

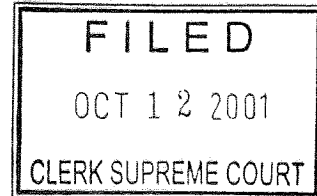
IN THE COURT OF APPEALS OF IOWA

No. 1-600 / 01-378
Filed October 12, 2001

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

A.M., Father,
Appellant,

P.M., Mother,
Appellant.



Appeal from the Iowa District Court for Polk County, Karla J. Fultz, Associate Juvenile Judge.

The father and mother of minor child A.S.M. appeal the juvenile court order terminating their parental rights. **AFFIRMED ON BOTH APPEALS.**

Christopher A. Kragnes, Sr., and Tiffany Koenig, Des Moines, for appellant father.

Marla Suddreth and Cathleen J. Siebrecht, Altoona, for appellant mother.

Thomas J. Miller, Attorney General, Tabitha Gardner, Assistant Attorney General, and Jennifer G. Navis, Assistant County Attorney, for appellee-State.

Nicole Garbis Nolan of the Youth Law Center, Des Moines, guardian ad litem for minor child.

Considered by Huitink, P.J., and Mahan, and Zimmer, JJ.

ZIMMER, J.

A mother and father of a minor child each challenge the juvenile court's order terminating their parental rights. The mother claims the evidence does not support termination on the statutory grounds cited by the court. Both the mother and father claim their parental rights should not have been terminated because the child is in the care and custody of his maternal grandmother. We affirm on both appeals.

I. Background. Anthony and Penny are the parents of Anthony (Storm), born May 3, 1995. Anthony and Penny have been involved with DHS since 1992, when their parental rights to three older children (Paradise, Patience, and Heaven) were terminated. Those children were adopted by their maternal grandmother. When the termination hearing was held, Anthony was incarcerated in Missouri for numerous criminal acts.

Storm came to the attention of DHS in April 2000 after the grandmother was informed Penny had been using drugs, was homeless, and had left Storm with inappropriate caretakers. He was adjudicated to be in need of assistance and placed in his grandmother's care. In August 2000, the court waived reasonable efforts because of Penny's total lack of cooperation with services and Anthony's incarceration. Both parents have a long history of substance abuse and criminal behavior.

II. Termination proceedings. The State petitioned to terminate the parents' rights in September 2000. At the termination hearing, the State introduced evidence that Penny dropped dirty UAs on numerous occasions and failed to comply with any of the services offered. Even in the month prior to the termination hearing, Penny could not maintain her sobriety, but took a prescription narcotic prescribed for

another person. The State also introduced testimony from Storm's therapists, who testified Storm described how Penny often used marijuana and beat people up. The maternal grandmother testified she obtained a restraining order against Penny to stop her from harassing her and Penny's three former children. Penny has threatened to kill her mother on several occasions. The grandmother stated Storm responded positively to living in her home. The juvenile court entered an order terminating both parents' rights under Iowa Code sections 232.116(1)(d), (f), and (k) and Anthony's rights under section 232.116(1)(b). Both parents have appealed.

III Appellate claims. On appeal Anthony contends the juvenile court erred in terminating his parental rights because Storm was in the custody of a relative and because Anthony believes Storm could be returned to Penny's care. He does not challenge any of the statutory grounds cited by the court in terminating his parental rights. Penny contends the juvenile court erred in: (1) concluding there was clear and convincing evidence her parental rights should be terminated under Iowa Code sections 232.116(1)(d), (f), and (k) (1999); (2) failing to grant her additional time for reunification; (3) concluding it was in Storm's best interest that her parental rights be terminated; and (4) terminating her parental rights even though Storm was placed with a relative.

IV. Discussion. Our review is de novo. Iowa R. App. P. 4; *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We give weight to the findings of the juvenile court, particularly with respect to the credibility of witnesses, but are not bound by them. *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa Ct. App. 1995); Iowa R. App. P. 14(f)(7). The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa Ct. App. 1997). Our primary

concern is the best interests of the child; we look to both the child's long-range and immediate interests. *In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa Ct. App. 1998).

A. Penny. On appeal, Penny first challenges the evidence supporting all three statutory grounds cited by the juvenile court. When termination is based on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

Iowa Code section 232.116(1)(d). Penny claims the six-month removal requirement of subsection (2) was not met because Storm was removed less than six months before the termination petition was filed. The time period is satisfied if met by the time of the termination hearing. See *In re A.M.S.*, 419 N.W.2d 723, 725 (Iowa 1988). Next, Penny contends she was prevented from maintaining significant and meaningful contact with Storm because visitation was denied despite her repeated requests. She points to her own efforts to obtain substance abuse treatment, counseling, and vocational rehabilitation after the court waived reasonable efforts as evidence of her efforts to comply with the case permanency plan and to resume the duties of being a parent to Storm. We find Penny's eleventh-hour efforts are too little, too late. She had ample opportunity to address her substance abuse and psychological problems. Over the years preceding this termination proceeding, Penny had access to a plethora of services to help her maintain her relationship with Storm. We give much probative force to case history in evaluating the quality of the future care that the parent is capable of providing. See *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993); *In re T.T.*, 541 N.W.2d 552, 555 (Iowa Ct. App. 1995). Penny's own choices led to Storm's removal. Her chaotic

and unstable lifestyle has prevented her from maintaining significant and meaningful contact with Storm and occupying a place of importance in his life. We affirm the termination of her parental rights under section 232.116(1)(d).

