

**IN THE COURT OF APPEALS OF IOWA**

No. 3-277 / 13-0164  
Filed April 10, 2013

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

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

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Appeal from the Iowa District Court for Poweshiek County, Randy S. DeGeest, District Associate Judge.

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

**AFFIRMED.**

Dennis E. McKelvie of McKelvie Law Office, Grinnell, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Rebecca L. Petig, County Attorney, for appellee.

Considered by Eisenhauer, C.J., Danilson and Bower, JJ.

**BOWER, J.**

A mother appeals the termination of her parental rights to her child. She contends the juvenile court erred in terminating her parental rights based on her mental disability, arguing she should have been offered additional services to reunify her and the child. She also contends termination is not in the child's best interests.

The mother failed to request any additional services prior to the termination of her parental rights. Because her mental disability impedes her ability to provide this special-needs child with the level of care necessary to meet the child's basic needs, we affirm the termination of the mother's parental rights.

***I. Background Facts and Proceedings.***

The child was removed from the mother's care in December of 2011, at four months of age, and was adjudicated to be a child in need of assistance (CINA). The child was born with a medical condition, that requires an extremely high level of monitoring in order to survive. The mother, who has borderline intellectual functioning, was not able to provide the necessary level of care for the child's medical condition, putting the child's health in jeopardy. The mother also had her parental rights to another child terminated.

Services were offered to assist the mother. In spite of receipt of these services, concerns persisted about the mother's ability to safely parent the child. The State filed a petition seeking to terminate the mother's parental rights, and a hearing was held in January 2013.

At the time of the termination hearing, the mother was unemployed and living with the maternal grandmother. The mother did not have a driver's license or a vehicle, impeding her ability to transport the child to the hospital when emergency medical care is necessary. The mother also failed to complete an education course regarding the child's future medical needs. She was inconsistent in attending visitations with the child, missing more than half of the offered visits between July 2012 and the time of termination. The Department of Human Services worker testified at the termination hearing that the child could not be safely returned to the mother's care, and that was unlikely to change.

On January 24, 2013, the juvenile court entered an order terminating the mother's parental rights pursuant to Iowa Code sections 232.116(1)(g) and (h) (2011). The court found that although the mother was appropriately bonded with the child, termination was in the child's best interests.

## ***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 considered "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. Analysis.***

The mother first contends her mental disability should not have been dispositive of her ability to care for the child. She notes that she did not intentionally neglect the child, but rather does not possess the medical training and sophistication necessary to care for the child, who has special medical needs. Absent these special needs, the mother argues she would have been able to offer a reasonable level of care.

It is true that lower mental functioning alone is not a sufficient reason to terminate parental rights. *In re D.W.*, 791 N.W.2d 703, 708 (Iowa 2010). However, we may consider it as a contributing factor to a parent's inability to provide a safe and stable home for a child. *Id.* Here, the mother's mental disability has impacted her ability to provide the appropriate level of care necessary for this child to not only be safe, but to survive. The mother has demonstrated an inability to get the child to regular medical appointments or provide medications as scheduled. Her past performance is indicative of the quality of the future care the mother is capable of providing. *See id.* at 709.

The mother argues additional training and assistance should have been provided to her because of the child's special needs. While the Department of Human Services has an obligation to make reasonable efforts to reunify a parent and child, the parent "has an equal obligation to demand other, different, or additional services prior to a permanency or termination hearing." *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005). The mother here has failed to do that, and therefore has not preserved this claim for review. *See id.*

Finally, the mother contends termination is not in the child's best interests. In making this determination, 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 condition and needs of the child." *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). The mother argues she was "present and eager" to provide care to the best of her ability, and that her mental functioning level "could have been supported by community services and continuing medical care from medical professionals involved."

The evidence does not show a mother who was "present and eager" to provide for the child. To the contrary, the mother failed to attend over half of her visits with the child in the months leading up to termination. The juvenile court noted the "bond between the child and the child's parent is described as appropriate, given the child's medical problems and limited contact with [the] mother." However, the court found that while the mother has the love and desire to provide the child with the appropriate care, "she simply does not have the ability to do so through no fault of her own. The mother's low functioning and inability to demonstrate she can comply with medical appointments and care would, without question, put the child's very survival in clear and present danger."

In contrast to the bond the child has with the mother, the court found the bond between the child and the foster parent is "a superior example of how a foster parent bonds with an infant placed in her care to the extent the foster child becomes like the natural child of the foster parent." With regard to her ability to provide care for the child, the juvenile court praised the foster parent, stating she

“is and remains the key to this child’s survival. It is apparent to this Court that without the current foster parent, the child might not be alive today.”

Given the child’s special needs and the mother’s inability to meet these needs, we find termination is in the child’s best interests. Termination will also allow the child to be adopted into a permanent home, something that the foster parent has indicated she would like to give the child. For the foregoing reasons, we affirm the termination of the mother’s parental rights.

**AFFIRMED.**