

IN THE COURT OF APPEALS OF IOWA

No. 17-1459
Filed December 20, 2017

**IN THE INTEREST OF A.R., M.A., and H.R.,
Minor Children,**

J.C., Mother,
Appellant,

E.A., Father of M.A.,
Appellant.

Appeal from the Iowa District Court for Crawford County, Mary L. Timko,
Associate Juvenile Judge.

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

Thomas E. Gustafson of Gustafson Law Firm, Denison, for appellant
mother.

Martha A. Sibbel of Law Office of Martha Sibbel, P.L.C, Carroll, for appellant
father of M.A.

Thomas J. Miller, Attorney General, and John B. McCormally, Assistant
Attorney General, for appellee State.

Kara L. Minnihan, Onawa, guardian ad litem for minor children.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

TABOR, Judge.

A mother, Jessica, appeals the juvenile court's statutory basis for terminating her parental relationship with three children—A.R., M.A., and H.R.—ages three, six and nine.¹ M.A.'s father, Edward, also appeals the termination of his parental rights, claiming the State did not make reasonable efforts toward reunification. After reviewing the available record,² we conclude the juvenile court correctly decided the children could not be safely returned to Jessica's care, a guardianship was not the right solution, and the State made reasonable efforts to reunify Edward and M.A.

I. Facts and Prior Proceedings

Jessica first encountered the Department of Human Services (DHS) in 2009 when H.R., the oldest child, was just eleven months old. Since then, the DHS has launched eight investigations related to Jessica's children. Three investigations—including the most recent one—related to Jessica's drug use.

Most recently, the DHS intervened after learning of domestic abuse occurring in Jessica's home and in front of the children. In March 2016, the children witnessed Jessica's then-paramour, Ben, hit her. Eventually the children hid in a closet and an extended family member was forced to climb through a window to reach them. Initially the children hesitated to discuss Ben's actions because Jessica told them they would be taken away if they did. After

¹ Each child has a different father. Neither A.R.'s father nor H.R.'s father appeals.

² Our review is de novo. See *In re M.W.*, 876 N.W.2d 212, 219 (Iowa 2016). We are not bound by the juvenile court's factual findings, but we give them weight, especially when witness credibility is critical to the outcome. See *id.* Proof must be clear and convincing, meaning there are no "serious or substantial doubts as to the correctness [of] conclusions of law drawn from the evidence." *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010).

reassurances from the DHS worker, seven-year-old H.R. and four-year-old M.A. described seeing Ben strangle Jessica, strike her on the head, and throw her to the ground. Around that same time, Jessica completed a drug screen and tested positive for methamphetamine. The children were removed from the home. In April 2016, the juvenile court notified the fathers of the children's removal and scheduled a hearing. Relying on Iowa Code section 232.2(6)(c)(2), the juvenile court adjudicated A.R., M.A., and H.R. as children in need of assistance (CINA) in May 2016.

After the children were removed, Jessica ended her relationship with Ben and entered mental-health and substance-abuse therapy. She also regularly attended visits with the children. But M.A.'s father, Edward, did not remain in contact with the DHS after April 2016. He also did not contact the family safety, risk, and permanency (FSRP) worker in charge of scheduling visitation and did not return the worker's calls.

The children entered foster care and, in mid-July, the children's foster dad reported H.R. tried to strangle herself with a mini-blind cord and said she wanted to kill herself.

By the fall 2016, Jessica's recovery took a turn for the worse. Between April and October, Jessica missed one-half of her scheduled mental-health therapy sessions. The treatment center required her to complete a "Strategies for Success" group before resuming therapy. Jessica also moved to Dow City, despite the

transportation difficulties posed by the new location.³ She also began dating a new paramour, Trent, with a criminal history, though she denied living with him. When H.R. was admitted to a pediatric psychiatric facility in November, Jessica did not go with her.

Edward began communicating with a DHS worker in December 2016. The worker encouraged Edward to attend an upcoming family team meeting either in person or by phone, but the meeting notes show Edward did not participate. Edward also did not attend the family team meeting in January 2017 and did not respond to attempts by an FSRP worker to set up visitation.

