IN THE SUPREME COURT OF IOWA

No. 17–0851

Filed January 19, 2018

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

A.S., Mother,

Appellant.

On review from the Iowa Court of Appeals.

Appeal from the Iowa District Court for Monroe County, William S. Owens, District Associate Judge.

Guardian ad litem of minor child seeks further review of court of appeals decision that reversed order terminating mother's parental rights. **DECISION OF COURT OF APPEALS VACATED; JUVENILE COURT JUDGMENT AFFIRMED.**

Robert F. Bozwell Jr. of Bozwell Law Office, Centerville, for appellant.

Julie R. De Vries of De Vries Law Office, PLC, Centerville, for guardian ad litem.

Thomas J. Miller, Attorney General, and Ana Dixit, Assitant Attorney General, for appellee.

WATERMAN, Justice.

In this appeal, we must decide whether the juvenile court erred in terminating a mother's parental rights. The mother left her three-month-old daughter with the father she knew was intoxicated. She returned to find the baby crying with blood in her diaper and took her to the hospital. Physicians determined the infant had been sexually abused. The father was ultimately convicted of that offense and sentenced to life in prison. Meanwhile, the child was placed in temporary custody with the maternal grandparents while social workers with the Iowa Department of Human Services (DHS) provided services to the mother who remained incapable of caring for her child alone. Ultimately, the juvenile court found that the State had proven the grounds for termination of her parental rights and that termination was in the child's best interests. The mother appealed. The court of appeals reversed and remanded the case for the child to remain in the custody of the grandparents as guardians. One judge dissented, concluding that court of appeals precedent disfavored guardianships under these circumstances and that the juvenile court's termination of the mother's parental rights should be affirmed. We granted the application for further review filed by the child's guardian ad litem and joined by the State.

On our de novo review and for the reasons explained below, we affirm the juvenile court judgment and vacate the decision of the court of appeals. The controlling legislation promotes prompt permanent placement for young children, and the mother remains incapable of raising the child safely with no indication her parenting abilities will sufficiently improve in the foreseeable future despite the extensive services DHS social workers have been providing. The juvenile court

correctly rejected the option of a continuing temporary guardianship with the child's grandparents.

I. Background Facts and Proceedings.

On the morning of February 4, 2016, A.S. left her child, who was less than three months old, in the care of the child's father, J.S., for approximately two hours. A.S. knew J.S. was intoxicated. When A.S. returned, she found the father "passed out" and their baby in a swing shaking and crying. A.S. noticed blood in their baby's diaper and with her aunt's help, took the infant to the Monroe County Hospital emergency room. The baby was promptly transferred by ambulance to Blank Children's Hospital in Des Moines, accompanied by A.S.

The DHS received a report that the child had been seriously injured from suspected sexual abuse. Amber Bricker, a child protection worker from Polk County, spoke with hospital staff that afternoon. She interviewed A.S., who revealed J.S. had a history of methamphetamine and alcohol abuse and most recently his problems involved alcohol. A.S. admitted to Bricker that she could tell when J.S. had been drinking based on the way he looked and acted. A.S. acknowledged that when she left the baby with him, J.S. seemed drunk because his "eyes were red and his speech was off."

The same day, the juvenile court issued an oral ruling removing the child from the care of A.S and J.S. When Bricker told A.S. about the order, A.S. agreed to comply. The next day, A.S. requested that the child be discharged to the care of A.S.'s parents. The court entered a written ex parte order temporarily removing the child from the care of both parents. The court appointed Julie De Vries as attorney and guardian ad litem for the child.

In mid-February, J.S. was arrested on charges of child endangerment and sexual abuse in the first degree. He has remained incarcerated since his arrest.

On March 14, the juvenile court found the child to be a child in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(*c*)(2) and (*d*) (2016). The child was placed in the legal custody of her maternal grandparents. A.S. moved into her parents' home and has lived there with her daughter throughout the case.

