

IN THE COURT OF APPEALS OF IOWA

No. 17-1628
Filed December 20, 2017

**IN THE INTEREST OF K.T.-L., K.T.-L., and K.L.,
Minor Children,**

L.L., Mother,
Appellant,

L.T., Father,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Judge.

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

Amanda Van Wyhe of Van Wyhe Law Firm & Mediation Center, PLC, Sioux City, for appellant mother.

Zachary S. Hindman of Mayne, Arneson, Hindman, Hisey & Daane, Sioux City, for appellant father.

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

Michelle M. Hynes of Juvenile Law Center, Sioux City, guardian ad litem for minor children.

Considered by Danilson, C.J., and Doyle and Mullins, JJ.

DOYLE, Judge.

This appeal concerns three children, two of whom are eligible for enrollment in the Yankton Sioux Tribe. The juvenile court terminated parental rights to the children pursuant to Iowa Code chapter 236 (2017) and the provisions of the Indian Child Welfare Act (ICWA), *see generally* Iowa Code ch. 232B. The mother of the three children and the father of the two youngest children have separately appealed the termination of their parental rights.

I. Background Facts and Proceedings.

The family's involvement with the juvenile court began in 2012 when the oldest child was adjudicated a child in need of assistance (CINA) due to concerns about the mother's alcohol and substance abuse. The Iowa Department of Human Services offered the mother services to address those issues. In spite of those efforts, the mother continued abusing drugs and the middle child tested positive for methamphetamine at birth in 2014. In 2015, the juvenile court ordered both children be removed from the home and adjudicated the middle child to be a CINA. The youngest child was born in 2016. Shortly thereafter, the State petitioned to terminate parental rights to the two oldest children. About six weeks later, the parties agreed to suspend the termination proceedings and a trial placement began to transition the two oldest children back to the home. The petition for termination of parental rights was dismissed in November 2016. In January 2017, both the mother and the father tested positive for methamphetamine. The juvenile court ordered the removal of all three children and adjudicated the youngest child to be a CINA.

In March 2017, the State again petitioned to terminate parental rights to the two oldest children. A petition to terminate parental rights to the youngest child followed in June 2017. During two days of hearing held in August and September 2017, the juvenile court heard testimony and received evidence concerning the petitions for termination of parental rights to all three children. The following month, the court entered an order terminating the mother's parental rights to her children pursuant to Iowa Code section 232.116(1)(d), (f),¹ (h),² and (l) and terminating the father's parental rights to the two younger children pursuant to section 232.116(1)(d), (h), and (l). Both the mother and the father appealed.

II. Scope and Standard of Review.

We review proceedings concerning the termination of parental rights de novo. See *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010).

III. Discussion.

A. Statutory grounds for termination.

The mother of the three children argues the State failed to prove the grounds for termination under section 232.116. We will uphold termination under this section if clear and convincing evidence supports the grounds for termination under section 232.116. See *id.* Clear and convincing evidence exists if there are no "serious or substantial doubts as to the correctness [of] conclusions of law drawn from the evidence." See *id.* (citation omitted). We need only find grounds

¹ This paragraph applies only to the oldest child.

² This paragraph applies only to the two younger children.

to terminate parental rights under one of the paragraphs cited by the juvenile court to affirm. *See id.*

With regard to the termination of her parental rights under section 232.116(1)(f) and (h),³ the mother challenges the State's proof of the final element—that the children cannot be returned to her care at the present time. With regard to these paragraphs, the term “at the present time” means “at the time of the termination hearing.” *D.W.*, 791 N.W.2d at 707.

Clear and convincing evidence shows the children could not be returned to the mother's care at the time of the termination hearing. The mother began receiving services to address her alcohol- and substance-abuse issues in 2012. By the time of the August 2017 termination hearing, she had yet to adequately address those issues. The mother continued a romantic relationship with the father, who also has unaddressed alcohol- and substance-abuse issues and who perpetrated domestic violence on the mother when intoxicated. The mother was unemployed, living with others, and unable to provide for her own needs. She was equally incapable of providing for the children's needs. Because the mother could not provide the children with a safe home at the time of the termination hearing, the children could not be returned to her care.

