

IN THE COURT OF APPEALS OF IOWA

No. 0-155 / 10-0156
Filed April 8, 2010

**IN THE INTEREST OF D.P.,
Minor Child,**

**N.A.P., Mother,
Appellant.**

Appeal from the Iowa District Court for Linn County, Susan Flaherty,
Associate Juvenile Judge.

A mother appeals from a juvenile court order terminating her parental
rights to a child. **AFFIRMED.**

Thomas J. Viner of Jacobsen, Johnson & Viner, Cedar Rapids, for
appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Harold Denton, County Attorney, and Kelly Kaufman, Assistant
County Attorney, for appellee.

Dawn Wilson, Cedar Rapids, for father.

Deborah Skelton, Walford, attorney and guardian ad litem for minor child.

Considered by Vogel, P.J., and Eisenhauer, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

MILLER, S.J.

The appellant, N.P., is the mother of a son, D.P., who was nineteen months of age when a termination of parental rights hearing concluded in June 2009. N.P. appeals from a January 2010 juvenile court order terminating her parental rights to D.P. (The order also terminated the parental rights of D.P.'s father, and he has not appealed.) We affirm.

N.P. used cocaine throughout the time she was pregnant with D.P. At D.P.'s birth both he and N.P. tested positive for cocaine in their systems. D.P. was removed from N.P.'s physical custody by temporary removal order on the day after his birth. The order placed him in the temporary legal custody of the Iowa Department of Human Services (DHS) for placement in family foster care. D.P. has thereafter remained in the legal custody of the DHS, placed in family foster care. D.P. was adjudicated a child in need of assistance (CINA) in December 2007.

The State filed a petition in November 2008 seeking termination of N.P.'s parental rights to D.P. A hearing on the petition was held in January 2009. At the conclusion of that hearing the juvenile court kept the record open for a deposition to be taken and presented and for a written recommendation from D.P.'s attorney and guardian ad litem. That subsequently-filed recommendation was for continuing efforts toward reunification.

The State filed an application to reopen the record. The juvenile court granted the request and further hearing was held in June 2009. In January 2010 the court entered an order terminating parental rights pursuant to Iowa Code

sections 232.116(1)(g) (2009) (child adjudicated CINA, court has terminated parent's parental rights to another child, parent continues to lack ability or willingness to respond to services, additional period of rehabilitation would not correct situation) and (h) (child three or younger; child adjudicated a CINA; child removed from parents six of last twelve months, or last six months with any trial period at home being less than thirty days; child cannot be returned to parents at present time). N.P. appeals.

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

In re C.B., 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

N.P. claims the State failed to prove the third and fourth elements of section 232.116(1)(g) and failed to prove the fourth element of section 232.116(1)(h). When the trial court terminates on more than one statutory ground, we may affirm if we find grounds to terminate under any one of the grounds relied on by that court. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). We choose to focus on section 232.116(1)(h).

N.P. was twenty-six years of age at the time of the termination hearings. She had periodically and regularly abused alcohol beginning at age sixteen. N.P. began the use and abuse of cocaine in 2006. She has a lengthy criminal history beginning in 2002, including convictions related to her abuse of alcohol and possession and use of illegal controlled substances. Those convictions include

convictions for “consumption/intoxication,” possession of a controlled substance, sponsoring a gathering for use of marijuana, numerous convictions for interference with official acts, and a conviction for identity theft. According to her own testimony, N.P. has completed substance abuse treatment “a lot” of times, beginning at age sixteen or seventeen. Since age sixteen her longest period of sobriety has been about six months.

D.P. is N.P.’s fourth child, all apparently by different fathers. As detailed in the juvenile court’s termination order, her oldest two children were removed from her because of her unaddressed mental health problems, substance abuse, and association with unsafe adults. The oldest child is in his father’s custody. N.P.’s parental rights to the second child were terminated. Her rights to the third were terminated, apparently with her consent and as a result of the same issues that had led to removal of the older two. N.P. gave birth to a fifth child in December 2008. That child’s father is a man N.P. met and became pregnant by while in drug treatment, in violation of the treatment program’s prohibition on such relationships. By the conclusion of the termination hearing in this case that fifth child had been removed from N.P.’s custody because N.P. was taking the six-month-old child to places described as “homes that were known drug-related homes—drug homes.”

