

IN THE COURT OF APPEALS OF IOWA

No. 0-229 / 10-0279
Filed April 21, 2010

**IN THE INTEREST OF D.C. and D.C.,
Minor Children,**

B.H., Mother,
Appellant,

F.C., Father,
Appellant.

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

A mother and father appeal separately from the order terminating their
parental rights. **AFFIRMED ON BOTH APPEALS.**

Deborah M. Skelton, Walford, for appellant mother.

Robin L. O'Brien-Licht, Cedar Rapids, for appellant father.

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

Dawn Wilson, Cedar Rapids, for minor children.

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

DANILSON, J.

A mother, B.H., and a father, F.C., appeal the termination of their parental rights to their daughter, Dd.C., born in April 2008; and their son, Dn.C., born in May 2009. We affirm on both appeals.

I. Background Facts and Proceedings.

The mother and father have long histories of drug abuse.¹ They met in a drug-using environment and have maintained a relationship for over four years, including incidents of violence and periods of separation. The father and mother were never married. They continued to use drugs together throughout their relationship. Both have criminal histories that include numerous drug and/or alcohol related offenses. The father's criminal history also includes several violent crimes. The mother has a history of mental health issues, including bipolar disorder, depression, anxiety, and personality disorder.¹ She takes prescribed mental health medication, and has received mental health counseling in the past.

This family became involved with the Iowa Department of Human Services (DHS) in late February 2008, when the mother went to the emergency room and discovered that she was thirty-two weeks pregnant. She admitted that she had used cocaine throughout her pregnancy. Her last use was at thirty-three weeks gestation. Dd.C. was born at thirty-nine weeks gestation. Neither the mother nor Dd.C. tested positive for drugs at time of the birth.

At that time, the mother and father did not have a home and were staying with friends. Upon their discharge from the hospital, with the assistance of DHS,

¹ The father also has a long history of alcohol abuse.

the mother and Dd.C. entered the Heart of Iowa, a residential substance abuse treatment program for women and their children. The parties stipulated to Dd.C.'s adjudication as a child in need of assistance (CINA) on June 2, 2008.

Shortly thereafter, the mother and Dd.C. were discharged from Heart of Iowa due to a physical altercation between the mother and another woman. The mother and father resumed living together. The parents agreed to ongoing drug testing and continuing outpatient drug treatment. On August 15, 2008, DHS informed the juvenile court that it approved this arrangement and recommended Dd.C. stay in the mother's custody.

The arrangement was short-lived. On August 28, 2008, DHS requested removal of Dd.C., due to the mother's testing positive for cocaine on August 20, 2008, and again on August 27, 2008. The father tested positive for cocaine on August 27, 2008, and September 3, 2008. At a hearing held on October 31, 2008, the parents stipulated that Dd.C. should remain in the custody of DHS for family foster care.

Following Dd.C.'s removal and placement in family foster care, the parents continued to submit to drug testing and attend substance abuse treatment. By this time, the mother was pregnant with their second child. The father obtained employment, and the parents maintained an apartment for several months. Visits with Dd.C. were expanded to include periods of unsupervised visitation.

In January 2009, the father relapsed to using cocaine. The parents decided to live separately so the mother's visits with Dd.C. would not be reduced. The mother's visits progressed to unsupervised, overnight visitation. The father continued to have regular supervised visitation; however, he was inconsistent in

his attendance at substance abuse treatment and failed to provide samples for drug testing.

In April 2009, Dd.C. was returned to the mother's custody on a trial home placement. The placement was conditioned upon DHS providing daily drop-in supervision, weekly drug testing for the mother, and a requirement that the father not be present in the family home. Dn.C. was born in late May 2009.² He tested negative for drugs at time of his birth and was released from the hospital to the mother's care. The father continued to have regular, supervised visitation.

On June 23, 2009, the mother tested positive for cocaine. DHS ended the trial home placement for Dd.C., and the children were immediately removed from the mother's care. The children have remained in family foster care since that time. Both children tested positive for cocaine, and in such high levels that established they had not only been exposed to the drug, but had ingested it as well. The mother denied that she had used cocaine and offered excuses as to how she and the children could have tested positive for the drug. The mother tested positive for cocaine again in June, July, and August 2009. However, the mother continued to deny that she had used cocaine and again offered numerous explanations for the positive drug tests. The juvenile court found the explanations lacked credibility. Furthermore, after the children were removed, the mother admitted that the father had been living with them in the family home since shortly after Dn.C.'s birth.

The parties stipulated to Dn.C.'s adjudication as a CINA on August 31, 2008. A few weeks later, the father was arrested and charged with assaulting

² The father's paternity to either child was never contested.

the mother. Since that time, the father has been in and out of jail due to public intoxication, assault, and various violations of the no-contact order between himself and the mother.

The mother has maintained that she will end her relationship with the father. Throughout the pendency of these proceedings, however, the mother has repeatedly allowed the father to stay with her. She has also allowed him to be with the children when she is not there, even when a condition of her having custody of the children has been that she will not have contact with the father. The mother has expressed that she loves the father and would be unable to turn him away if he showed up and needed a place to stay.

