IN THE COURT OF APPEALS OF IOWA

No. 3-387 / 13-0317
Filed April 24, 2013

IN THE INTEREST OF K.A.,
Minor Child,

C.K., Mother,
Appellant.

Appeal from the Iowa District Court for Johnson County, Deborah F. Minot, District Associate Judge.

A mother appeals the district court order terminating her parental rights. **AFFIRMED.**

Noelle Murray of Moore & Egerton, L.L.P., Iowa City, for appellant mother.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant Attorney General, Janet M. Lyness, County Attorney, and Patricia A. Weir, Assistant County Attorney, for appellee state.

Patrick Ingram of Mears Law Office, Iowa City, for appellee father.

Anthony Haughton of Linn County Advocate, Cedar Rapids, attorney and guardian ad litem for minor child.

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

VOGEL, P.J.

A mother, Cody, appeals the district court order terminating her parental rights to her son, K.A. (born 2010), pursuant to Iowa Code section 232.116(1)(h) (2011) (child three or younger, adjudicated child in need of assistance (CINA), removed from home for six of last twelve months, and child cannot be returned home).[1] She claims the State did not prove the fourth element—the child cannot be returned at the present time—by clear and convincing evidence, she should have been afforded additional time to accomplish reunification pursuant to Iowa Code section 232.104(2)(b), termination was not in the child's best interest, and the district court erred in referencing events that allegedly occurred after the trial record was closed. Because we agree with the district court's findings, we affirm.

We review termination orders de novo. *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007). Our primary concern in termination proceedings is the best interests of the child. *Id.* To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence. *See* Iowa Code § 232.116. "Clear and convincing evidence" means there are no serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). We defer to the district court's credibility findings. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990).

First, Cody contends the State failed to prove by clear and convincing evidence the final element of section 232.116(1)(h)—the child could not be

[1] K.A.'s father, Brian, had his parental rights also terminated. He does not appeal.

returned safely to Cody's home.[2] The record is replete with instances of domestic violence between Cody and Brian, and other men in Cody's life.[3] All service providers have been consistent in identifying the fact that volatile relationships are a big, if not the biggest, hindrance of reunification. The district court specifically found Cody's testimony was disrespectful and she only reluctantly discussed her relationship with Brian. Although offered many services, Cody has failed to show she has learned the skills to prevent placing herself and her child in these dangerous situations; she has even gone as far as covering up for Brian when he violated protective orders. She has never shown she has the ability to avoid him and protect K.A. when Brian is not incarcerated.

Moreover, Cody's visitation with K.A. has been spotty and inconsistent. She has not progressed past fully supervised visits, nor has she shown she has stable housing or can provide financially for the child. We find the State has proved by clear and convincing evidence K.A. cannot be returned to Cody's care.

Next, Cody argues the district court erred in not granting her an additional six months to work towards reunification. Once the limitation period lapses, termination proceedings must be viewed with a sense of urgency. *C.B.*, 611 N.W.2d at 495. Insight for the determination of the child's long-range best interests can be gleaned from "evidence of the parent's past performance for that performance may be indicative of the quality of the future care that parent is capable of providing." *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

---

[2] Cody does not contest the other elements. The child was adjudicated as a CINA on March 3, 2011, and was placed in foster care pursuant to a court order on April 9, 2012.

[3] At the termination hearing Cody was pregnant by another man. She has a history of domestic violence with the putative father of her unborn child as well. She testified she may place the child for adoption but is unsure of her plans.

Cody has not shown an ability to sustain any progress achieved, and her past performance indicates she quickly falls back into unhealthy situations and relationships. She has put herself in a violent domestic situation as recently as one month before the termination hearing; she has not learned what a healthy relationship is. Moreover, she has been resistant to engaging in the services, such as therapy, that would help her reach a stable life-style, as she has been "reflexively resistant" to anyone she perceives as authority. Though this family has been involved with the Department of Human Services for almost the entirety of K.A.'s life, Cody's progress has been sorely lacking. The child need not wait an additional six months to see if Cody can overcome her poor lifestyle choices.

Cody next claims the district court erred in including a reference to events that occurred after the trial record was closed. The State argues this issue was not preserved because Cody did not file a motion to amend or enlarge for the district court to take up her concerns and make an appropriate ruling. The questioned evidence was regarding a public confrontation between Cody and K.A.'s father, Brian. Given that substantial other evidence of Cody and Brian's violent relationship was already in the record, we find even if the issue was properly preserved, she did not suffer any prejudice from the erroneously considered evidence. *See A.S.*, 743 N.W.2d at 869 (holding no prejudice would be found due to erroneously admitted evidence where it was merely cumulative).

Lastly we turn to Cody's argument that termination was not in K.A.'s best interests. Terminating her parental rights so the child can be permanently placed and adopted gives primary consideration to K.A.'s safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical,

mental, and emotional needs of the child under Iowa Code section 232.116(2). *See In re P.L.*, 778 N.W.2d 33, 41 (Iowa 2010). It is well-settled law 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. *Id.* K.A. is a healthy child with a loving bond with his foster parents, who are willing to adopt him. There is also the possibility of an out-of-state family member adopting him, and we find the permanency of adoption is in the child's best interest. Consequently, termination was proper under sections 232.116(1) and (2).

AFFIRMED.