

IN THE COURT OF APPEALS OF IOWA

No. 17-1263
Filed November 22, 2017

**IN THE INTEREST OF B.G., B.L., and T.H.,
Minor Children,**

K.G., Mother,
Appellant,

R.L., Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Susan C. Cox, District Associate Judge.

The mother and one of the fathers appeal from the termination of their parental rights. **AFFIRMED ON BOTH APPEALS.**

Thomas G. Crabb, Des Moines, for appellant mother.

Cathleen J. Siebrecht of Siebrecht Law Firm, Des Moines, for appellant father.

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

Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ.

POTTERFIELD, Judge.

The mother's parental rights were terminated to three of her five children.¹ At issue in this appeal are B.L., born in 2008; B.G., born in 2009; and T.H., born in 2012. B.L.'s father also appeals the termination of his parental rights.²

I. Background Facts and Proceedings.

The mother is no stranger to interactions with the Iowa Department of Humans Services (DHS). As a child, she was involved with the department due her mother's use of methamphetamine and other drugs. As a parent, the mother came to the attention of DHS before the present proceedings began in 2013. In 2009, DHS made a founded report for child abuse after the mother was arrested for underage drinking and possession of drug paraphernalia; DHS learned the mother had taken B.L. to a known drug house a number of times. The mother was also having trouble with B.L.'s father and alleged domestic violence.

DHS was again involved with the family in 2011 when the mother's third child, M.V., was born prematurely and died soon after. At the time of his birth, the umbilical cord and the mother's urine were tested for THC; both showed a positive result. The mother admitted to using marijuana while pregnant with M.V. but denied either B.L. or B.G. was in her care at the time. She also reported she was no longer in a relationship with M.V.'s father, stating he had been domestically violent to her in the past and then again recently. She did not notify the police.

¹ The mother has had five children with five different fathers. One of the children, M.V., was born prematurely in 2011 and died soon after birth due to medical complications. Another child, R.T., born in 2013, was injured when his father violently shook him. The mother's parental rights to R.T. were terminated in January 2015. The other three children are at issue in this appeal.

² No other father appeals the termination of his parental rights.

In 2013, R.T. was born to the mother and a fifth father. R.T. was born prematurely and struggled with respiratory and feeding issues. When R.T. was approximately three months old, he was rushed to the emergency room while in acute distress. After extensive medical testing, doctors determined someone had violently shaken R.T., inflicting serious head trauma including brain bleeds and retinal hemorrhages. R.T. was flown from Des Moines to Iowa City and underwent emergency neurosurgery. R.T.'s father admitted he was caring for the child (in the mother's home) immediately before R.T. quit breathing. R.T.'s father was charged with child endangerment causing serious injury and was later found guilty.

The mother refused to believe the medical evidence that R.T.'s injuries were the result of being shaken and refused to comply with the no-contact order prohibiting contact between her and the father. The mother admitted she knew R.T.'s father had at least one previous conviction for domestic violence. Still, she maintained contact with him and allowed the children to have contact with R.T.'s father as well.

As a result, in November 2013, the children's guardian ad litem asked the court to remove the children from the mother based on the "mother's instability and protective concerns due to . . . contact with substance abusers and violating [the no-contact order]." The mother's four living children were removed from her care. T.H., who had been born in 2012, was originally placed in the custody of his father

but within a month, T.H. was removed from the father's care and placed with his paternal grandparents.³

The mother completed a mental-health evaluation the same month. She disclosed a history of being physically abused as a child and having one violent romantic relationship. She reported having ended the relationship with R.T.'s father because "he just focused on himself" and did not seem interested in her welfare. The social worker who completed the evaluation recommended the mother "be seen for individual therapy on a weekly basis to address her history with males, development of healthy problem-solving skills, as well as her relationships with parent figures as they may relate to the choices she makes in adult relationships."

The mother began attending therapy, but she missed at least three consecutive therapy sessions and the therapist discontinued their relationship in February 2014. The mother posted on social media threatening to kill herself. Additionally, contrary to the mother's statements to professionals, there was evidence the mother continued her relationship with R.T.'s father; she violated the no-contact order by talking to him on social media and sending him pictures of the children during visits.

In October 2014, the mother began seeing her third therapist since DHS involvement began and she also obtained a second mental-health evaluation. In it, the mother was diagnosed with adjustment disorder with mixed anxiety and

³ T.H. was returned to his father's care for an extended period of time between May 2014 and February 2016, but he was ultimately removed and placed with his grandparents again in February 2016 and remained there through the termination proceedings in May 2017.

depression and histrionic personality disorder. It was noted the mother had experienced significant cumulative trauma from childhood through the present day and that she addressed her fears of abandonment and being alone “by pursuing relationships with men who have abused her emotionally and physically.” The mother had made positive change, including getting a job and financially supporting herself. She was able to verbalize how some of her past choices had negatively impacted the children.