A.S. completed a psychological assessment on May 11, and the DHS received a copy of the report on June 7. A.S. was found to be "mildly intellectually disabled." The assessment "placed her reading and oral comprehension ability at the fourth grade level, with her memory ability in the low average range." The psychologist, Dr. Seth A. Brown, expressed concern because

> [A.S.] did articulate that it was acceptable to leave her child in the care of an intoxicated individual, as she believed that individual could decide how to take care of a child. Background records indicate that she does not appear to acknowledge the seriousness of the sexual assault and believes that her husband did not carry out such behavior as he informed her of this.

Dr. Brown concluded, based on extensive background information and his conversations with A.S., that A.S. "may appear well-intentioned in regard to the welfare of her daughter, but at times she does not fully appreciate the complexity of the issues and potential threats to the welfare of her daughter."

The DHS provided various services to A.S., including family safety, risk, and permanency (FSRP) services, family team meetings, court-ordered supervision for the family, relative care for the child, and the psychological assessment for A.S. The caseworker and service providers

tailored those services to accommodate A.S. For example, the FSRP provider used workbooks with pictures rather than merely handing A.S. the agency's parenting instruction material to read.

Review hearings were held on August 8 and November 7. At the August hearing, the court asked A.S. if she wanted to request additional services. A.S. did not request a change in services. At the November review hearing, the juvenile court noted that A.S.'s visits with the child had progressed to semisupervised. The court again asked A.S. if she wanted to request different services, and A.S. again declined.

On February 9, 2017, a jury convicted J.S. of child endangerment and sexual abuse in the first degree. J.S. was sentenced to serve life in prison without the possibility of parole. His direct appeal is pending. On February 13, the State filed a petition to terminate the parental rights of A.S. and J.S. The DHS, the child's guardian ad litem, and the court-appointed special advocate (CASA) all recommended termination of A.S.'s parental rights.

The DHS case manager had given the grandparents information on foster parent training classes in the fall of 2016. The maternal grandmother initially told the CASA she did not need parenting classes because she had raised four children, but would take the classes if the judge ordered her. The grandparents did not realize that the DHS does concurrent planning for the child's placement even while focusing on family reunification. The March 21 CASA report noted that the maternal grandmother stated that the grandparents wanted to adopt the child if A.S.'s parental rights were terminated. By that time, the grandparents had signed up for the foster parent training classes and were waiting for the classes to begin.

On May 15, the juvenile court held a hearing on the termination petition in conjunction with a further permanency hearing. Three witnesses testified: the DHS case manager, the FSRP care coordinator, and the CASA. All three witnesses had worked with the family and observed the family members' interactions. Dr. Brown did not testify, but his psychological assessment of A.S. was submitted into evidence. No member of the child's family testified, and A.S. did not argue for the exception to termination based on a relative of the child having legal custody. *See* Iowa Code § 232.116(3).

The DHS case manager testified regarding her concern that A.S. thought it was alright to leave the child with J.S. when he was intoxicated. She also testified that, in her professional opinion, A.S.'s "intellectual ability prevents her from being able to safely raise her daughter." She later reiterated that "it's the Department's opinion that [A.S.] could not safely raise her daughter."

The FSRP care coordinator described the services provided to A.S., who received several hours of supervised visits weekly. During these visits, A.S. cared for her child while the care coordinator provided parenting instruction. A.S. also had several hours of semisupervised time with the child weekly during which the care coordinator stopped by periodically to monitor. In 2017, the care coordinator began providing additional one-on-one instruction with A.S. The goal was to allow A.S. to concentrate on learning parenting skills without the child or other family members present. The care coordinator testified that in her opinion, A.S. still could not safely parent the child on her own.

The CASA testified she believed that A.S., "due to her intellectual abilities, is unable to raise [the child] by herself." She also testified about an incident at the courthouse a few months earlier as reported to her by

a brother of A.S. Another sibling became angry about a ring on A.S.'s hand, and A.S.'s father forcefully grabbed A.S.'s arm to show them it was not a wedding ring. A.S. became upset, threatening to hit her sister-in-law and raising a fist at her.

