IN THE COURT OF APPEALS OF IOWA

No. 17-1488
Filed November 22, 2017

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

M.M., Mother,
Appellant.

Appeal from the Iowa District Court for Johnson County, Jason A. Burns, District Associate Judge.

A mother with a history of substance abuse and mental-health issues appeals the termination of her parental rights to two young daughters. **AFFIRMED.**

Rachel C.B. Antonuccio of Public Defender's Office, Iowa City, for appellant.

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

Anthony A. Haughton of Linn County Advocate, Inc., Cedar Rapids, guardian ad litem for minor children.

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

TABOR, Judge.

A mother, Melony, appeals the termination of her parental relationship with her two daughters, three-year-old L.S. and two-year-old D.S. Bruising around the ears of the youngest girl drew the attention of authorities. Once the Iowa Department of Human Services (DHS) took custody of the girls, Melony never made enough progress to have them returned. On appeal, Melony challenges the statutory grounds for termination and argues the juvenile court's action harmed the children because of their close bond with her. Melony seeks an additional six months to work toward reunification, or, in the alternative, a guardianship for the children with her sister.

After independently reviewing the record, we reach the same conclusion as the juvenile court regarding termination of Melony's parental rights.[1] Melony cannot safely parent her daughters given her persistent substance abuse and untreated mental-health issues. Crediting the opinions of the social workers, we doubt whether a reprieve of six months would make a difference; nor do we find this case is appropriate for a guardianship. Accordingly, we affirm.

I. Facts and Prior Proceedings

The DHS took notice of Melony's family in August 2016 after she brought D.S. to a doctor to inspect bruising on and around the toddler's ears. After testing for medical conditions that could cause bruising, the examining doctor concluded

[1] 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).

D.S's injuries resulted from physical abuse.[2] The older sister, L.S., showed no similar signs of physical abuse. Initially, Melony blamed her live-in paramour for D.S.'s injuries.

The DHS case plan allowed the children to stay with relatives. But just days later, Melony removed the children from the relative's care without notifying her DHS caseworker. As a result, the DHS requested removal and placed the children in family foster care. While in Melony's care, both children were exposed to marijuana, according to a hair test. Melony also tested positive for marijuana and methamphetamine. The juvenile court adjudicated L.S. and D.S. as children in need of assistance in September 2016 under Iowa Code section 232.2(6)(b), 232.2(6)(c)(2), and 232.2(6)(o)(2016). The children remained in foster care; Melony stayed with her parents. To achieve reunification, the court expected Melony to seek treatment for substance abuse and emotional issues and to find employment and stable housing.

At first, Melony made progress. She began working at Arby's. She obtained a driver's license. She participated in family treatment court. She sought substance-abuse treatment, graduated from an outpatient program, and was methamphetamine free during October and November of 2016. But after the DHS approved Melony's mother and stepfather for family foster care, Melony was forced to find new housing and chose to move back in with her paramour. In December, Melony witnessed a person's death and began using methamphetamine as a means to cope with the trauma. At this time, Melony admitted she likely caused

[2] The examining doctor's notes indicate the bruising pattern was consistent with someone's knuckles pressing into D.S.'s head and grabbing her ears with significant force.

the injuries to D.S.'s ears, claiming the bruising occurred when she repositioned the child's head while styling her hair. Melony blamed the severity of the bruising on a combination of the hairstyling and L.S. kicking D.S. repeatedly in the head.

Melony continued using methamphetamine. Though she eventually sought residential treatment, she left the facility after one day. When she expressed an interest in returning, the treatment facility required Melony to provide a letter from her psychiatrist stating she was emotionally stable enough to begin treatment. Melony did not satisfy that requirement. She continued to use methamphetamine intermittently over the next several months. After Melony tested positive for marijuana, she accused the DHS of tampering with the results to provoke her and limit her visitation with the children. She claims the DHS's misdeeds prompted her to relapse on methamphetamine. Eventually, Melony broke up with her paramour and moved in with drug abusers. At the suggestion of the DHS, Melony sought housing assistance and began renting an apartment.

The State filed a petition to terminate parental rights in February 2017. The juvenile court held a termination hearing in June 2017. The State's evidence at the hearing did not paint a positive picture of Melony's parenting efforts. DHS social worker Michelle Irons noted Melony's continued methamphetamine use, her poor attitude toward mental-health treatment, and her lack of urgency to seek help. Heidi Aude, the family safety, risk and permanency worker, testified Melony often became easily frustrated with the children and would yell at them during supervised visits. Aude also said Melony often expressed her intent to discipline the children by "swatting" them and shouted at others who suggested she should refrain from

"swatting" the children. The guardian ad litem agreed Melony's inappropriate use of corporal punishment was an ongoing issue.

In her own testimony, Melony conceded she often reacts impulsively in negative situations and later regrets her conduct. Melony, who was thirty-two years old, admitted using marijuana since she was thirteen and methamphetamine since she was nineteen. Melony maintained she did not mean to hurt D.S. while styling her hair.