D.P. was removed from N.P. in November 2007. Despite her numerous, previous substance abuse evaluations and inpatient and outpatient treatments, N.P. again relapsed and used cocaine in March 2008. She participated in yet another treatment program from March 2008 to September 2008, but then once

again relapsed. For the month of October her whereabouts were unknown. She dropped out of mental health and substance abuse treatment, and she did not contact or communicate with DHS staff or service providers.

At the January 2009 portion of the termination hearing N.P. expressed a desire and intent to participate again in mental health counseling, drug testing, and substance abuse treatment, to secure employment that she represented would become available later in the month, and to continue to reside in the home of her supportive grandparents, a home that they shared with an aunt of N.P.

Between January 2009 and June 2009 the drug tests to which N.P. submitted were negative, but she did not appear for some that were scheduled. In late February and March DHS personnel found it difficult and at times impossible to reach her where she was purportedly residing. It became apparent that she was spending substantial amounts of time at a different location or locations. Between January and June N.P. missed numerous visits she was scheduled to have with D.P. She decreased and then stopped her participation in mental health counseling and substance abuse treatment. N.P. spent less time in the rural home of her grandparents, and spent significant amounts of time with old friends in the city where she had experienced years of alcohol and drug use. The record does not indicate that she secured the employment she had forecast in January, or any employment for that matter. N.P.'s aunt who lived with N.P.'s grandparents testified at the June hearing that N.P. was drinking beer at times, including the prior week. According to the aunt, some of the drinking

occurred in the home of N.P.'s grandparents while N.P.'s six-month-old child was with N.P. before the child's very recent removal.

N.P. has received years of services through CINA proceedings involving her first, second, and now fourth children. She has been unable or unwilling to secure and maintain employment, being employed only sporadically and for short periods of time. N.P. has resided with relatives, in shelters, in drug treatment facilities, and with friends, because she has been unable to secure housing of her own. Her mental health and substance abuse issues remain unresolved, and she appears to be ignoring them. N.P. has begun frequenting old haunts peopled by friends in the illegal drug culture. Despite a history of alcohol abuse and dependence, she is again drinking.

Based on the evidence of N.P.'s numerous relapses in the use of drugs and alcohol, her unresolved mental health and substance abuse issues, her lack of employment and stable housing, and the opinions of testifying witnesses, the juvenile court found that N.P. would need to maintain "sobriety, stable housing and employment, and consistent follow through with mental health treatment . . . for an extended period of time to support the conclusion that she has interrupted [her] destructive cycle on a long term basis." The court concluded the State had proved the grounds for termination of her parental rights pursuant to section 232.116(1)(h). We agree and conclude that the State proved by clear and convincing evidence the only element of that provision challenged on appeal, that D.P. could not be returned to the custody of N.P. at the time of the termination

hearing without being subject to the risk of neglect or abuse that would cause him to remain a CINA.

N.P. also claims that termination of her parental rights is not in D.P.'s best interest. Even if a statutory ground for termination is met, a decision to terminate must still be in the best interest of a child. *In re M.S.*, 519 N.W.2d 498, 400 (Iowa 1994). The primary concern in a termination of parental rights proceeding is the best interest of the child. Iowa R. App. P. 6.904(3)(o); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981); *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa Ct. App. 1995).

In considering whether to terminate a parent's rights pursuant to one or more of the provisions of section 232.116(1), our courts "shall 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." Iowa Code § 232.116(2). Such consideration may include certain factors listed in section 232.116(2). *Id.* N.P.'s ability to provide for the needs of D.P. is detrimentally affected by her mental health problems and history of substance abuse, both of which N.P. was ignoring at the conclusion of the termination hearing. D.P. has lived his entire life with his foster family, is integrated into that family, and no doubt identifies it as his family. Although D.P.'s foster mother was reluctant to make any final decision concerning adopting him until circumstances required such a decision, by the conclusion of the termination hearing she had indicated that if D.P. became available for adoption she did not think she could let him go. As D.P. has lived

with his foster family his entire life in a stable, nurturing environment and is doing quite well there, it appears desirable to maintain that environment and continuity for him.

We conclude termination is appropriate under section 232.116(2). Iowa Code section 232.116(3) nevertheless provides that termination need not occur if any of the factors in that provision apply. We have carefully reviewed those factors, find that none apply, and believe it unnecessary to set them forth in this decision.

We agree with the juvenile court that termination of N.P.'s parental rights is in D.P.'s best interest.

AFFIRMED.