The CASA further testified that she knew "there was some abuse" in the maternal grandparents' home. A.S. had told the CASA that her father slapped her in the child's presence a year ago. The CASA also testified she personally observed that "the verbal abuse [in the home] had been just kind of ongoing." She expressed concern about the impact the abuse would have on the child.[1]

> Q. So [A.S.] relayed to you that she had experienced verbal or physical aggression in the home? A. Yes.
>
> Q. Do you believe that had an impact on [the child] while that was happening? A. Yes.
>
> Q. Even as young as four months old, do you believe [the child] was impacted by that? A. Absolutely. Through all the information that we have on the development of kids, those first few months and how important they are, even though they don't have actual memory of the events, it affects who they are for a lifetime basis.

When questioned by the child's guardian ad litem, the CASA explained that she felt the child should be removed from the maternal grandparents' home because of the "turmoil that is in the home."

The court issued its order on May 18 terminating the parental rights of A.S. and J.S. pursuant to Iowa Code section 232.116(1)(*h*) (2017).[2] The court declined to apply any exceptions to termination of parental rights under section 232.116(3). The court considered and

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[1]The DHS case manager also testified that witnessing domestic violence negatively affects a child's well-being.

[2]J.S.'s parental rights were also terminated pursuant to subparagraphs *d*, *i*, and *j*.

rejected guardianship with the maternal grandparents as an option, acknowledging that

> [o]ne of the other permanency options available to the juvenile court is placing the children in a guardianship pursuant to Iowa Code Section 23[2].104(2)(*d*)(1). In this case, however, given the age of the child, the length of time she has been removed, and the availability of other viable permanency options it is clear guardianship would not be appropriate. It is time for [the child] to achieve permanency, and in these circumstances a guardianship is woefully inadequate to achieve the sort of stable, nurturing and permanent home she both needs and deserves.

J.S. did not appeal the termination of his parental rights.

A.S. appealed, and we transferred the case to the court of appeals. A three-judge court of appeals panel concluded that, instead of terminating A.S.'s parental rights, the juvenile court should have created a guardianship. The court of appeals concluded that termination of A.S.'s parental rights was not in the child's best interests and that two exceptions under section 232.116(3) applied to negate the need for termination. The court of appeals reversed the termination-of-parental-rights ruling with respect to A.S. and remanded the case back to the juvenile court to enter an order transferring guardianship and custody of the child to the maternal grandparents pursuant to section 232.104(2)(*d*)(1). One judge dissented, finding that termination of A.S.'s parental rights is in the best interests of the child. The dissenting judge cited precedent emphasizing "that a guardianship is not a legally preferable alternative to termination." The dissenting judge concluded,

> Instead of establishing a guardianship in this matter requiring continued efforts, supervision, and court intervention, the child deserves a fresh start with an adoptive family who will provide her with a normal childhood she so deserves, as opposed to providing services to the mother and child until such a time that the child can become more independent.

The child's guardian ad litem applied for further review of the court of appeals decision, and the State joined that application, which we granted.

II. Standard of Review.

"We review proceedings terminating parental rights de novo." *In re A.M.*, 843 N.W.2d 100, 110 (Iowa 2014). "We are not bound by the juvenile court's findings of fact, but we do give them weight, especially in assessing the credibility of witnesses." *Id.* (quoting *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010)).

III. Analysis.

The child's guardian ad litem and the State argue the court of appeals erred in reversing the termination of A.S.'s parental rights and remanding for guardianship because the decision conflicts with precedent and is not in the child's best interests. We agree.

We use a three-step analysis to review termination of parental rights. *In re M.W.*, 876 N.W.2d 212, 219 (Iowa 2016). First, we "determine whether any ground for termination under section 232.116(1) has been established." *Id.* If we determine "that a ground for termination has been established, then we determine whether the best-interest framework as laid out in section 232.116(2) supports the termination of parental rights." *Id.* at 219–20. Finally, if we conclude the statutory best-interest framework supports termination, "we consider whether any exceptions in section 232.116(3) apply to preclude termination of parental rights." *Id.* at 220.

A. Whether a Ground for Termination Has Been Established. The juvenile court concluded there were grounds for termination under Iowa Code section 232.116(1)(*h*). Under that section, the court may terminate parental rights if

> (1) The child is three years of age or younger.
>
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
>
> (3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
>
> (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

Iowa Code § 232.116(1)(*h*). We conclude there is clear and convincing evidence that each of the four requirements has been met. There is no question that the child meets the first three requirements. The child is less than three years old, was adjudicated a child in need of assistance in March of 2016, and has been removed from the parents' physical custody since February 2016.

