

IN THE COURT OF APPEALS OF IOWA

No. 0-156 / 10-0149
Filed March 24, 2010

**IN THE INTEREST OF
T.B., M.B., J.B., and D.B.,
Minor Children,**

**C.G., Mother,
Appellant.**

Appeal from the Iowa District Court for Linn County, Barbara H. Liesveld,
District Associate Judge.

A mother appeals from the termination of her parental rights to four of her
children. **AFFIRMED.**

David N. Nadler, Cedar Rapids, for appellant.

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

Ellen Ramsey-Kacena, Cedar Rapids, attorney and guardian ad litem for
minor children.

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

SACKETT, C.J.

A mother appeals from the juvenile court order terminating her parental rights to her four oldest children. She contends the State did not prove the statutory grounds for termination under Iowa Code sections 232.116(1)(e), (f), and (j) (2009) by clear and convincing evidence. She further contends termination is not in the best interests of the children due to the closeness of the parent-child bond. We affirm.

Background Facts and Proceedings. The mother placed her four oldest children, born in 1996, 1998, 1999, and 2002, with their father in 2006 because she was facing incarceration for drug convictions. The State removed the children from the father's care in January of 2007 and placed them in foster care following allegations the father and his paramour were using drugs around the children. The father refused to allow hair stat testing of the children. The mother was incarcerated in Wisconsin from March of 2007 to January of 2008. Following her release on high-risk probation, she could not move to Iowa because of the terms of her probation. In April of 2008 the State petitioned to terminate the parental rights of both parents.

Following a hearing in July of 2009 the court entered an order in September that found the mother had not had face-to-face contact with the children since April of 2007, but maintained regular contact with them through letters and telephone calls. The court concluded the State proved the grounds for termination under sections 232.116(1)(f), (j), and the children were bonded to their mother. It further concluded it was in the children's best interest to remain

together and their mother had made progress in her probation and in maintaining her sobriety. Because of the bond the children had with each other and their mother, the court declined to terminate her parental rights and extended permanency to give the mother additional time to reunify with the children.¹ It ordered an interstate compact referral to Wisconsin in order to develop a transitional plan for reunification of the children with the mother.

The mother was arrested on theft charges, leading to revocation of her probation. She began a new term of incarceration in Wisconsin in April of 2009, and hoped to be released between February and July of 2010. In July of 2009 the State again petitioned to terminate the mother's parental rights. Following a hearing later in July the court issued an order in December terminating her parental rights under Iowa Code sections 232.116(1)(e), (f), and (l). The court found the mother "agrees that her children need permanency and they have waited long enough for her" and "it is not fair to make them wait any longer for her to be in a position to care for them." The court concluded the State proved the statutory grounds for termination pled, the children were willing to be adopted by a relative, and it was in the children's best interests to terminate the mother's parental rights.

Scope and Standards of Review. "[T]he proper standard of review for all termination decisions should be de novo." *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We give weight to the fact findings of the juvenile court, "especially when considering the credibility of witnesses," but are not bound by them. Iowa R.

¹ The court terminated the father's parental rights.

App. P. 6.904(3)(g). The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978); *Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35 (1972). The State has the burden of proving the grounds for termination by clear and convincing evidence. *In re T.A.L.*, 505 N.W.2d 480, 483 (Iowa 1993). When the juvenile court terminates a parent's rights on more than one statutory ground we may affirm if we find clear and convincing evidence to support any of the grounds cited by the court. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

Merits.

In *In re P.L.*, 778 N.W.2d at 40 the court held:

Section 232.116 requires the juvenile court to make various decisions in the process of terminating a parent's parental rights. First, the court must determine if the evidence proves one of the enumerated grounds for termination in section 232.116(1). If a ground is proven, the court may order the termination. Iowa Code § 232.116(1). Next, the court must consider whether to terminate by applying the factors in section 232.116(2). *Id.* § 232.116(2). Finally, if the factors require termination, the court must then determine if an exception under section 232.116(3) exists so the court need not terminate. *Id.* § 232.116(3).

Our analysis on de novo review, follows the same pattern.

Grounds for termination. The mother contends the State did not prove any of the statutory grounds for termination pled. We find clear and convincing evidence supports termination under sections 232.116(1)(e) and (f). Since the mother initially placed the children with their father in 2006, she has not lived in the same state as the children. At first she maintained contact with them by letter and telephone. After her first period of incarceration, she had some visits with

them, but then her contact with them decreased. By the time of the hearing on the second termination petition, she had written only a few letters during the preceding six months and had not seen the children for more than three months. She has not maintained significant and meaningful contact with the children nor has she made reasonable efforts to resume their care. See Iowa Code § 232.116(1)(e)(3). The mother was incarcerated at the time of the termination hearing; consequently, the children could not be returned to her care at that time. See *id.* § 232.116(1)(f)(4).

Best Interests. Having found grounds for termination, we consider whether to terminate by applying the factors found in section 232.116(2). The mother contends termination is not in the children's best interests. The mother is unable to provide the children a safe home. The children wish to remain together. A relative has come forward who indicates she is willing to adopt all four children. The mother agrees the children have waited long enough for her to resume their care and that they cannot be returned to her care in the foreseeable future. The mother also has some serious health concerns that could prevent her from being a long-term placement for the children. Applying the factors in section 232.116(2), we conclude termination is in the children's best interests. See *id.* at 37 (“[A] court should base its best-interest determination on the legislative requirements contained in section 232.116(2) . . .”).

We also consider whether any of the exceptions to termination in section 232.116(3) apply. The mother contends termination would be detrimental to the children because of the strong parent-child bond. There is a strong bond

between the children and a strong parent-child bond between the mother and the children. See Iowa Code § 232.116(3)(c). Under the facts of this case we do not believe the bond here, though strong, is a reason to refuse to terminate. None of the exceptions prevent termination in this case.

Summary. Clear and convincing evidence supports termination under sections 232.116(1)(e) and (f). Termination is proper under the factors in section 232.116(2). We affirm the juvenile court order terminating the mother's parental rights. No exceptions in section 232.116(3) to termination apply.

AFFIRMED.