At the October 2014 permanency hearing, the court granted a six-month extension for the mother to work toward reunification with B.L., B.G., and T.H. and for B.L.’s father to work toward reunification with B.L. T.H. lived with his father under DHS supervision; B.L. and B.G. remained in foster care. The court changed the permanency goal to termination of parental rights regarding the mother and R.T.

In January 2015, the court terminated the mother’s parental rights to R.T. In its written ruling, the juvenile court found the mother’s unresolved mental-health issues posed a risk to R.T. and concluded the mother was unable or unwilling to fully participate in the proffered services. Reunification with the other three children remained the goal under the six-month extension of time.

In the following months, the mother’s employment was sporadic. She struggled to attend therapy consistently. The mother’s therapist reinforced that the mother needed long-term therapy to address her errors in thinking and her past decision-making including choices to involve herself in relationships with “bad boys.” The mother continued to be dishonest in sessions, claiming she was not in romantic relationships but being contradicted by her own social media posts, by

reports from the children and foster parents, and by events witnessed by providers. The mother was encouraged to abstain from romantic relationships while she worked toward getting her children back.

In March 2015, the court returned B.L. and B.G. to the mother's care. T.H. continued to live with his father. After the children were returned, the mother attended therapy only sporadically. She quit her employment, and she began spending time with adult males in the home while the children were present. The mother was reminded to be aware of the influence other adults could have on her children and her circumstances.

By June 2015, the mother's therapist was threatening to quit seeing the mother due to her number of missed appointments. The mother was not consistently taking B.L. and B.G. to their therapy appointments, and, without telling any of the case professionals, she moved the children in with her new boyfriend, Zach.

In the fall of 2015, the mother had stopped attending therapy altogether. She reported to the case professionals that she no longer felt it was necessary. The mother continued to maintain employment only sporadically.

The police were called to the home of the mother and her new boyfriend in January 2016. B.L. was in the home at the time, as he stayed home sick from school. The mother and Zach had a verbal argument that turned physical, with the mother ripping Zach's shirt and scratching his chest. Zach then physically forced the mother and B.L. out of the home without coats—it was twenty-seven degrees outside at the time. When the police arrived, they saw an injury to the mother's elbow; Zach admitted he had physically forced the mother out; B.L. reported to the

police that the boyfriend made him leave as well. Zach was then arrested for domestic abuse assault causing injury.

Following the episode, DHS made referrals for the mother to work with a domestic violence advocate, who could provide the mother with transitional housing. The mother was also encouraged to get herself and B.L. and B.G. back into therapy. The mother took no positive action. Instead, she asked that the no-contact order prohibiting contact between her and Zach be rescinded.

At the March 2016 review hearing, the court ordered the mother to obtain a new mental-health evaluation and follow through with any recommended treatment. The mother was also ordered to obtain independent housing.

The mother did not appear for the family team meeting in early May, and she not attend or respond to phone calls. Professionals realized the mother, B.L., and B.G. had not been seen in two weeks. The mother had missed all appointments; she was still not participating in therapy. DHS learned the children had multiple recent unexcused absences from school. When DHS was finally able to reach the family, both children reported they had been staying at Zach's house and said they saw Zach and the mother "fighting and arguing."

On May 18, the mother called 911 and reported Zach had pushed her down the stairs. The next day, when she informed DHS, she stated that Zach had pushed her down the stairs after she refused to have sex with him. After the police arrived, they made Zach leave the house. According to the mother, later, approximately twenty of Zach's friends and family members arrived at the home, yelling at the mother, calling her names, and threatening her. The mother stated the children were present and witnessed the event.

The mother then moved from Zach's home into the home of another male friend, Brady. DHS initiated a new safety plan with the mother and warned that the children may be removed again if the mother did not secure independent housing. As a DHS worker was leaving Brady's home, they saw a handgun holster and a loaded magazine for a handgun. When asked, the mother claimed she did not know if Brady had a gun or where it would be located. DHS met with B.L. and B.G., who disclosed they had been spending a lot of time with the maternal grandmother. The maternal grandmother was not to be around the children because of her long history of drug use and her refusal to comply with DHS services, including taking drug tests to establish her sobriety. The children also reported the mother and Brady had been fighting a lot and the mother hid a pistol under the couch to keep it away from Brady, who had threatened to kill himself.

