

IN THE COURT OF APPEALS OF IOWA

No. 0-231 / 10-0281

Filed May 12, 2010

**IN THE INTEREST OF J.W., A.W., and W.W.,
Minor Children,**

**J.L.T., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

A mother appeals the termination of her parental rights to three children, contending that the State failed to prove the grounds for termination cited by the juvenile court and that termination was not in the children's best interests.

AFFIRMED.

Nathaniel A. Tagtow of Nelissen & Juckette, P.C., Des Moines, for appellant mother.

John Swartz, Urbandale, for appellee father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, John P. Sarcone, County Attorney, and Kevin Brownell, Assistant County Attorney, for appellee State.

Drake Legal Clinic, Des Moines, 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 her three children, born in 1995, 1997, and 2002. She maintains that the State failed to prove the grounds for termination cited by the juvenile court and that termination was not in the children's best interests.

We may affirm if we find clear and convincing evidence to support any of those grounds. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). On our de novo review, we conclude the State proved that the children could not be returned to their mother's custody. See Iowa Code § 232.116(1)(f) (2009) (requiring proof of several elements including proof that children have been removed from the physical custody of their parents for at least twelve of the last eighteen months or for the last twelve consecutive months and that children cannot be returned to parents' custody).

The children lived with their maternal grandparents for approximately five years while their mother struggled with drug-related issues and was incarcerated. At the time of the termination hearing, the mother was in prison, with an anticipated release date of May 2011. Therefore, she was in no position to have the children returned to her custody.

Seemingly recognizing this reality, the mother focuses on the element of section 232.116(1)(f) that specifies the time period for removal. See Iowa Code § 232.116(1)(f)(3). She contends that because the juvenile court initially removed the children from her custody well over a year prior to the termination action, this element was not proven.

The mother's argument rests on the assumption that the statutory time periods set forth in section 232.116(1)(f)(3) prescribe the maximum time the children must be out of the parents' custody. Precisely the opposite is true. Children must be out of the parents' custody for *at least* those time frames prior to termination of their parental rights. See *In re J.O.*, 675 N.W.2d 28, 30 (Iowa Ct. App. 2004) ("The statutory time period . . . begins to run on the date custody is transferred and continues to run until the date of the termination hearing."). "If a parent ceases to have contact with his or her child for these limitation periods, and the other requirements are met, 'the legislature . . . has made a categorical determination that the needs of a child are promoted by termination of parental rights.'" *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000) (quoting *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990)).

The children were initially removed and placed with their grandparents in 2005. They were returned to the mother's legal custody in 2007, but were again removed in 2008 and again placed with their grandparents. The children remained in the grandparents' legal and physical custody from that date through the termination hearing in early 2010. While the mother was intermittently in the same home, this court has stated that "[n]o amount of contact with the child rises to the level of physical or legal custody without a judicial determination and an order returning the child to the parent." *J.O.*, 675 N.W.2d at 30. No such order was entered. In fact, in May 2009, the grandparents became legal guardians of the children pursuant to a probate guardianship order. It is clear, therefore, that the children were removed from the mother's custody for the requisite period of time. Accordingly, clear and convincing evidence supports the juvenile court's

termination of the mother's parental rights pursuant to Iowa Code section 232.116(1)(f).

The mother next contends that termination is not in the children's best interests. 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." *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010) (quoting Iowa Code § 232.116(2)).

Although the juvenile court did not have the benefit of the *P.L.* decision, the court provided a detailed summary of the evidence relating to the statutory factors. We concur with the court's analysis.

We recognize that the juvenile court could have chosen to defer termination and simply continue the guardianship. See Iowa Code § 232.116(3). In our view, this was not a viable option. While the mother shared a close bond with the children, the fact that she did was in large measure due to the efforts of the grandparents. With unflinching devotion to their daughter and grandchildren, they took the children to the prison for weekly or bi-weekly visits, facilitated regular correspondence and telephone conversations, and preserved the children's identification of their mother as their emotional as well as biological parent. Despite their efforts in the recent past and over the previous five years, the grandmother admitted that the parent-child relationship had been a "roller-coaster." On our review of the mother's history, we are convinced this turbulent ride would have continued absent a termination of her parental rights. For that reason, we agree with the juvenile court that termination is in the children's best interests.

We affirm the termination of the mother's parental rights to her children, born in 1995, 1997, and 2002.

AFFIRMED.