Meanwhile, H.R.'s December psychiatric progress report also revealed troubling information—when scared or nervous H.R. dissociated by acting like a dinosaur and expressing herself through noises.

Jessica also struggled in December 2016 and tested positive for methamphetamine. By February, Jessica's substance-abuse therapy report was poor. She only attended one of three individual therapy sessions in the previous month and rarely participated in treatment activities.

The family experienced mixed progress that spring. H.R. made significant strides at the psychiatric facility and was discharged in March. Jessica also completed the class permitting her to re-enroll in mental-health therapy in March. But by the end of March, Jessica tested positive for methamphetamine. Jessica's April substance-abuse-therapy-progress report also noted she missed several

³ Jessica does not have a valid driver's license, so she relies on others to get to visits and therapy. FSRP workers transported her to visits and TMS, a contracted transportation provider with DHS, was available to take her to therapy appointments.

group sessions in March and all of her individual sessions. The DHS reached Edward in April, and Edward admitted he had no justification for his lack of participation. He said he could not obtain a requested substance-abuse evaluation because he lacked insurance but had one scheduled in the near future. Edward did not obtain the evaluation. In April, Jessica missed three visits with the children because she failed to confirm the visits or just didn't show up. She also tested positive for methamphetamine again. When asked about using, she said it just happened and she "just didn't give a fuck." This attitude was reflected in her substance-abuse-therapy-progress report for May. In May, she only attended one individual session and one out of four group sessions. Edward began asking about visitation in May. Eventually, an FSRP worker contacted him to schedule visitation. He completed three visits with M.A. in July 2017.

The juvenile court held a termination hearing in July 2017. Jessica was present and Edward participated by phone. DHS case manager Kortney Wessman testified about her involvement in the case. Sarah Ahart, FSRP worker, testified about her observations of Jessica during visitation. Ahart noted conversations with Jessica about the mother's paramour.

Jessica also testified. She blamed her inconsistent treatment efforts on her transportation challenges and said she could care for the children if given "time to get [herself] together." When asked if she was still in a relationship with Trent, Jessica denied it. When pressed, she admitted Trent stayed at her home three times a week but continued to deny a romantic relationship. She also admitted she "put [her] kids through hell" and exposed her children to drug abuse and

domestic violence. Edward testified about classes in parenting and anger management he took and why he did not complete any drug testing.

The juvenile court terminated Jessica's parental rights in A.R. under Iowa Code section 232.116(1)(e), (h), and (l) (2017). Her parental rights in M.A. and H.R. were terminated under section 232.116(1)(e), (f), and (l). The court terminated Edward's rights in M.A. under Iowa Code section 232.116(1)(b), (e), and (f). Jessica and Edward now appeal.

II. Analysis of Parents' Claims

A. Jessica's Claims

1. Grounds for Termination

Jessica challenges all grounds for termination cited by the juvenile court. To affirm we need to find facts to support just one of the grounds for each child. *In re J.B.L.*, 844 N.W.2d 703, 704 (Iowa Ct. App. 2014). In regard to A.R., we focus our analysis on paragraph (h). Under that paragraph, the State must prove:

- (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).

In regard to the older children, M.A. and H.R., we focus on paragraph (f). Under that paragraph, the State must prove:

- (1) The child is four years of age or older.

(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 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).

Jessica challenges the fourth element of both paragraphs, claiming the State did not offer clear and convincing evidence the children could not be presently returned to her custody. We reject her challenge. Jessica did not adequately address the DHS concerns. She continued to involve herself with troubling paramours and attempted to hide her involvement with her most recent paramour. She fails to appreciate how her association with such partners could impact her children, even though these child-welfare proceedings stem from instances of domestic violence.

Jessica's commitment to mental-health and substance-abuse treatment was also minimal. While transportation difficulties made getting to treatment difficult, Jessica failed to take advantage of available solutions. She chose to move to Dow City, further away from her treatment locations and compounding her transportation woes. Jessica also continued to use methamphetamine, testing positive just two months before the termination hearing.

