IN THE COURT OF APPEALS OF IOWA

No. 23-1930
Filed February 21, 2024

IN THE INTEREST OF D.D. and L.D.,
Minor Children,

K.S., Mother,
Appellant,

J.D., Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Lynn Poschner, District Associate Judge.

A mother and father separately appeal the termination of their parental rights to their two children. **AFFIRMED ON BOTH APPEALS.**

Judy Johnson of JDJ Law Firm, PLLC, Des Moines, for appellant mother.

Karen A. Taylor of Taylor Law Offices, P.C., Des Moines, for appellant father.

Brenna Bird, Attorney General, and Tamara Knight, Assistant Attorney General, for appellee State.

ConGarry D. Williams of Juvenile Public Defender, Des Moines, attorney and guardian ad litem for minor children.

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

TABOR, Presiding Judge.

Katlin and Jesse are the parents of D.D. born in 2016 and L.D. born in 2022. The parents separately challenge the juvenile court order terminating their parental rights. Jesse contends the State did not prove the grounds for termination and that he should be granted a six-month extension. Katlin argues that the court should have considered an exception for the close bond she shares with her children. Both parents argue termination was not in the children's best interests. After examining the record, we reach the same conclusion as the juvenile court.[1] As that court found: "Katlin and Jesse have not demonstrated the ability to provide for the children's special needs." Because the State proved grounds for termination by clear and convincing evidence and termination is in the best interests of D.D. and L.D., we affirm the order. We also do not find an exception for the parent-child bond, nor do we grant Jesse's request to defer permanency for six months.

I. Facts and Prior Proceedings

Seven-year-old D.D. and one-year-old L.D. each face serious developmental or health challenges. D.D. was diagnosed with autism and requires daily applied behavior analysis (ABA). L.D. sees a nephrologist and urologist because of concerns about kidney dysfunction.

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[1] We review the termination of parental rights de novo. *In re M.W.*, 876 N.W.2d 212, 219 (Iowa 2016). Although we are not bound by the juvenile court's findings of fact, we give them weight, especially when they involve witness credibility. *Id.* The State must offer clear and convincing proof that termination is proper. *Id.* "Evidence is clear and convincing when there is no serious or substantial doubt as to the correctness of the conclusions of law drawn from the evidence." *In re T.S.*, 868 N.W.2d 425, 435 (Iowa Ct. App. 2015).

Their parents have long-standing substance-use issues. Katlin "first used [methamphetamine] approximately fourteen years ago." And doctors found methamphetamine and amphetamines in L.D.'s system when she was born. Jesse also used methamphetamine, often with others, but mainly with Katlin. On the other hand, the parents have housing to accommodate their children. As far as employment, Jesse works for a company that installs and repairs swimming pools with sporadic hours that become steady in pleasant weather. Katlin has not had a job outside the home since she was pregnant with D.D.

The Iowa Department of Health and Human Services became involved with the family in 2022. It removed D.D. from his parents' care that August based on the parents' methamphetamine use and placed him with a relative. L.D. was removed in September after complications at her birth. She was eight weeks premature which resulted in hospitalization, so she was placed in a foster home. Both children's placements are temporary. L.D. has never lived with her parents. The children were adjudicated as children in need of assistance (CINA) in October 2022. Meanwhile, the department provided the parents with supervised visitation, drug screens, and therapy referrals. Both parents also received referrals for outpatient substance-use treatment. But they did not capitalize on these opportunities. They refused to show up for drug screening throughout the case. This led case workers to "highly suspect that substance use is continuing to go on." The department asked Katlin and Jesse after the permanency hearing to take a drug test, but they refused. The department reduced Family Centered Services (FCS) visits from twice per week to once per week for lack of progress. The

parents' visitation with D.D. and L.D. was inconsistent, though it improved following the permanency hearing in August 2023.

Katlin also did not engage in therapy until after the permanency hearing. At the termination hearing in October, she testified that she last used methamphetamine in early August. And so did Jesse. Katlin also testified that she was attending regular group therapy and individual counseling sessions. She has diabetes and mental-health issues and is prescribed medication for both concerns. But Katlin had not taken her medication "for a couple months." And Jesse only began attending substance-use treatment regularly two weeks before the termination hearing. Neither parent attends mental-health therapy.