We also conclude that there is clear and convincing evidence that at the time of the termination hearing, the child could not be safely returned to A.S.'s custody. A.S. willingly participated in the services offered and has progressed, but she has not progressed to the point where she can care for the child without ongoing assistance. The DHS case manager testified that A.S. "needs a program that would help her daily with [the child] if she were to do this on her own." Although the FSRP care coordinator believed A.S. "is doing the best that she can with her abilities," she also believed A.S. "could not raise [the child] independently without assistance." We agree that A.S. is trying her best to raise her child with the help of others.

We reiterate that a parent's intellectual disability "alone is not sufficient grounds for termination." *In re A.M.*, 843 N.W.2d at 111 (quoting *In re D.W.*, 791 N.W.2d at 708). But it can be a relevant consideration when it affects the child's well-being. *Id.* As Dr. Brown

noted, A.S. "may appear well-intentioned in regard to the welfare of her daughter, but at times she does not fully appreciate the complexity of the issues and potential threats to the welfare of her daughter." Even after the DHS became involved, A.S. did not recognize the danger of leaving her child with an intoxicated person. The CASA noted that A.S. had only a limited ability to internalize and apply the information provided to her.

For example, on the day J.S. sexually assaulted the child, A.S. told a DHS worker she felt hurt by what he did but that she was "all about second chances." The following day, A.S. stated that she did not want to believe J.S. could have sexually assaulted his own daughter. After J.S.'s arrest, A.S. visited him in jail weekly and wanted their child to be in J.S.'s life. By November 2016, A.S. informed the FSRP care coordinator that she stopped visiting J.S. and did not plan any further interactions with him. However, around Christmastime, A.S. told others that "she wanted her family to be whole again"; this statement concerned the CASA who worked with A.S.

More broadly, the evidence persuades us, as it persuaded the juvenile court, that A.S. cannot in the foreseeable future raise the child on her own. The DHS caseworker agreed that the mother would have to have "somebody, for example, to fall back on and help her when she need[s] help at all times." She testified that overall the mother had made only "minimal progress" in parenting. The FSRP care coordinator testified that A.S. needs "assistance and backup"; she could not raise her child without such assistance. At the time of the hearing, the FSRP care coordinator was providing eight hours of services per week to the mother. For A.S. to raise the child, it would take "a team effort of herself and another person for assistance." The CASA also agreed that A.S. was unable to raise the child by herself; she analogized A.S. to a younger

babysitter who would be capable of caring for the child temporarily but not full-time.

Based on our de novo review, we find the record shows that the child could not be returned to the care of A.S. at the time of the hearing. We find clear and convincing evidence that grounds for termination of A.S.'s parental rights were established under section 232.116(1)(*h*).

B. Whether the Best-Interest Framework Supports Termination. We next turn to whether the best-interest framework provided in section 232.116(2) supports termination. Section 232.116(2) provides in relevant part,

> In considering whether to terminate the rights of a parent under this section, 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. This consideration may include any of the following:
>
> *a.* Whether the parent's ability to provide the needs of the child is affected by the parent's mental capacity or mental condition or the parent's imprisonment for a felony.
>
> . . . .
>
> *c.* The relevant testimony or written statement that a foster parent, relative, or other individual with whom the child has been placed for preadoptive care or other care has a right to provide to the court.

Iowa Code § 232.116(2). Importantly, we note that

> [i]t 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.

In re A.M., 843 N.W.2d at 112 (quoting *In re P.L.*, 778 N.W.2d 33, 41 (Iowa 2010)). The "legislature has established a limited time frame for parents to demonstrate their ability to be parents." *In re J.E.*, 723 N.W.2d 793, 800 (Iowa 2006). The time frame is six months. *See* Iowa

Code § 232.116(1)(*h*). "Children simply cannot wait for responsible parenting." *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997) (quoting *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990)). A.S. was given over one year to demonstrate her ability to care for her child, and even after participating in the services provided, A.S. remained unable to care for the child on her own. As described above, we share the serious concerns about A.S.'s ability to recognize situations that threaten the child's safety. We are unable to conclude that A.S.'s parenting ability will improve in the foreseeable future to enable her to raise her child without ongoing help from others.

