

IN THE COURT OF APPEALS OF IOWA

No. 0-158 / 10-0200
Filed March 24, 2010

**IN THE INTEREST OF G.S., J.S., B.S., and M.G.,
Minor Children,**

**M.L.F., Mother,
Appellant.**

Appeal from the Iowa District Court for Webster County, James A. McGlynn, Associate Juvenile Judge.

A mother appeals the termination of her parental rights to four children, contending (1) the evidence does not support the grounds for termination on which the juvenile court relied and (2) termination is not in the children's best interests. **AFFIRMED.**

Marcy Lundberg of Marcy Lundberg Law Office, Fort Dodge, for appellant mother.

Christopher O'Brien of O'Brien Law Office, Fort Dodge, for appellee father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Ricki Osborn, County Attorney, and Jennifer Bonzer, Assistant County Attorney, for appellee State.

Sarah Smith, Fort Dodge, for minor children.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

VAITHESWARAN, P.J.

A mother appeals the termination of her parental rights to four children, born in 2004, 2006, 2007, and 2009. She contends (1) the evidence does not support the grounds for termination on which the juvenile court relied and (2) termination is not in the children's best interests. In reviewing these arguments, we apply the standards set forth in *In re P.L.*, 778 N.W.2d 33 (Iowa 2010). Our review is de novo. *P.L.*, 778 N.W.2d at 40.

With respect to the mother's challenge to the evidence supporting the grounds for termination, we may affirm if we find clear and convincing evidence to support any of the cited grounds. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). On our de novo review, we find more than clear and convincing evidence to establish that the children could not be returned to the mother's custody. See Iowa Code §§ 232.116(1)(f), (h) (2009).

The mother began using methamphetamine when she was twenty-four years old and continued to use the drug on and off for seven years. Her last usage occurred on November 16, 2009, one day before she entered an inpatient drug treatment facility and twenty-five days before the termination hearing.

The Department of Human Services became involved with the family in 2005, partially because of the mother's drug use. In 2008, the mother tested positive for drugs and agreed to have her three oldest children removed from her care. Ultimately, those children were placed with a relative, where they remained through the termination hearing. The youngest child, who was born in January 2009, was removed from her mother's care in April 2009 after a hair follicle test

performed on the mother was positive for methamphetamine. This child was placed in foster care, where she remained through the termination hearing.

The mother maintains that all the children could have been placed with her at the recovery center. Although the recovery center permitted children, the juvenile court rejected this option. The court reasoned that the department had been involved with the family for almost five years and the circumstances surrounding the mother's entry into the recovery program did "not show a sincere desire to conquer her substance abuse problem, but rather a last-ditch attempt to avoid termination of parental rights." The court continued,

Even if it appeared that the mother was sincere in her efforts and was making good progress in her treatment program, the most this Court would authorize would be an extended trial visit with the mother at the treatment facility beginning with the youngest child and gradually including the older children as the mother continued to progress and to prove herself capable. If the mother chose to check herself out of [the recovery center], the trial visit would automatically end, and the children would be returned to their previous placements. Custody would not be returned to the mother until she had successfully completed the substance abuse treatment program, had successfully demonstrated that she could maintain sobriety after discharge, and had established a safe, stable, and secure home for the children. In a best case scenario, a return of custody to the mother is at least six months to a year away.

These findings are fully supported by the record.

We turn to the mother's assertion that termination was not in the children's best interests. On this question, the Iowa Supreme Court has reiterated that we must 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." *P.L.*, 778 N.W.2d at 40 (quoting Iowa Code § 232.116(2)).

The mother's home was marked by domestic violence and health hazards such as broken glass, nails, and cigarette butts on the floor. In addition, one of the children was diagnosed with juvenile rheumatoid arthritis, a condition that required extensive medical treatment that the mother would have been ill-equipped to facilitate. Finally, the mother's history of visits with the children showed a lack of commitment to maintaining a bond with them. For these reasons, we need not reverse the termination decision under section 232.116(2).

We are left with an analysis of the exceptions to termination set forth in Iowa Code section 232.116(3). See *id.* at 41. The juvenile court addressed the first exception, which allows a court to deny a termination petition if "[a] relative has legal custody of the child." Iowa Code § 232.116(3)(a). The court noted that the mother's proposal to defer termination and set up a guardianship with this relative "would allow the mother to wander in and out of the children's lives" and would not account for the fourth child who was not in the relative's custody. We concur in this analysis.

Turning to the exception based on evidence of a close parent-child relationship, that exception was not established. See *id.* § 232.116(3)(c). In a four-week period following the youngest child's removal, the mother missed five out of twelve visits. She fell asleep during some visits. Finally, from the time of the first child's birth, she assigned a higher priority to her drug use than to the care of her children. For these reasons, we decline to reverse the termination decision pursuant to this exception.

The second, fourth, and fifth exceptions are, by their terms, inapplicable.
Id. § 232.116(3)(b), (d), (e).¹

We affirm the termination of the mother's parental rights to her children born in 2004, 2006, 2007, and 2009.

AFFIRMED.

¹ The fifth exception could potentially apply, as the mother was accepted to a health facility for recovery treatment. But because that facility accepted children, her entry into the facility did not necessarily mean that she would be separated from her children.