After the June 2017 termination hearing, Melony was arrested for possession of methamphetamine. A July hearing was held to add this development into the record. During the July hearing, DHS worker Irons also revealed Melony had lost her job at Arby's and questioned the stability of Melony's housing. In September 2017, the juvenile court terminated Melony's parental rights in the two children pursuant to Iowa Code section 232.116(1)(d) and 232.116(1)(h).[3] Melony now appeals.

II. Analysis of Mother's Claims

A. Grounds for Termination

Melony challenges both grounds for termination cited by the juvenile court. To affirm, we need to find facts to support just one of the sections. *In re J.B.L.*, 844 N.W.2d 703, 704 (Iowa Ct. App. 2014). We focus our analysis on subsection (h). Under that subsection, 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

[3] The father's rights were also terminated but are not at issue in this appeal.

> months, or for the last six consecutive months and any trial period at home has been less than thirty day.
> (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); *see In re A.M.*, 843 N.W.2d 100, 111 (Iowa 2014) (identifying relevant time in fourth element as date of termination hearing).[4]

Melony claims the juvenile court erred in concluding the children could not be presently returned to her custody. She insists she remedied several DHS concerns by the time of the trial. Specifically, she found steady employment, rented her own apartment, obtained a driver license, graduated from a substance-abuse program, and ended her troubling relationship. But Melony's account is just one side of the ledger.

After the juvenile court reopened the record, it learned Melony lost her job and had not paid her rent once her housing assistance ran out.[5] Her last measureable period of sobriety was several months ago. Eight days after the first hearing, Melony was arrested for possession of methamphetamine and admitted using.[6] Melony continued to downplay the harm she caused D.S. by insisting it was unintentional or blaming older sister L.S. Melony's continued refusal to fully accept responsibility for her conduct is concerning given her affinity for physical discipline and demonstrated short temper. As the juvenile court aptly observed: "Her refusal to appropriately address the allegation of physical abuse, while

[4] Because two termination hearings occurred, we will consider the second hearing as the relevant time.
[5] After the record closed, the juvenile court learned Melony lost her housing. Because this information is outside our record, we will not consider it when making our determination.
[6] The juvenile court also noted Melony was arrested on August 9, 2017, after the record closed. We will not consider this arrest when reaching our conclusion.

important, has been overshadowed by her inability to provide a safe, drug-free environment for the children." After our careful review, we conclude the evidence in the record shows the children cannot be returned to Melony's care at the present time.

B. Six-Month Deferment

Melony contends she should be granted an additional six months to reunify. *See In re A.B.*, 815 N.W.2d 764, 776 (Iowa 2012). Melony cites her strong bond with both children, evidenced by their signs of affection during visitation. *See* Iowa Code § 232.116(3)(c). Melony overstates the nature of the bond. By the time of the second termination hearing, the children had been out of Melony's care for a significant portion of their young lives—roughly thirty percent for L.S. and roughly forty percent for D.S.

Melony argues she is well suited to provide the best environment for the children. She cites her age, health, and understanding of their needs. Melony's self-view is idealized. Her history of drug-use and poor mental health, her aggressive acts toward D.S., her inability to maintain employment, and exposure of the children to drugs all show Melony is unable to responsibly parent.

Termination at this time is in the children's best interests. *See* Iowa Code § 232.116(2). If we wait for Melony's actual parenting abilities to match her perceived abilities, we would run afoul of our well-settled principles. *See In re P.L.*, 778 N.W.2d 33, 41 (Iowa 2010) ("It is well-settled law that we 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."). Based on this record, we conclude

the conditions requiring termination will likely still exist after six months. *See In re A.A.G.*, 708 N.W.2d 85, 93 (Iowa Ct. App. 2005) (considering uncertainty regarding parent's sobriety, resistance to services offered, and pending criminal charges).

C. Guardianship

Melony asks us to reverse the termination and instead place the children in a guardianship with her sister. *See In re B.T.*, 894 N.W.2d 29, 34 (Iowa Ct. App. 2017). But this case differs from *In re B.T.* in critical ways. First, the age of the children is a key consideration. B.T. was ten years old. *Id*. L.S. and D.S. are still toddlers. Generally, a guardianship is not the preferred placement for very young children. *See In re K.R*., No. 14-0244, 2014 WL 1495476, at *4 (Iowa Ct. App. Apr. 16, 2014). Also, B.T.'s grandmother, who was selected as guardian, had been a caretaker for the child's entire life and would continue to be involved regardless of termination. *B.T.,* 894 N.W.2d at 34. By contrast, Melony's sister does not share an extensive history with L.S. and D.S.; her involvement has been limited to respite care. We conclude a guardianship would not be in the children's best interests.

III. Conclusion

Upon de novo review, we conclude (1) the children could not be returned to the mother's care at the time of termination; (2) the parent-child bond is not so strong as to prevent termination; (3) termination is in the children's best interests; and (4) a guardianship would not be appropriate.

AFFIRMED.