The child is adoptable. While the child will need additional surgeries to address her injuries from the assault, the child has no identified special needs that would impede her prospects for adoption. The child is doing well in the home of her maternal grandparents and interacts positively with others.

A.S. unquestionably loves her child and has bonded with her. But, as the juvenile court noted, "despite [A.S.'s] best efforts and intentions and the department's diligence in providing her services[, A.S.] is unable on her own to provide the safe, nurturing, and stable home that [the child] both needs and deserves." We conclude that termination of A.S.'s parental rights is in the child's best interests to enable her permanent placement in an adoptive home.

C. Whether Any Exceptions Apply to Preclude Termination. "Once we have established that the termination of parental rights is in the child[']s best interests, the last step of our analysis is to determine whether any exceptions in section 232.116(3) apply to preclude the termination." *In re M.W.*, 876 N.W.2d at 225. Section 232.116(3) provides,

> The court need not terminate the relationship between the parent and child if the court finds any of the following:
>
> *a. A relative has legal custody of the child.*
>
> *b.* The child is over ten years of age and objects to the termination.
>
> *c.* There is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.
>
> *d.* It is necessary to place the child in a hospital, facility, or institution for care and treatment and the continuation of the parent-child relationship is not preventing a permanent family placement for the child.
>
> *e.* The absence of a parent is due to the parent's admission or commitment to any institution, hospital, or health facility or due to active service in the state or federal armed forces.

Iowa Code § 232.116(3) (emphasis added). A finding of any of these factors allows the court to avoid terminating parental rights, but the factors "are permissive, not mandatory." *In re A.M.*, 843 N.W.2d at 113 (quoting *In re D.S.*, 806 N.W.2d 458, 474–75 (Iowa Ct. App. 2011)). "We may use our discretion, 'based on the unique circumstances of each case and the best interests of the child, whether to apply the factors in this section to save the parent-child relationship.' " *In re M.W.*, 876 N.W.2d at 225 (quoting *In re A.M.*, 843 N.W.2d at 113). "An appropriate determination to terminate a parent-child relationship is not to be countermanded by the ability and willingness of a family relative to take the child. The child's best interests always remain the first consideration." *In re C.K.*, 558 N.W.2d at 174.

Neither our court nor the court of appeals has addressed who bears the burden of proving the exception to termination when a relative has custody. "Ordinarily, the burden of proof on an issue is upon the party who would suffer loss if the issue were not established." Iowa R. App. P. 6.904(3)(*e*); *see Beyer v. Todd*, 601 N.W.2d 35, 40–41 (Iowa 1999) (applying former version of this appellate rule to determine burden of

proof when statute is silent); *Buda v. Fulton*, 261 Iowa 981, 985, 157 N.W.2d 336, 339 (1968) ("The true test to determine where is the burden is to consider which party would be entitled to the verdict if no evidence were offered on either side."); *see also In re Lorenzo C.*, 63 Cal. Rptr. 2d 562, 571 (Ct. App. 1997) (holding "it is reasonable to impose the burden of proof upon a parent who objects to termination based on the alleged existence of the exception" in the termination statute that is silent as to who bears the evidentiary burden). We apply rule 6.904(3)(*e*) to hold that once the State has proven a ground for termination, the parent resisting termination bears the burden to establish an exception to termination under Iowa Code section 232.116(3)(*a*). *Cf. In re A.Y.H.*, 483 N.W.2d 820, 822 (Iowa 1992) (holding parent who seeks change in disposition order bears the burden of proof under Iowa Code section 232.102 to show the child will not suffer harm if returned to the parent because "the necessary information is more often within the parent's reach"). The burden remains on the State to prove the grounds for termination. *See In re J.W.D.*, 456 N.W.2d 214, 217 (Iowa 1990) (requiring the State to prove grounds for termination by clear and convincing evidence).

