

IN THE COURT OF APPEALS OF IOWA

No. 21-0927
Filed November 23, 2021
Amended November 23, 2021

**IN THE INTEREST OF J.S.-M. and A.S.-M.,
Minor Children,**

**J.S.-M., Mother,
Appellant.**

Appeal from the Iowa District Court for Lee (North) County, Ty Rogers,
District Associate Judge.

A mother appeals the termination of her parental rights. **AFFIRMED.**

Justin Stonerook, Burlington, for appellant mother.

Thomas J. Miller, Attorney General, and Natalie Deerr, Assistant Attorney
General, for appellee State.

Alicia M. Stuekerjuergen of Stuekerjuergen Law Firm, PLC, West Point,
attorney and guardian ad litem for minor children.

Considered by Tabor, P.J., and Greer and Badding, JJ.

BADDING, Judge.

After their children had been out of parental custody for nineteen months, the juvenile court found the parents' efforts toward reunification came "too little and too late" to delay permanency any longer. Given the lack of progress by both parents, the court ordered the termination of their rights. The mother separately appeals.¹ Because these young children need permanency now, we affirm the termination of her parental rights.

I. Background Facts and Proceedings

J.S.-M. and A.S.-M., born in 2013 and 2015, were removed from their mother's care in the fall of 2019 after the mother admitted using methamphetamine and marijuana while caring for them. There were also concerns about her mental health, her ability to safely supervise the children, and her lack of stable housing. When the Iowa Department of Human Services (DHS) first became involved with the family, the mother threatened to kill the child protective worker assigned to her case. She was aggressive and showed a "rapid change of emotions/facial expressions." Based on her erratic behavior, DHS required her to submit to drug testing and allowed only supervised visits with the children. In early September, the mother tested positive for drugs.

From the start, the mother refused to cooperate with safety planning and services. Within a month, she had missed multiple visits with the children as well

¹ We recently affirmed the termination of the father's parental rights in *In re J.S.-M. and A.S.-M.*, No. 21-0927, 2021 WL 4304213 (Iowa Ct. App. Sept. 22, 2021). The mother timely filed a motion for rehearing after we noted she was not a party to that appeal. The supreme court granted the motion in mid-October. We will address only the mother's arguments in this appeal.

as family team meetings. She rarely communicated with providers about her whereabouts or reasons for being absent. When she did respond, she would either hang up or slam the door on them. She did not attend the October hearing in which J.S.-M. and A.S.-M. were adjudicated children in need of assistance. See Iowa Code § 232.96 (2019).

The mother continued to have minimal involvement in the case after the children were adjudicated. Before the dispositional review hearing in early May 2020, which the mother did not attend, the DHS caseworker submitted a report to the court summarizing her lack of progress toward reunification: “[The mother] continues to be homeless and is not engaged in services. [She] appears to continue to abuse substances and is not being treated for her mental health diagnoses. Her behaviors continue to be aggressive and erratic in nature.”

Despite those ongoing issues, the court gave the parents another six months to work toward reunification at the August permanency hearing. Its reasoning was focused more on the father’s response to services and had little to do with any progress on the mother’s part. Although she had entered a transitional housing facility earlier that summer, the mother was evicted after a month “for multiple counts of disrespect and then threatening physical violence towards the owner and toward other women in the house.” Soon after her eviction, the mother was arrested for possession of methamphetamine. Just a few days after her release from jail on that charge, she was arrested again—this time for assaulting her boyfriend with a knife. She was then pregnant with their child.

It wasn’t until after her release from jail in late October that the mother showed some willingness to change. She began attending weekly supervised

visits and sometimes met with a substance-abuse counselor. While her participation improved, she remained without a home or job. She was often overwhelmed and emotional during her interactions with the children, which service providers attributed to her unaddressed mental-health issues.