In fact, it appears the mother frequently allows people with drug and criminal histories to stay with her if they have nowhere else to stay. The mother has reported that she was the victim of several incidents of violence at the end of 2009, including two incidents in her apartment when a gun was pulled on her, and an incident where she was sexually abused in an abandoned apartment by four men she did not know after accepting a ride home from them.

Although the mother had regularly attended most of her visits with the children, in the latter months of 2009 and into January 2010, her attendance became less consistent. She cancelled or no-showed for several visits, left early from others, made excuses as to why she could not be at visits, and was unable to reschedule. The mother smokes and has been unable to quit, even though she knows that Dn.C. has severe breathing issues that are aggravated by exposure to second-hand smoke. The mother has even left the children under the supervision of a caseworker during visits so she could have a cigarette. After

her positive tests for cocaine in June, July, and August 2009, the mother also tested positive for marijuana in October 2009, and missed other scheduled drug tests.

On December 7, 2009, the State filed a termination petition. A contested hearing was held on January 26, 2010. The mother was present with her attorney. The father was not present due to his incarceration,³ but was represented by his attorney. The children were represented by their guardian ad litem. On February 9, 2010, the court terminated the mother's and father's parental rights to the children pursuant to Iowa Code sections 232.116(1)(h) and (i) (2009). The parents now appeal.

II. Scope and Standard of Review.

We review termination of parental rights de novo. *In re Z.H.*, 740 N.W.2d 648, 650-51 (Iowa Ct. App. 2007). Grounds for termination under section 232.116(1) must be proved by clear and convincing evidence. *In re P.L.*, 778 N.W.2d 33, 34, 39 (Iowa 2010); *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). If a ground exists, the court may terminate a parent's parental rights. *P.L.*, 778 N.W.2d at 37-39. In determining whether to terminate, our 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. *Id.* at 37-39; Iowa Code § 232.116(2). We also

³ The father was incarcerated without an expected release date pending charges for burglary in the second degree, for an incident that occurred several weeks before the termination hearing. On January 22, 2010, the father was staying at the mother's apartment, when the mother went to a male neighbor's apartment to get away from the father, who was intoxicated. It is alleged that the father went to the male neighbor's apartment, kicked at the door, broke a window to enter the apartment, and began fighting with the male neighbor.

consider whether any of the exceptions contained in section 232.116(3) allow the court not to terminate. *P.L.*, 778 N.W.2d at 37-39; Iowa Code § 232.116(3).

III. Parental Rights of the Father.

Under section 232.116(1)(h), parental rights may be terminated if the court finds by clear and convincing evidence (1) the child is age three or younger, (2) the child has been adjudicated in need of assistance, (3) the child has been removed from the home for a period of at least six of the last twelve months, and (4) the child cannot be returned to parents at the time of hearing.⁴ The father contends the State failed to prove by clear and convincing evidence that the children would suffer adjudicatory harm if returned to his care.

Although numerous services have been made available to help him with his substance abuse issues, the father has not sufficiently accessed these services. The father has not consistently attended substance abuse treatment and missed scheduled drug tests. Further, the father did nothing to address his alcohol abuse.

Prior to his present incarceration, the father was unable to maintain consistent employment or housing. The parents' relationship is unstable and includes a history of domestic violence. The father has violated no-contact orders between the parties. After Dn.C.'s birth, the father was living in the family home, against express court orders not to. The children were subsequently removed and have not been the parents' care since.

⁴ The father erroneously states that section 232.116(1)(h) requires the court to find that he abandoned or deserted the children.

The father does not have an unlimited amount of time to correct his deficiencies. See *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997). Prior to his current incarceration, the father had a long history of substance abuse. The children tested positive for exposure to and ingestion of cocaine while in his and the mother's care. The father tested positive for cocaine multiple times since the children's adjudications, and eventually stopped complying with drug testing.

The father has not shown that he is, or would be within a reasonable period of time, able to parent the children. Past performance of a parent may be indicative of the quality of future care the parent is capable of providing. *In re C.W.*, 554 N.W.2d 279, 283 (Iowa Ct. App. 1996). We find no reason to further delay the children the permanency they need and deserve. Clear and convincing evidence supports termination of the father's parental rights.

The father also argues termination of his parental rights is not in the best interests of the children.⁵ In this case, it is clear the father is unable to provide the children with a stable home. The father is incarcerated, has a long history of substance abuse, has been unable to maintain employment or housing, has failed to utilize services offered to him, and has a history of violent crimes. He has continued to disobey express court orders to stay away from the mother and appears to have little regard for the seriousness of his actions and the

⁵ In addition to meeting the section 232.116(1) grounds for termination, section 232.116(2) requires us to 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 37-39; Iowa Code § 232.116(2). Therefore, termination is not mandatory upon finding the requisite statutory elements under section 232.116(1). *P.L.*, 778 N.W.2d at 37-39; *In re C.W.*, 554 N.W.2d 279, 282 (Iowa Ct. App. 1996).

consequences his decisions have on his children. The father cannot provide for the long-term nurturing and growth of the children. We are convinced that the children's interests are best served by terminating the father's parental rights and continuing the children's placements in safe and stable homes.