A.S. did not meet her burden to establish an exception to termination. The FSRP care coordinator and the CASA recommended termination of A.S.'s parental rights. A.S. did not testify at the termination hearing, nor did her parents. Indeed, no witness at trial even mentioned the idea of a guardianship. Rather, the juvenile court, in its diligence, thoroughly addressed all potential options and cogently explained in its decision why guardianship was a "woefully inadequate" option. We find A.S. failed to meet her burden to establish that the grandparents' temporary custody of the child should preclude termination of A.S.'s parental rights.

Although the child's maternal grandparents have legal custody of the child, we decline to use subparagraph *a* to avoid terminating A.S.'s parental rights.[3] The DHS case manager recommended termination and adoption, rather than the creation of a guardianship. The guardian ad litem also recommended termination of A.S.'s parental rights. They recommended termination after personally observing the maternal grandparents interact with the child. We give weight to their testimony. *See In re A.M.*, 843 N.W.2d at 112 ("It is significant to us that neither the third-party service providers nor the [guardian ad litem] believed [the child] could be safely returned to her parents at the time of trial."); *In re J.L.P.*, 449 N.W.2d 349, 353 (Iowa 1989) ("In affirming the juvenile court's decision to terminate the parent-child relationship, we note that the guardian ad litem for the children has joined the State in requesting termination . . . and that all of the caseworkers agree with the decision."); *cf. In re L.S.*, 483 N.W.2d 836, 840 (Iowa 1992) (affirming the juvenile court's judgment after acknowledging that the "juvenile court noted the active involvement by the guardian ad litem in the progress of this case and gave substantial weight to [the guardian ad litem's] recommendation"). And we give weight to the findings of the juvenile court judge who heard their live testimony. *See In re Guardianship of Stewart*, 369 N.W.2d 820, 824 (Iowa 1985) ("We pay close attention to the credibility findings of the trial court because it had the opportunity to observe and listen to the parties and other witnesses . . . ."); *see also In*

[3]The court of appeals also found that subparagraph *c* applied to this case. We acknowledge that there is evidence of bonding between the mother and the child. However, there is nothing in the record that provides "clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." Iowa Code § 232.116(3)(c). We find that subparagraph *c* does not apply.

re M.W., 876 N.W.2d at 219 (noting that we give weight to the juvenile court's findings of fact even though we are not bound by them).

D. Whether to Transfer Guardianship and Custody to the Child's Maternal Grandparents. Finally, we address the court of appeals decision to remand to the juvenile court to enter an order transferring guardianship and custody of the child to the child's maternal grandparents. Because we conclude that termination of A.S.'s parental rights is in the child's best interests, we decline to allow a guardianship under the statutory provisions used by the court of appeals.[4] However, we consider the option of affirming termination of

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[4]The court of appeals found that termination of A.S.'s parental rights was not in the best interests of the child and, therefore, turned to section 232.117(5), which provides,

> If after a hearing the court does not order the termination of parental rights but finds that there is clear and convincing evidence that the child is a child in need of assistance . . . due to the acts or omissions of one or both of the child's parents the court may adjudicate the child to be a child in need of assistance and may enter an order in accordance with the provisions of section 232.100, 232.101, 232.102, or 232.104.

Iowa Code § 232.117(5). The court of appeals selected the option in section 232.104(2)(*d*)(1),

> After a permanency hearing the court shall do one of the following:
>
> . . . .
>
> *d.* Enter an order, pursuant to findings required by subsection 4, to do one of the following:
>
> (1) Transfer guardianship and custody of the child to a suitable person.

Id. § 232.104(2)(*d*)(1). Under subsection 4,

> [c]onvincing evidence must exist showing that all of the following apply:
>
> *a.* A termination of the parent-child relationship would not be in the best interest of the child.
>
> *b.* Services were offered to the child's family to correct the situation which led to the child's removal from the home.
>
> *c.* The child cannot be returned to the child's home.

A.S.'s parental rights while remanding for transfer of the guardianship and custody of the child to a relative of the child. *See* Iowa Code § 232.117(3)(*c*) (allowing the court to transfer guardianship and custody of the child to "[a] parent who does not have physical care of the child, other relative, or other suitable person" after terminating the parental rights of the child's parents). We reject that option.

