'s father with child endangerment for inflicting these injuries. The court ordered no contact between S.M. and S.M.'s father after he was released from jail. DHS found S.M.'s mother had denied S.M. critical care by failing to provide proper supervision and noted several instances where S.M.'s mother struck S.M.'s father in the presence of S.M. and S.M.'s sibling.¹ The parents agreed to begin mental health treatment and other DHS-provided services. Both parents were enrolled in anger management classes.

On February 14, 2012, S.M. and S.M.'s sibling were removed from their home and placed with S.M.'s paternal grandparents. A removal hearing held on

¹ This sibling is not at issue on appeal.

February 22, 2012, confirmed the placement. S.M. was not returned to her parents' care throughout the juvenile court proceedings.

On March 23, 2012, the juvenile court adjudicated S.M. a child in need of assistance (CINA). At the hearing on CINA adjudication, S.M.'s mother objected to visitation at S.M.'s paternal grandparents' home. She did not, however, object to the custodial order, which placed S.M. in the paternal grandparents' home.

After the CINA adjudication, S.M.'s mother regularly participated in services but exhibited problems with emotional functioning including shutting down and intense outbursts. DHS workers noted her parenting skills were not improving, and she continued to use physical discipline with the children even after signing a safety plan in which she agreed not to use physical discipline. Workers also noted her continual focus on perceived conflicts with S.M.'s paternal grandparents regarding S.M. DHS worked with S.M.'s mother during services to resolve the conflict between S.M.'s mother and the grandparents. No visits took place between S.M.'s father and S.M. during this time due to the no-contact order. Because of the pending criminal charges, participation by S.M.'s father in services was limited on advice of his attorney. Both parents minimized S.M.'s injuries by stating they did not know about the broken ribs and that the broken leg accidentally occurred during a diaper change. On July 23, 2012, the district court modified the no-contact order to allow supervised visitation between S.M. and S.M.'s father. During this time period, S.M.'s mother became angry outside a party with S.M.'s father, pushing him and a child into a car and throwing objects at him. She later stated she "blacked out" because she was so angry.

At the permanency hearing on August 17, 2012, S.M.'s mother and father did not contest the services they were given but requested the court defer permanency for six more months. The court did not defer permanency and continued the child's placement with the paternal grandparents.

A termination hearing was held in January of 2013. At the hearing, the court heard testimony from the child's aunt and two DHS workers involved in S.M.'s case. S.M.'s father lived with friends at the time of the hearing. DHS representative Anne Varney testified the relationship between S.M.'s parents was still unstable—the relationship was on again and off again. She explained that S.M.'s mother at times would decide to file for legal separation and at other times the couple would reconcile, again working on their relationship. Another DHS worker, Wendy Markey, reported the couple had changed their minds on their relationship status at least four times in the last month. Markey testified:

They attend all visitations. We have counted. They have attended over 120 visits. They have followed through with both of them, completed an anger management program. They have completed parenting classes. I think that every service possible has been offered to them. It's just at this point they haven't been able to demonstrate they could utilize the services that we have provided to them to provide a safe home for their children. . . .

[M]ental health and anger management I think are the huge factors in the relationship.

Varney reported concerns with the mother's anger management skills, having observed problems herself, and hearing reports from both parents that mother would hit the father. These incidents of violence, Varney reported, would occur after extensive yelling and screaming. Three months before the hearing, S.M.'s mother acknowledged she had blacked out and hit the father in a bowling alley—after she had completed a sixteen-week anger management course. Varney

reported that while S.M.'s mother was taking medication to help with her mental health issues she refused to see a therapist. Varney described "a ton" of bickering and tension between the two parents during visitation with S.M. The juvenile court noted the danger of the persisting relationship between S.M.'s mother and father, and both parents' minimization of S.M.'s injuries. The court terminated the parental rights of both S.M.'s mother and father under Iowa Code section 232.116(1)(d) and (h) (2013). Both parents appeal.

II. Analysis.

We review termination of parental rights proceedings de novo. *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). We give weight to the factual findings of the juvenile court, especially concerning witness credibility, but we are not bound by those findings. *In re A.B.*, 815 N.W.2d 764, 773 (Iowa 2012).

A. Mother's Appeal.

The mother argues her rights were improperly terminated and she should be allowed a six-month deferral of permanency because the court allowed DHS to "erect false barriers to reunification with the mother to the point no true reunification was ever attempted." This, she reasons, was caused by placement of S.M. with S.M.'s paternal grandparents. She does not cite authority to support this argument. See Iowa R. App. P. 6.903(2)(g)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue."). We interpret the mother's claim as challenging whether DHS made reasonable efforts towards reunification under Iowa Code section 232.102(10). While the record shows S.M. objected to visitation at S.M.'s grandparents' home, it is unclear whether she requested an alternative placement or suggested alternatives to visiting at the

grandparents' home. See *In re S.R.*, 600 N.W.2d 62, 65 (Iowa Ct. App. 1999) (stating a parent has “the obligation to demand other, different, or additional services prior to the termination hearing.”). Further, the record is replete with services offered to the mother in order for her to reunify with her child. These services included help to handle her conflict with S.M.'s paternal grandparents. Considering the “type, duration, and intensity of services or support offered” we conclude S.M.'s mother was offered reasonable services towards reunification. See Iowa Code section 232.102(10)(a)(1).

B. Father's Appeal.

S.M.'s father first argues that termination was not in S.M.'s best interest as legal custody of S.M. was placed with a relative. The father points us to Iowa Code section 232.116(3)(a) to support the proposition that “[t]he court need not terminate parental rights if the court finds a relative has legal custody of the child.” This section is the third step in a court's analysis as to whether a parent's rights should be terminated as to a child.

Section 232.116 requires the juvenile court to make various decisions in the process of terminating a parent's parental rights. First, the court must determine if the evidence proves one of the enumerated grounds for termination in section 232.116(1). If a ground is proven, the court may order the termination. Iowa Code § 232.116(1). Next, the court must consider whether to terminate by applying the factors in section 232.116(2). *Id.* § 232.116(2). Finally, if the factors require termination, the court must then determine if an exception under section 232.116(3) exists so the court need not terminate. *Id.* § 232.116(3).

P.L., 778 N.W.2d at 40. However, the language of 232.116(3) is permissive—the court “need not terminate.” *Id.* Our analysis hinges on whether application of this factor makes termination unnecessary. See *In re D.W.*, 791 N.W.2d 703,

706 (Iowa 2010). S.M. is very young, and requires permanency. See *P.L.*, 778 N.W.2d at 41. Upon our de novo review of the record, we find termination is still necessary given the father's history of abuse, his marginalization of or inability to accept responsibility for this abuse, and his ongoing tumultuous relationship with S.M.'s mother.

S.M.'s father next argues that permanency should have been deferred for another three months, because he complied with all services and needed additional time to conclude other proceedings and couple counseling. "It is well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child." *P.L.*, 778 N.W.2d at 41. The father does not contest that grounds under section 232.116(1) exist. S.M. was removed from the home in February of 2012. The termination hearing was held in January of 2013. S.M.'s father has had eleven months to complete services. During this time S.M. finished her first year of life and began her second. The father has continued a volatile relationship with S.M.'s mother and failed to secure adequate housing by the termination hearing. While he has taken part in services and obtained employment, there is no evidence the problems would be remedied by an additional three months' delay in permanency. We affirm termination as to both parents.

AFFIRMED.