In late December, she entered a residential substance-abuse treatment facility. Unfortunately, the mother regressed during her stay there. According to providers, she was “a bully to other peers and their children.” She was once “caught kicking at a two year old,” which prompted a disciplinary plan. She exhibited “childlike behaviors,” such as “growling aggressively at staff.” Because the staff felt that her mental-health issues were interfering with her treatment, they discharged her from the facility in March 2021, just a few weeks before the termination hearing. She moved into a rent-free apartment with her two-month-old infant the same day as her discharge.

After a two-day hearing in April, the juvenile court granted the State’s petition to terminate the mother’s parental rights under Iowa Code section 232.116(1), paragraphs (e) and (f) (2021). The court believed a few weeks on her own was not enough for the mother to establish stability and consistency, particularly when combined with her continuing mental-health and substance-abuse concerns. The court also found delaying permanency was not in the children’s best interests, given their young age and increasing behavioral problems since the case began. The mother now appeals those rulings.

II. Analysis

We review orders terminating parental rights *de novo*. *In re A.B.*, 957 N.W.2d 280, 293 (Iowa 2021). It is the State’s burden to prove the grounds for

termination by clear and convincing evidence. *Id.* In reviewing the termination of a parent's rights, we focus on three steps. First, we address whether the State proved a statutory ground for termination under section 232.116(1). *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). If so, we turn to the framework in section 232.116(2) to determine whether termination is in the children's best interests. *Id.* If the best-interests factors support termination, we then consider whether to apply any exceptions under section 232.116(3) to preserve the parent-child relationship. *Id.* at 41. The mother challenges each of these steps in the termination process.

A. Statutory Grounds

We start with the mother's challenge to the grounds for termination. Although the juvenile court relied on two alternatives, we may affirm on any ground supported by the record. *In re A.B.*, 815 N.W.2d 764, 774 (Iowa 2012). Thus, we will consider the sufficiency of the evidence only as it relates to section 232.116(1)(f). The mother contests the fourth element, claiming the State failed to prove by clear and convincing evidence that the children could not be returned to her custody. Iowa Code § 232.116(1)(f)(4).

In support of this claim, the mother highlights her recent progress since her release from jail, contending she

attended all visits post-incarceration that were offered. She attended counseling with the children, and obtained safe and appropriate housing for the children. . . . [She] has managed her medications during and after her pregnancy, has been attending sessions with a psychiatrist, has been attending [Narcotics Anonymous] meetings, and has been fully participating in Family Treatment Court. She has also remained sober since her incarceration.

She concludes that finding "the children are at risk because of [her] mental condition or drug abuse ignores the many positive steps that [she] has taken since

October 2020.” We agree she has taken recent positive steps, and we applaud her for those efforts. But she glosses over facts that show her mental health and drug addiction still present a threat to the children’s safety.

The mother did not begin making an effort to resume custody until after she was arrested for possession of methamphetamine and assaulting her boyfriend with a knife. These arrests occurred nearly a full year after the children were removed from her care—a year in which she was mostly absent from their lives. While the mother did achieve sobriety toward the end of the case, she did so in two structured environments: jail and inpatient treatment. See *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998) (“Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting.”). Her unsuccessful discharge from inpatient treatment is also concerning in light of the treatment provider’s opinion that her unresolved mental-health needs were interfering with her progress in treatment. Plus, the service coordinator for the facility noted the mother was only “minimally participating in treatment, . . . and was argumentative with staff and non-adherent to the general rules of the house . . . , often taking the phone in her room, not completing chores assigned to her, and arguing about attending group therapy.” This does not give us much hope about the mother’s ability to sustain her sobriety outside of a structured setting. See *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000) (“The future can be gleaned from evidence of the parents’ past performance and motivations.”).

From the outset of the case, the mother reported that she used drugs to self-medicate her mental-health conditions, which, according to her, included schizophrenia, bipolar disorder, borderline personality, attention deficit hyperactivity disorder, depression, and anxiety. As her DHS case manager testified:

If these mental health diagnoses aren't addressed, then she could potentially relapse and start self-medicating with illegal substances again, like she said she did in the past, which is why she said she started using meth again, and plus her behaviors tend to exacerbate. She can go from laughing to crying to angry and—really quickly. Her emotions kind of get away from her, get out of control, when she's not taking her medicine.