Iowa Code section 232.116(1)(f). Penny claims she was not given sufficient time to establish her willingness to respond to services because reasonable efforts were waived just three months after his removal. We find Penny had ample time to respond to services and to deal with her problems in the years preceding the court's waiver of reasonable efforts. Her past pattern of some compliance with services and then relapse continued up to the time of the termination hearings. Penny started substance abuse treatment and counseling at her attorney's direction. About a month before the termination hearings, Penny took a prescription narcotic prescribed for another person. We find that Penny, even after years of intervention by the State and the loss of her three older children, continues to lack the ability or willingness to respond to services and that additional time would not correct the situation. We affirm the termination of her parental rights under Iowa Code section 232.116(1)(f).

Iowa Code section 232.116(1)(k). Penny argues she is not a "chronic substance abuser" as defined in Iowa Code section 125.2(4). We note the definitions in section 125.2 apply only to chapter 125. See Iowa Code § 125.2. We find clear and convincing evidence Penny has a chronic substance abuse problem which has presented a danger to Storm. We also find Storm would not be able to be returned to Penny's care within a reasonable time because of her inability to resolve her long-standing problem of substance abuse. We find termination proper on this statutory ground and affirm.

Additional time to change. Penny claims all she needs is some additional time with her son in a structured environment to correct any remaining problems. She correctly argues parents have a fundamental interest in raising their children and that termination is an outcome of last resort. The Iowa Supreme Court has recognized a parental interest in the integrity of the family unit exists, but that such interest is not absolute and may be forfeited by certain conduct. *In re Dameron*, 306 N.W.2d at 745. At some point, the rights and needs of the child rise above the rights and needs of the parents. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). Storm has waited long enough. He has been separated from his sisters. He needs and deserves permanency and stability which Penny cannot give him. It would not be in Storm's best interest to force him to wait any longer.

Best interest. Penny argues the statutory provisions for termination are not mandatory, but require an analysis of whether or not termination would be in the child's best interest. See *In re C.W.*, 554 N.W.2d 279, 283 (Iowa Ct. App. 1996). She is not in a position to resume care of Storm. He needs permanency and stability now to avoid further emotional and psychological harm. It would be to his benefit to be reunited with his siblings. We find termination of Penny's parental rights to be in Storm's best interest.

Placement with a relative. Finally, Penny claims her parental rights should not have been terminated because Storm was in the care and custody of a relative, his maternal grandmother. See Iowa Code § 232.116(3)(a). A determination to terminate the parent-child relationship is not to be countermanded by the ability and willingness of a relative to take the child. *In re C.K.*, 558 N.W.2d 170, 174 (Iowa 1997). The child's best interests always remain the first consideration. *In re R.R.K.*,

544 N.W.2d at 275. The language of section 232.116(3) is permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). If Storm were placed with his grandmother as guardian, Penny and Anthony could seek to overturn that placement and have him returned to their care. We find it is in Storm's best interest to "provide a custodian who is free from the assertion by the parents of their legal rights." *In re L.S.*, 483 N.W.2d 836, 840 (Iowa 1992). The juvenile court did not abuse its discretion in terminating Penny's parental rights even though Storm was in the care of a relative.

B. Anthony. Anthony does not claim the juvenile court erred in terminating his parental rights under Iowa Code sections 232.116(1)(b), (d), (f), or (k). Instead, he claims his parental rights should not be terminated because Storm could be returned to Penny's care and termination was not required because Storm was in the care of a relative. See Iowa Code § 232.116(3)(a). For the reasons set forth above in the discussion of Penny's claims, we find no merit in either of Anthony's claims. Storm could not be returned to Penny's care. It is in Storm's best interest that the parent-child relationship with both parents be severed so that he can be adopted by his grandmother.

V. Conclusion. We find clear and convincing evidence supports each of the statutory grounds cited by the court in terminating Penny's parental rights. Anthony has waived any challenge to the statutory grounds for terminating his parental rights. Iowa R. App. P. 14(a)(3). His other claims are without merit. Naming Storm's grandmother his guardian would not be in his best interest. He needs and deserves the stability and permanency only termination of his parent's rights can provide. We

affirm the termination of Penny's and Anthony's parental rights to Storm in all respects.

AFFIRMED ON BOTH APPEALS.