Meanwhile, the children are receiving services. D.D. attends ABA therapy coordinated with his school. He also participates in occupational and speech therapy. L.D. engages in occupational, speech, and physical therapy. As of the termination hearing, the parents had gone to "maybe only one or two" of the children's many medical and therapy appointments. The parents say that they were not informed about some of them. But many times, they were unresponsive to the department. For example, L.D.'s physicians recommended that she receive the Respiratory Syncytial Virus (RSV) vaccine due to her "vulnerability to illnesses." A social worker testified that "[m]edical personnel had made several attempts to contact the parents to obtain consent" but they did not get back to them and the social worker administrator had to sign off on it. Katlin testified that she could have gone to D.D.'s appointments if she rearranged her therapy schedule but that "it's kind of a hassle to go through all of that." Jesse testified that his work

schedule gets in the way of attending appointments, though he works with his father. Jesse said that his father is "just all about work."

In August 2023, the State petitioned to terminate parental rights. Both parents testified at the hearing. The juvenile court terminated their rights to D.D. under Iowa Code section 232.116(1) (2023), paragraph (f) and their rights to L.D. under paragraph (h). Katlin and Jesse appeal separately.

II. Analysis

In reviewing the termination of parental rights, we follow a three-step analysis. *In re D.W.*, 791 N.W.2d 703, 706−07 (Iowa 2010). We first determine whether a ground for termination has been met under section 232.116(1). *Id.* If so, we look to the best-interests framework set out in section 232.116(2). *Id.* If that framework supports termination, then we consider any statutory exceptions in section 232.116(3). *Id.* We only need consider arguments that the parents raise. *In re J.P.*, No. 19-1633, 2020 WL 110425, at *1 (Iowa Ct. App. Jan. 9, 2020).

A. Grounds for Termination

Jesse argues that the State did not prove grounds for termination under section 232.116(1) paragraphs (f) and (h). Paragraph (f) requires proof of these elements:

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

Iowa Code § 232.116(1)(f). And similarly, paragraph (h) requires proof of these elements:

> (1) [L.D.] is three years of age or younger.
> (2) The child has been adjudicated a [CINA] 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.

Id. § 232.116(1)(h). Jesse disputes element four of each paragraph.

In analyzing these elements, we assess whether the children could be safely returned to Jesse's custody at the time of the termination trial. *See In re J.E.*, 723 N.W.2d 793, 799 (Iowa 2006) (interpreting "returned to the custody" as whether the child could *safely* return to the parent's custody); *see also In re A.S.*, 906 N.W.2d 467, 474 (Iowa 2018) (interpreting "at the present time" to mean the point of the termination hearing). And Jesse insists that L.D. and D.D. could have been returned home at the time of trial. He notes that he had been engaging in substance-use treatment, regularly participating in FCS visits, and that FCS did not have concerns about his parenting at supervised visits. He asserts "there is no evidence to show that if the children were returned to [him] that he would not be able to provide for them and keep them protected." But his contention overlooks the children's special needs. *J.E.*, 723 N.W.2d at 799.

We first address Jesse's ability to parent D.D. True, the parents have housing, Jesse is employed, and he started regularly participating in treatment and visits. Yet there are other concerning factors to consider. Jesse reports that he

last used methamphetamine in August. But the family support worker testified that Jesse refused to take any drug tests and the department had "no evidence of sobriety at this point, and . . . would highly suspect that substance use is continuing to go on." And Jesse did not begin his treatment until two weeks before the termination hearing. That late start came over a year after D.D.'s removal. *See In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (stating parent "waited too long to respond [to services], and the underlying problems which adversely affected her ability to effectively parent were too serious to be overcome in the short period of time prior to the termination hearing"). Because of his autism, D.D. needs a highly stable environment to thrive. The record does not show that Jesse could meet D.D.'s special needs. *See In re J.W.D.*, 456 N.W.2d 214, 218 (Iowa 1990) ("For [the child] to function effectively he will need parents with exceptional parental skills who are able to give him the special love, support, supervision, patience, and discipline necessary for him to overcome his present disabilities. It is not enough for this child to be provided with adequate food, clothing and shelter.").