We also find that none of the exceptions to termination listed under section 232.116(3) apply. We agree with the juvenile court that termination of the father's parental rights is in the children's best interests.

IV. Parental Rights of the Mother.

The mother also contends the State failed to prove the provisions of section 232.116(1)(h) by clear and convincing evidence. She argues the State failed to prove the children would suffer adjudicatory harm if returned to her care. To support this contention, the mother states that she has ended her relationship with the father, has been sober for two years, would soon have an efficiency apartment, and would be eligible for benefits if she had the children.

To her credit, the mother has cooperated with DHS throughout these proceedings. She has made efforts to participate in services, attend group therapy, and improve her parenting skills. At times she has submitted to drug testing. However, the record shows that serious concerns remain that inhibit the mother's ability to provide a safe and stable home for the children.

Most importantly, we agree with the juvenile court that the mother's testimony that she has been sober for two years is not credible. As the juvenile court stated:

On June 23, 2009, the Department of Human Services received drug test results which showed that Bridget was positive for cocaine. The Department of Human Services immediately ended

the trial placement for Dd.C. Department of Human Services also immediately sought and obtained an order removing Dn.C. from his mother's custody. The mother denied that she had used cocaine. Department of Human Services then arranged for the children to be subject to drug testing. Both children tested positive for the presence of cocaine. Both children also tested positive for norcocaine, which establishes that the children were not only exposed to cocaine, but ingested it as well. The mother's explanations for her and her children's positive drug tests was that she had ongoing associations with people who use cocaine, lived in a building where people regularly used crack cocaine and that she had been in places where crack cocaine is used. Additionally, after the children were removed, the mother admitted that the father had been living with her and the children since shortly after Dn.C.'s birth. The mother tested positive for cocaine again in June, July and August of 2009. The mother continued to deny that she was using cocaine, but said that she had gone with the father to an apartment where cocaine was being used and she believed that may have been the reason she continued to test positive for the drug. The mother suggested that perhaps her sexual relationship with the father caused her to test positive for cocaine. The mother's explanations lacked credibility.

The record further indicates that the mother has continued to put herself in dangerous situations and associate with people who abuse substances and/or have criminal histories. She has disregarded court orders to have no contact with the father, and in fact, allowed him to be alone around the children when she knew he was using drugs. She allowed the father to move in with she and the children after Dn.C.'s birth. Although she states that she has ended her relationship with the father, she also testified that she loves him and would be unable to turn him away if he came to her and needed a place to stay. Her history demonstrates that she has little regard for the effect her relationship with the father and her associations with other people have on the children.

The mother not addressed the mental health concerns noted in the case plan. She has failed several drug tests, and missed others. Particularly since

she began failing drug tests more frequently, the mother missed visitations without notice, left early from visitations, or called to give excuses why she could not make it. She was evicted from her apartment. Although she stated that she would soon have an efficiency apartment, she also testified that the apartment would not be appropriate for the children and is in a bad area of town.

The mother acknowledged that it is not fair for the children to wait longer for permanency. However, the mother has not shown that she is, or would be within a reasonable period of time, able to parent the children. Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting. *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). The record clearly supports the mother's inability to provide a safe environment for the children, and returning the children to her care is not an option. We conclude clear and convincing evidence supports termination of the mother's parental rights.

The mother also argues termination of her parental rights is not in the best interests of the children. *See generally P.L.*, 778 N.W.2d at 37-39. Upon our review, we find that the circumstances that existed at the time of the children's adjudications continue to exist. There continue to be major concerns about the mother's use of illegal drugs, parenting skills, denial of her actions, relationships and associations, and lack of responsibility for the harms she places on the children. The children are one and two-years-old and need safety and permanency in their lives. Children should not be forced to endlessly await the maturity of a natural parent. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). At

some point, the rights and needs of the children rise above the rights and needs of the parent. See *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The mother cannot provide for the long-term nurturing and growth of the children. Despite many chances to do so, the mother has failed to prove that these children are a priority in her life since they were adjudicated in June 2008 and September 2009, and we cannot find that she will do so in the foreseeable future.

We also find that none of the exceptions to termination listed under section 232.116(3) apply. We agree with the juvenile court that termination of the mother's parental rights is in the children's best interests.

V. Conclusion.

We affirm the termination of the father's and mother's parental rights.⁶

AFFIRMED ON BOTH APPEALS.

⁶ We conclude the evidence clearly and convincingly proves the section 232.116(1)(h) grounds for termination of the father and mother's parental rights to the children. Therefore, we need not address whether the evidence also supports termination of their parental rights pursuant to the remaining section found by the juvenile court. See *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996) (holding that when trial court terminates on more than one statutory ground we need only find grounds to terminate under one of the provisions relied on by the juvenile court in order to affirm).