The next day, May 26, the State asked the court to modify placement by again removing B.L. and B.G. from the mother's care. In its petition, the State noted that the mother had failed to follow court orders to obtain a new mental-health evaluation and follow its recommendation and failed to obtain independent housing. The court granted the State's petition, and the two children were placed in foster care.

Between May 2016 and October 2016, the mother missed more than half the scheduled visits with B.L. and B.G. She did not follow court orders to obtain a mental-health evaluation or attend therapy. She continued her romantic relationship with Brady, and it remained problematic: she called 911 to report domestic violence in July after he broke into the bathroom while she was showering and pulled her out. Brady was charged criminally as a result. It was

noted that the mother had told DHS workers she was living alone during the period she called 911 and reported her live-in boyfriend had assaulted her.

The mother continued missing visits and having inappropriate people in the home at the time visits were scheduled. She had several outbursts in front of the children. She reengaged in therapy—her fourth therapist since DHS became involved—but failed to accurately report her history to the therapist.

In February 2017, the State filed petitions to terminate the mother's rights to B.G., B.L., and T.H. and B.L.'s father's parental rights. The termination hearing took place over three days: March 21, April 12, and May 16.

B.L.'s father testified he had not seen B.L. in "probably two years." He stated he had not participated in services or taken advantage of scheduled visits because he was "[w]orking a lot, trying to work on [him]self," but claimed he had called once or twice to ask if visits could start being scheduled again—once in June 2016, before he went to jail, and once in January 2017. He also reported he had completed outpatient drug treatment through his probation and that he had been sober since June 2016. The father claimed B.L. could be returned to his care at the time of the hearing, but he admitted he did not know what grade B.L. was in, what time he went to bed, what his favorite things were, what types of medications B.L. was taking, or why he was going to therapy.

The mother testified she had not been to a visit with T.H. since December 2015; she admitted they no longer shared a bond and T.H. did not recognize her anymore (when he saw her at a team meeting). While she hoped to have some type of relationship with T.H. in the future, she did not ask that he be returned to her care at that time. The mother testified she believed B.L. and B.G. could be

returned to her care. She stated she had a job and had obtained independent housing. The mother claimed her boss was a good support for her—sometimes driving her around and paying for her pedicures; he also owned the home she lived in. She denied they were in a romantic relationship. The court noted the mother’s ongoing dependence on men to meet her daily needs. The mother claimed she had made big changes since DHS involvement started in October 2013; she elaborated she made the change of “accepting herself” after the children were removed from her care for a second time—in May of 2016—and expanded that she has “done a lot of stuff for [her]self, eating better, . . . started tanning again, taking better care of [her]self, developing healthier friendships, . . . trying to reconnect with family members that [she hasn’t] really been, and just keeping [her] bond with her children.” The mother continued to downplay the seriousness of the multiple instances of domestic violence that were perpetrated against her during the course of the case. She blamed the family safety, risk, and permanency workers for “setting her up.”

The juvenile court terminated the mother’s parental rights to all three children pursuant to Iowa Code section 232.116(1)(g) (2017); her rights to T.H. were additionally terminated pursuant to section 232.116(1)(f). B.L.’s father’s parental rights were terminated pursuant to section 232.116(1)(b), (e), and (f).⁴

The mother and B.L.’s father appeal separately.

II. Standard of Review.

⁴ T.H.’s father’s parental rights were terminated pursuant to Iowa Code section 232.116(1)(f). T.H.’s father has not appealed.

We review the termination of parental rights de novo. *In re T.S.*, 868 N.W.2d 425, 431 (Iowa Ct. App. 2015). We uphold an order terminating parental rights when there is clear and convincing evidence in the record to support the statutory grounds for termination. *Id.*

III. Mother's Appeal.

The mother challenges the statutory grounds for termination; she also maintains termination of her rights was not in the children's best interests.

A. Statutory Grounds.

When the juvenile court terminates a parent's rights on more than one ground, we may affirm on any ground we find supported by clear and convincing evidence. See *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010). Here, we consider Iowa Code section 232.116(1)(g), which allows the court to terminate when all the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family or a court of competent jurisdiction in another state has entered an order involuntarily terminating parental rights with respect to another child who is a member of the same family.

(3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.

(4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

The mother challenges the court's conclusion only in regards to elements three and four.