The same is true for L.D. She requires stability, "attention and consistency" with her "specialized medical needs" and many doctors' appointments. Jesse has never lived with L.D., having only had supervised visits with her. And with both L.D. and D.D., the department cut Jesse's visits to once per week for lack of progress. On this point, we agree with the State. "Without the necessary progression from supervised to unsupervised visits, the [c]ourt cannot say the child should have been returned." *See In re C.N.*, No. 19-1861, 2020 WL 567283, at *1 (Iowa Ct. App. Feb. 5, 2020). Thus, we find that the State proved the grounds for

termination by clear and convincing evidence. The children could not be safely returned to Jesse's care at the time of the trial.

B. Best Interests of the Children

Next, we address the parents' best-interests claims. Because they raise similar points, we address their arguments together. In considering the framework under section 232.116(2), we give primary consideration to the children's safety, the best placement for furthering their long-term nurturing and growth, and the children's physical, mental, and emotional condition and needs. *See In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010). Katlin argues that guardianship would have preserved her children's important biological and family connections. But a guardianship is not what is best for the children given their young ages and special needs. *See A.S.*, 906 N.W.2d at 477 ("[A] guardianship is not a legally preferable alternative to termination."). Katlin noted that D.D. struggles with change. But his emotional condition was not helped by Katlin being in and out of his life for more than a year. And the service worker testified that parents who want to change "are going to be fully engaged and contact me." She stated that these parents never "really dove deep."

We recognize that Katlin and Jesse have tried to do better for themselves and their children. But they have been unable to accomplish these goals. And we must consider what the future likely holds for the children if returned to their parents. "We gain insight into the child[ren]'s prospects by reviewing evidence of the parent's past performance—for it may be indicative of the parent's future capabilities." *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994), *holding modified by P.L.*, 778 N.W.2d at 35. Both parents refused to verify their sobriety through drug

tests, cancelled countless appointments, and were unresponsive to many of the department's reunification efforts. Jesse even acknowledged that he "waited too long" to improve his parenting. The parents have not committed themselves to attending L.D.'s many appointments. What's more, Katlin has not taken care of her own medical needs, having gone without the necessary medication for diabetes for months. While it is positive that Katlin attends group therapy, she has prioritized her own convenience over attending her son's appointments.

Overall, L.D. and D.D. must have attention and stability to address their heightened needs. As the juvenile court said: "It is best for [parental rights] to be terminated so that the children can establish a permanent home with a safe caregiver who can be relied on to meet their needs now and for years in the future." *See In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997) ("Children simply cannot wait for responsible parenting."). Reunification would not benefit the children's long-term growth nor their physical and emotional needs. Thus, we find that termination is in the best interests of the children.

C. Close Bond

Katlin also argues that the court should have forgone termination because of the close bond she shares with her children. *See* Iowa Code § 232.116(3)(c). She claims that her bond with D.D. is "a lot stronger than anybody could ever know because he really helped me through." We don't doubt that Katlin has gone through a lot with D.D., but she has not proven by clear and convincing evidence that termination would hurt him because of the closeness of their relationship. *See A.S.*, 906 N.W.2d at 476 (clarifying that parent resisting termination bears the burden on exception).

Granted, termination may not be appropriate if children have special needs that only their parent can handle. *In re A.S.*, No. 14-0980, 2014 WL 4938010, at *5 (Iowa Ct. App. Oct. 1, 2014) ("[W]e find the unique circumstances of this case and the best interests of A.S. and E.S. tip the scale toward saving the mother-child relationship."). But that is not the case here. D.D. and L.D. are vulnerable children, and Katlin has not been engaged enough to help them overcome their challenges. Katlin has never lived with L.D. *See In re M.D.*, 946 N.W.2d 766 (Iowa Ct. App. 2020) (holding that termination was not detrimental to the child due to close bond as "the child has never lived with the mother, and his contact with her is limited to supervised visits"). And she has not been consistent enough in addressing D.D.'s autism diagnosis. The closeness of the parent-child relationships is not enough to preclude termination.

D. Six-Month Extension

Lastly, we address Jesse's argument that he should be granted a six-month extension under section 232.104(2)(b). To continue placement for six months, that statute requires the court to decide "the need for removal will no longer exist at the end of the extension." *In re A.A.G.*, 708 N.W.2d 85, 92 (Iowa Ct. App. 2005). As the juvenile court concluded, the parents "are still not at a point that they are willing to participate in drug screens or openly account for their last date of use or history of use. This is the extent of progress made after more than a year of services." Like the juvenile court, we cannot find that the need for removal will no longer exist after six months. Thus, we affirm the termination order.

AFFIRMED ON BOTH APPEALS.