

IN THE COURT OF APPEALS OF IOWA

No. 0-198 / 10-0204
Filed April 8, 2010

**IN THE INTEREST OF G.S.S., S.R.B. JR., and
R.L.S.S., Minor Children,**

L.A.F., Mother,
Appellant,

D.J.H., Father,
Appellant.

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

A mother and father appeal the termination of their parental rights to their children. **AFFIRMED.**

Jessica R. Noll, Sioux City, for appellant-mother.

Patrick H. Tott, Sioux City, for appellant-father.

Thomas J. Miller, Attorney General, Janet Hoffman, Assistant Attorney General, Patrick Jennings, County Attorney, and Dewey Sloan, Assistant County Attorney for appellee.

Michelle Hynes, Sioux City, attorney and guardian ad litem for minor children.

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

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

EISENHAUER, J.

A mother and father appeal the termination of their parental rights to their children.¹ They contend the State failed to prove the grounds for termination by clear and convincing evidence. They also contend termination is not in the children's best interest. We review their claims de novo. See *In re N.E.*, 752 N.W.2d 1, 6 (Iowa 2008).

The mother and children are members of the Rosebud Sioux Tribe. At the time of termination, the children were six, five, and one year of age. The older two children were adjudicated in need of assistance (CINA) in 2005 and 2007, due to the mother's substance abuse problems. All three were removed from the mother's care in August 2007 after the mother violated probation by leaving a treatment center. They were again adjudicated CINA in November 2008.

The mother's parental rights were terminated pursuant to Iowa Code sections 232.116(1)(d), (e), (f), (h), and (l) (2009). The father's parental rights were terminated pursuant to sections 232.116(1)(b), (d), (e), and (f). We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Termination is appropriate under section 232.116(1)(f) and (h) where there is clear and convincing evidence the child has been adjudicated in need of assistance, has been removed from the parents' custody for a requisite period of time depending on the child's age, and "[t]here 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." The

¹ The mother's appeal involves all three children. The father's appeal only pertains to his child, R.S.S.

parents' only argument concerns whether the children can be safely returned to their custody.

We find clear and convincing evidence proves the children cannot be returned to their parents' custody. R.S.S. could not be returned to the father's custody because he is incarcerated and serving a twenty-year prison sentence. His expected release is not until sometime in 2018, when R.S.S. will be fifteen years of age. Nor can the children be returned to the mother's custody. The mother has serious unaddressed substance abuse problems. She admitted to using both marijuana and alcohol just weeks prior to the termination hearing, despite being pregnant. She is a chronic substance abuser and despite numerous attempts at staying sober, she has been unable to do so. Returning the children to her custody would be placing them at risk of abuse or neglect, the kind of harms that would justify a CINA adjudication. The grounds for termination of the mother and father's parental rights pursuant to sections 232.116(1)(f) and (h) have been proved.

The parents also contend termination is not in the children's best interest. In determining the best interest, this court's primary considerations are "the child's safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child." *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010) (citing Iowa Code § 232.116(1)(2)).

We conclude termination of the mother's parental rights is in the children's best interest. The mother has a long history of drug and alcohol abuse and

continues this substance abuse despite two prior CINA adjudications of the older children and the receipt of services in this case. The mother has not demonstrated an ability to put the children's need for safety ahead of her substance abuse issues. See *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000) (holding a parent's past actions are evidence of the quality of his or her future care). There is no indication the mother will be able to safely parent these children in the near future. The children should not be forced to endlessly await the mother's maturity. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000).

Termination of the father's parental rights is also in the R.S.S.'s best interest. The father is currently serving a lengthy prison sentence and there is no guarantee he will be released from prison before R.S.S. reaches the age of majority. The legislature has included in its consideration of a child's best interest "[w]hether a parent's ability to provide the needs of the child is affected by . . . the parent's imprisonment for a felony." Iowa Code § 232.116(2)(a).

The father notes R.S.S. was in the paternal grandmother's care for the year leading up to termination and there is no evidence she would suffer from serious emotional or physical harm while in her care. At the time of termination, R.S.S.'s paternal grandmother was sixty-eight years of age and elected not to undergo the training necessary to become an adoptive parent. There were also concerns about the paternal grandmother's stability. In contrast, the Department of Human Services had identified four potential adoptive placements. The child should not be forced to endlessly suffer in parentless limbo. See *In re E.K.*, 568 N.W.2d 829, 831 (Iowa Ct. App. 1997). To continue to keep children in

temporary foster homes is not in their best interest. *In re J.L.P.*, 449 N.W.2d 349, 353 (Iowa 1989). In addition, long-term foster care is not preferred to termination of parental rights. *In re R.L.*, 514 N.W.2d 900, 903 (Iowa Ct. App. 1995). Given the father's lengthy incarceration and history of substance abuse, and considering the child's needs, termination is in her best interest.

AFFIRMED.