At the time of the final day of the termination hearing in May 2017, the mother and these children had been involved with DHS for approximately forty-

four months. T.H. had spent forty-two of those forty-four months outside of the mother's care, and B.L. and B.G. had spent approximately twenty-eight of the forty-two months outside of the mother's care. The mother had been given a number of chances to engage in therapy in a meaningful way and in fact had been court-ordered to do so a number of times. The mother had yet to do so. Multiple therapists recognized the mother's habit and failure in decision-making that led her to date "bad boys" and violent men, and the mother has been abused by at least four different paramours. Rather than taking steps to move past this behavior, the mother continues to downplay the significance of these assaults—even though a number of them took place in front of the children—and continues to deny she was in romantic relationships with the men who hurt her. While the mother claimed to have independent housing, employment, and to not be involved romantically with anyone at the time of the termination hearing, nothing in the record suggests the mother has made the strides necessary to keep out of more abusive relationships in the future. Additionally, the mother has not shown that she has the capacity to protect the children when they are in her care. For example, she continued to be involved with R.T.'s father after he violently shook R.T. and was arrested for child endangerment causing serious injury. When she and the children were staying with Brady and DHS asked if there were weapons in the home, the mother denied any knowledge of guns, though the children reported the mother had hid a pistol under the couch after Brady put it in his mouth and threatened to kill himself while he and the mother were fighting.

After forty-four months, including a six-month extension of time, the mother had yet to respond to services meant to help her be able to safely parent her

children. Nothing in the record indicates that more time would correct the situation. We agree with the juvenile court's decision to terminate the mother's parental rights to all three children pursuant to section 232.116(1)(g).

B. Best Interests.

The mother claims termination of her parental rights was not in the children's best interests. Although the mother does not specify that her arguments in this section pertain to only B.L. and B.G., her statements about the strong bond they share and the lack of pre-adoptive foster family appear to indicate her argument is limited to the older two children. Thus, any claim of error regarding the best interests of T.H. has been waived.

Even giving credit to the mother's claims, termination of her parental rights is in B.L.'s and B.G.'s best interests. As their therapist noted, the children are in need of permanency. See *In re J.E.*, 723 N.W.2d 793, 802 (Iowa 2006) (Cady, J., concurring specially) (noting the "defining elements in a child's best interest" are the child's safety and her "need for a permanent home"). They have been involved with DHS for a number of years, and they have endured a number of placements and a significant amount of uncertainty during that period. Unfortunately, the mother is not in a position in which she can provide the stability or safety that they need, and we are past the point where the children can be asked to wait longer for their mother to make the necessary changes. See *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) ("The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.").

We affirm the juvenile court's termination of the mother's parental rights to all three children.

IV. Father's Appeal.

The juvenile court terminated the parental rights of B.L.'s father pursuant to section 232.116(1)(b), (e), and (f). However, the father only challenges the statutory grounds for termination under section 232.116(1)(b) and (f).⁵ The father has not challenged the court's conclusion under section 232.116(1)(e), and any claim of error related to that ground has been waived. See *Hylar v. Garner*, 548 N.W.2d 864, 870 (Iowa 1996) (“[O]ur review is confined to those propositions relied upon by the appellant for reversal on appeal.”).

The father also claims termination is not in B.L.'s interests because his foster home was no longer a pre-adoptive home. As we have said before, “We will not refuse to terminate the rights of parents who would otherwise be terminated because an adoptive home has not been secured.” *In re T.C.*, 522 N.W.2d 106, 109 (Iowa Ct. App. 1994). The father had not seen B.L. for a number of years, due to his own illegal actions and failure to keep in contact with the department. Although he may still love B.L., he could not answer even the most basic questions about the child at the time of the termination hearing, and he has not established that he could provide B.L. with stability and permanency—either at the time of the hearing or any time in the future. B.L.'s best interests require finding a forever

⁵ We note that it takes a broad reading of the father's appeal to find that he has challenged two of the three sections. The father does not list any of the subsections he is challenging and he has not argued any specific elements. Rather, we are construing his statement that the juvenile court “erred in terminating the father's parental rights when there was not clear and convincing evidence that the child could not be returned to the care of the Father either immediately or within a reasonable time” as a challenge to Iowa Code section 232.116(1)(f)(4). Similarly, we construe his statement that he disagrees with the court's finding that he “deserted or abandoned” the child as an argument against section 232.116(1)(b), though he makes no further comment or argument other than saying he disagrees with the conclusion.

home; termination will hopefully make that possible. See Iowa Code § 232.116(2) (requiring the court to “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”).

We affirm the termination of the father’s parental rights.

AFFIRMED ON BOTH APPEALS.