More than a year and a half after these services were first recommended, the mother had yet to obtain a mental-health evaluation, effectively manage her medications, or consistently engage in counseling. Up until the time of the termination hearing, service providers continued to observe erratic and aggressive behaviors that were affecting the mother's interactions with the children.

The mother points out what she believes to be an inconsistency in allowing her infant to remain in her care but not returning her two older children to her custody, questioning: "If the two children at issue are in danger from neglect, mental injury from actions of the Mother, or are in danger from the Mother's mental condition or drug abuse, would it then not be true of the newborn?" But as we have observed, "Even though a mother may be able to parent some of her children does not necessarily mean she is capable of providing appropriate care to all her children." *In re T.J.O.*, 527 N.W.2d 417, 421 (Iowa Ct. App. 1994).

The record shows the mother could not provide appropriate care to these children because her unresolved mental-health and substance-abuse issues put

them at risk of continued harm. See *In re M.M.*, 493 N.W.2d 812, 814 (Iowa 1992) (noting termination is warranted when there is “risk of probable harm”). We accordingly find the State’s evidence supports termination of her parental rights under section 232.116(1)(f).

B. Best Interests

Turning to the next step, we must decide whether termination is in the children’s best interests. We look to section 232.116(2) for guidance:

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.

In weighing those factors, we may also consider “[w]hether the parent’s ability to provide the needs of the child is affected by the parent’s mental capacity or mental condition.” Iowa Code § 232.116(2)(a). “[W]e 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. Consistent with that precedent, the juvenile court decided the mother’s progress came too late and termination was thus in the children’s best interests. Challenging that determination, the mother argues there is no need to wait for her to become a suitable parent and provide a stable home. She asserts “she has shown that she can accomplish this, and did accomplish this in a timely manner.”

But it is not timely to start facing serious substance-abuse and mental-health issues just before the termination hearing. While the mother did obtain her own housing, the juvenile court could not deem it safe, noting “she has

only been out and living on her own for a few weeks.” We agree that a few weeks is not enough time to assess the stability of her home environment. And given the trajectory of the case, we are not convinced the mother is ready to be a full-time parent either. She was “easily frustrated” and “quick to anger” with the children during visits. In a DHS report to the court two weeks before the hearing, the case manager expressed concern that the mother could not recognize the impact her actions and attitude had on the children. Even more telling, after nineteen months of intervention, service providers did not believe the mother had “the parental capacity to care for the [children]” or provide them with long-term stability. Considering the relevant statutory factors, we conclude termination is in the children’s best interests. See *In re J.E.*, 723 N.W.2d 793, 802 (Iowa 2006) (Cady, J., concurring specially) (explaining the children’s safety and need for permanent home are the “defining elements” in determining best interests).

C. Closeness of Parent-Child Relationship

Having found a ground for termination exists and termination is in the children’s best interests, we must then consider whether any of the permissive factors in section 232.116(3) apply here. See *In re A.M.*, 843 N.W.2d 100, 113 (Iowa 2014) (noting courts have discretion to decide whether to preserve the parent-child relationship in some cases). The mother relies on paragraph (c), which allows the juvenile court to preserve a parent’s rights if clear and convincing evidence shows “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). The record does not support that contention.

Although the mother has had positive interactions with the children, they were not always beneficial to them. In fact, A.S.-M., the younger of the two children, seemed to get more anxious only after visits with the mother. According to the children's therapist, A.S.-M. had problems with stomach pains, bed-wetting, and sleeping because of her anxiety. As the mother became more involved, both children displayed an increase in their negative behaviors, such as throwing tantrums, lying, and stealing. Based on that evidence, we disagree with the mother's assertion that her strong bond with the children overrides these serious concerns. Because the children need stability in their lives now, we decline to delay permanency based on the parent-child relationship. See *In re D.W.*, 791 N.W.2d 703, 709 (Iowa 2010). Thus, we affirm the termination order.

AFFIRMED.