Her attendance at visitations with the children was irregular, particularly as of late. She failed to confirm visitations or was not home when an FSRP worker came to pick her up. As the juvenile court found, Jessica's lack of consistency in

visitation “weighed heavily on the children.” When Jessica attended visitation, she spent time on her phone rather than spending time with the children.

After carefully reviewing the evidence, we reach the same conclusion as the juvenile court—the children cannot be returned to Jessica’s care at the present time. Termination was proper under paragraphs (f) and (h).

2. Six-Month Deferment

Jessica next contends she should be given six more months to show she can become a responsible parent. But termination at this time is in the children’s best interests. See *id.* § 232.116(2). To grant Jessica more time would delay the inevitable. As the oldest child, H.R. has been subjected for the longest time to the unstable home environment provided by Jessica. As a result, H.R. has displayed the most harrowing behavior—a suicide attempt and non-verbal disassociation. H.R.’s behavior has improved since removal. And we do not see any sign in the record Jessica can now provide a home environment free of domestic violence and drug abuse. Jessica has continued to interact with dangerous paramours and to abuse drugs. Nothing suggests Jessica will be able to fix in six months what she has been unable to fix for more than a year. See *In re A.A.G.*, 708 N.W.2d 85, 93 (Iowa Ct. App. 2005) (considering uncertainty regarding parent’s sobriety and resistance to services offered). We cannot indulge Jessica’s hope that someday she could become a fit parent. See *In re P.L.*, 778 N.W.2d 33, 41 (Iowa 2010).

3. Guardianship

Jessica also challenges the juvenile court’s refusal to place the children in a guardianship with A.R.’s paternal grandmother. Jessica concedes guardianships are not a legally preferable alternative to termination if grounds for

termination are established by clear and convincing evidence. See *In re L.M.F.*, 490 N.W.2d 66, 67 (Iowa Ct. App. 1992) (holding placement with a relative under a permanency order is not legally preferable to termination of parental rights). But under a narrow set of circumstances, a guardianship may be established even when grounds for termination are established. See *In re B.T.*, 894 N.W.2d 29, 34 (Iowa Ct. App. 2017) (considering guardian's established relationship with child, child's age, child's desires, and close parent-child bond). Such narrow circumstances are not present here.

B. Edward's Claims

1. Best Efforts

Edward alleges the State failed to provide him with reasonable efforts toward reunification with M.A. See *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002) (noting the DHS must make reasonable efforts to provide parents with services). The measure of reasonable efforts varies depending on the circumstances of each case. *Id.* (citing *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa Ct. App. 1997)). Edward emphasizes the near two-month delay from when he requested visitation until it was arranged.

The failure of reunification efforts falls at Edward's own feet. The DHS reports are full of references to agency attempts to contact Edward and his lack of responses. Edward complains he did not receive individual status visits, a contract of expectations, or a review of the prior CINA cases, but his inaction prevented the DHS from sharing this information with him. He also notes he was not included in family team meetings, but after he finally spoke with a DHS worker and was

encouraged to attend the December meeting, even by phone, he failed to do so. The service was offered; Edward did not take advantage of it.

While we are troubled by the agency's slow response to Edward's visitation request, we do not find the delay alone violated the reasonable-efforts requirement. After Edward's belated request, the DHS eventually set up interactions with M.A. Edward complains the offered visitation was limited to once per week. But Edward had not seen M.A. in more than one year, and given M.A.'s young age, it was reasonable for his visits to be introduced gradually. We conclude the DHS provided reasonable efforts toward reunification.

2. Six-Month Deferment

Edward also requests an additional six months to work toward reunification. Given Edward's history of drifting in and out of M.A.'s life and his inability to maintain any meaningful contact with her for a significant period of time, we conclude termination at this time is in the child's best interests. See Iowa Code § 232.116(2); *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006) (noting a review of a parent's past performance is indicative of future performance).

III. Conclusion

After our de novo review, we conclude (1) the children could not be returned to Jessica's care at the time of termination hearing without the risk of harm; (2) a guardianship would not be the best solution for the children; (3) the DHS provided Edward with reasonable reunification efforts; and (4) neither parent is likely to resolve their existing difficulties within six months.

AFFIRMED ON BOTH APPEALS.