³ These paragraphs are substantially similar but contain different time requirements based on the ages of the children. *Compare* Iowa Code § 232.116(1)(f) (applying to children four years of age or older who have been removed from the home for twelve of the last eighteen months or twelve consecutive months) *with* Iowa Code § 232.116(1)(h) (applying to children three years of age or younger who have been removed from the home for six of the last twelve months or six consecutive months). The mother does not dispute the sufficiency of the evidence establishing the first three elements of paragraphs (f) and (h). Therefore, we need only examine whether there is clear and convincing evidence the children could not be returned to the mother's care. *See Aluminum Co. of Am. v. Musal*, 622 N.W.2d 476, 479–80 (Iowa 2001) (“Issues not raised in the appellate briefs cannot be considered by the reviewing court.”).

B. Statutory Exception to Termination.

The mother also seeks to avoid termination of her parental rights based on one of the statutory exceptions. Specifically, she argues the provisions of section 232.116(3)(c) apply. That provision states that the court “need not terminate the relationship between the parent and the child if . . . [t]here is clear and convincing evidence that 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 exceptions provided in section 232.116(3) are permissive, not mandatory. See also *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993), *overruled on other grounds by P.L.*, 778 N.W.2d 33, 39-40 (Iowa 2010). “The court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply the factors in this section to save the parent-child relationship.” *In re D.S.*, 806 N.W.2d 458, 475 (Iowa Ct. App. 2011).

The record shows that although the mother’s involvement with the juvenile court continued over a five-year period, she is unable to provide appropriate care to the children. During the children’s short trial placement in the mother’s care, the middle child suffered a “significant” amount of hair loss due to a head lice infestation that afflicted all three children. The youngest child had “severe diaper rash” and an ear infection at the time of removal. The youngest child suffered constipation due to the mother’s use of cow’s milk instead of formula, and the mother lied to case workers about obtaining approval to feed the child cow’s milk. At the time of termination, the mother had not made progress in addressing the issues that led to the children’s removal and her contact with the children consisted of one weekly visitation, which she failed to attend consistently. In contrast, the

children are doing well in their out-of-home placements. The mother testified she is “[a]bsolutely” content with the children’s placements, had no concerns about the love the children received in those placements, and agreed that the placements were good for the children. Adoption awaits all three children.

Providing the children with a safe, permanent home is in the children’s best interests. 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 “need for a permanent home”). As our supreme court has noted, “The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems. . . . [Children] will continue to grow, either in bad or unsettled conditions or in the improved and permanent shelter which ideally, at least, follows the conclusion of a juvenile proceeding.” *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). Terminating the mother’s parental rights will provide the children with the needed permanency that will allow them to continue to flourish. Therefore, we decline to apply the exception to the termination statute set forth in section 232.116(3)(c).

C. ICWA requirements.

Finally, both the mother and the father challenge the sufficiency of the evidence supporting the ICWA requirement that the State prove “the continued custody of the child[ren] by the child[ren]’s parent or Indian custodian is likely to result in serious emotional or physical damage to the child[ren].” Iowa Code § 232B.6(6)(a). The State is required to prove this element by proof beyond a reasonable doubt. See *id.*

The record establishes that the children will be at risk for serious emotional or physical damage if returned to either of the parents. The mother and the father lived together at the time of the termination hearing and have a history of domestic violence. Neither was self-supporting. Alcohol and substance abuse remained a concern for both; the mother never completed treatment, and the father completed treatment in early 2016 but relapsed and tested positive for methamphetamine in 2017, in addition to being arrested in May 2017 after trying to fight a man while intoxicated. Without a doubt, returning the children to either parent's care would result in serious harm, either emotional or physical.

The statutory requirements for termination of the mother's and the father's parental rights have been met. Terminating the mother's and the father's parental rights is necessary to protect these children from the myriad of harms that would be presented if the children were returned to their care.

AFFIRMED ON BOTH APPEALS.