When a court terminates parental rights, there is no statutory preference for placement with a relative. *In re R.J.*, 495 N.W.2d 114, 117 (Iowa Ct. App. 1992); *see also* Iowa Code § 232.117(3). *But cf. In re N.M.*, 528 N.W.2d 94, 97 (Iowa 1995) (concluding that "chapter 232 favors relative placements over nonrelative placements" for dispositions entered after a child is adjudicated a child in need of assistance). Both the DHS and the guardian ad litem recommended placing the child in the guardianship and legal custody of the DHS so that the child can be adopted.

Importantly, "a guardianship is not a legally preferable alternative to termination." *In re B.T.*, 894 N.W.2d 29, 32 (Iowa Ct. App. 2017). If the court transferred guardianship and custody to the child's maternal grandparents, they would have to report to the court at least annually, and the guardianship would not terminate until the child reaches the age of majority—sixteen years from now. *See* Iowa Code § 232.117(6)–(8) (setting out requirements for the guardian to report to the court); *id.* § 232.118(3) (providing that "[t]he authority of a guardian appointed by the court terminates when the child reaches the age of majority or is

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Id. § 232.104(4). We conclude that termination of the parent-child relationship *is* in the best interest of the child, so the requirements of subsection 4 are not met. We therefore cannot use these provisions to transfer guardianship and custody of the child to her maternal grandparents. *See id.* § 232.104(2), (4).

adopted"). The court could also, on its own motion, later remove the maternal grandparents and appoint a different guardian. *See id.* § 232.118(1). In rejecting guardianship here, the juvenile court stated,

> [G]iven the age of the child, the length of time she has been removed, and the availability of other viable permanency options it is clear guardianship would not be appropriate. It is time for [the child] to achieve permanency, and in these circumstances a guardianship is woefully inadequate to achieve the sort of stable, nurturing and permanent home she both needs and deserves.

We agree.

A.S. relies on *In re B.T* because the court of appeals in that case reversed the juvenile court's termination of parental rights and remanded to the juvenile court to enter an order transferring guardianship and custody of the child to the child's grandmother. 894 N.W.2d at 34–35. But in *In re B.T.*, the *ten-year-old* child "wanted to maintain the relationship with his mother if she can remain sober, but if not, he wished to be placed with his Grandmother." *Id.* at 34. The court of appeals noted that a "guardianship with the Grandmother w[ould] allow for both scenarios." *Id.* The court also noted that the mother and grandmother had a "close, mature, and healthy relationship that is free of conflict." *Id.* Only the mother and grandmother testified at the termination-of-parental-rights hearing, and "[n]o attorneys present at [the] hearing, including the child's guardian ad litem, made an argument to the court on the record advocating for or against termination of parental rights." *Id.* at 33. The court of appeals concluded that termination of the mother's parental rights would not be in the best interests of the child. *Id.* at 34.

In re B.T. is distinguishable. Here, the child at age two is too young to express a preference, and evidence was presented that there

was physical and verbal aggression in the grandparents' household. Neither the mother nor the grandparents testified, while the FRSP care coordinator, the CASA, and the child's guardian ad litem recommended termination.

We have concluded that termination of A.S.'s parental rights is in the best interests of the child because A.S. is unable to provide a safe, stable home. Yet the child's grandparents stated they believed A.S. was capable of caring for the child on her own and that A.S. was the primary caregiver of the child in their home. This leads us to question whether transferring guardianship and custody to the grandparents would actually provide more stability and safety for the child. If A.S. is still the primary caregiver of the child, the services provided multiple times each week to help A.S. care for the child would likely need to be continued for the foreseeable future. The child, who is now two years old, deserves a normal life with an adoptive family. The child's grandparents or other relatives may seek to adopt the child. The DHS will determine the appropriate adoptive parents.

IV. Conclusion.

For these reasons, we vacate the decision of the court of appeals and affirm the juvenile court's order terminating A.S.'s parental rights and rejecting a guardianship with the child's grandparents.

DECISION OF COURT OF APPEALS VACATED; JUVENILE COURT JUDGMENT AFFIRMED.