

IN THE COURT OF APPEALS OF IOWA

No. 0-301 / 10-0449

Filed May 12, 2010

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

J.R., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Constance Cohen,
Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Jennifer L. Oetker, Des Moines, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Andrea Vitzthum,
Assistant County Attorney, for appellee State.

John Jellineck, Des Moines, for minor children.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

DANILSON, J.

A mother appeals from the juvenile court order terminating her parental rights to her nine-year-old daughter, L.R.; six-year-old daughter, F.R.; four-year-old daughter, B.R.; and three-year-old daughter, S.R. The mother contends the court erred in ordering termination because (1) clear and convincing evidence does not support the statutory grounds cited by the court, (2) termination is not in the best interests of the children, and (3) the children could have been returned to the mother within six months. We affirm.

These children came to the attention of the Iowa Department of Human Services (DHS) in July 2009, when the mother consented to their temporary removal. The mother indicated that she was not mentally capable of caring for the children because she felt overwhelmed and was concerned she would hurt herself.¹ Two weeks prior to the children's removal, the mother was hospitalized for a suicide attempt. The family was without a home, food, or transportation. The whereabouts of the children's father were unknown, but it was believed that he had been deported.² Following an uncontested child in need of assistance (CINA) adjudication hearing, the children were adjudicated CINA on September 9, 2009, and were placed together in foster care.

Throughout these proceedings, the mother failed to keep promises she made to the children, and continued to admit her inability to care for the children. The juvenile court determined that issues remained that made the mother unable

¹ The mother did not contest the need for ongoing removal after the children were initially removed from her care.

² The father's paternity to the four children is not in dispute. The father did not participate in these proceedings; his parental rights were terminated; and he does not appeal.

to care for the children, and the children were not returned to her custody. The court specifically noted that the mother's unresolved mental health issues posed barriers to reunification. Parental rights were terminated on March 2, 2010.

We review termination proceedings de novo. *In re Z.H.*, 740 N.W.2d 648, 650-51 (Iowa Ct. App. 2007). Although we are not bound by them, we give weight to the juvenile court's findings of fact, especially when considering credibility of witnesses. Iowa R. App. P. 6.904(3)(g); *In re M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993). 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). The State has the burden of proving the grounds for termination 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).

I. Statutory Grounds.

The mother contends clear and convincing evidence does not support termination under sections 232.116(1)(e), (h), or (k). We may affirm the termination if facts support the termination of the mother's parental rights under any of the sections cited by the juvenile court. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

Under section 232.116(1)(e), parental rights may be terminated if the court finds by clear and convincing evidence (1) the children have been adjudicated CINA, (2) the children have been removed from the physical custody of the parent for at least six consecutive months, and (3) the parent has not maintained significant and meaningful contact with the children during the previous six

consecutive months and has made no reasonable efforts to resume care of the children despite being given the opportunity to do so.

There is no dispute that the children have been adjudicated CINA and have been removed from the physical custody of the mother for at least six months, indeed since July 2009. See Iowa Code § 232.116(1)(e)(1), (2). With respect to the third and final prong, i.e., section 232.116(1)(e)(3), the mother contends that she “was re-engaging in services and making attempts to resume regular contact” with the children.

The mother saw the children at a dispositional hearing on October 14, 2009, and then did not have any contact with DHS or the children until the termination pretrial on February 5, 2010, when she requested a visit with the children. Unfortunately, the mother failed to complete even the initial assignments to apologize to the children and did nothing to attempt to contact them again. The mother has not followed through with therapy, visitation, or Family, Safety, Risk, and Permanency Services (FSRP) services. She has failed to take her mental health medications. As the juvenile court stated:

[The mother] has engaged only sporadically with the case plan throughout the course of this case. She has, by her own admission, been confused, overwhelmed, and inconsistent in her compliance with Court ordered services and has failed to avail herself of proffered assistance to overcome barriers.

The record shows that the mother has not maintained significant and meaningful contact with the children during the previous six consecutive months and has made no reasonable efforts to resume care of the children, despite being given the opportunity to do so. See Iowa Code § 232.116(1)(e)(3). We agree with the juvenile court that clear and convincing evidence supports

termination of the mother's parental rights under section 232.116(1)(e), and we affirm on that ground. Because we affirm termination under section 232.116(1)(e), we need not address the mother's arguments concerning section 232.116(1) (h) or (k).

II. Best Interests.

The mother contends termination is not in the best interests of the children because she would eventually be able to provide for the long-term nurturing and growth of the children, and provide for the children's physical, mental, and emotional needs. The mother further argues that there was clear evidence that the children loved and missed her.

These claims implicate our analysis under sections 232.116(2) and (3). We consider whether to terminate by applying the factors in section 232.116(2) to determine if termination is in the children's best interests. See *P.L.*, 778 N.W.2d at 40. Then, if the factors exist to terminate, we must then determine if an exception under section 232.116(3) exists to refute termination. See *id.*

In considering a child's interests, "the court shall 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." Iowa Code § 232.116(2).

In seeking out those best interests, we look to the child's long-range as well as immediate interests. This requires considering what the future holds for the child if returned to the parents. When making this decision, we look to the parents' past performance because it may indicate the quality of care the parent is capable of providing in the future.

J.E., 723 N.W.2d at 798 (quoting *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997)).

The mother has been involved with DHS since July 2009. Extensive services have been offered to her, but she has failed to take advantage of these services. Concerns about the mother's mental health problems and instability have remained major issues throughout these proceedings. The mother has not shown any significant effort or interest in maintaining control of her life. She has gone for months without contacting DHS or her children. As the juvenile court noted, "[The mother] has a pattern of being less than forthcoming, particularly about her reasons for missed visits. She demonstrates no insight as to the harm that the children have suffered because of her inconsistency and inattention to them."

Further, the record indicates the mother has a mental illness that cannot be resolved within a reasonable period of time. As the juvenile court stated:

[The mother] has a chronic mental illness and has been repeatedly institutionalized for mental illness. She continues to present a danger to herself and others as evidenced by prior acts because she does not follow treatment recommendations. Her prognosis indicates the children will not be able to be returned to her custody within a reasonable period of time considering the children's ages and need for a permanent home. She admits that she is unprepared to provide for the children at the current time, but believes that with a few months more time she can demonstrate the stability necessary to care for four active children.

A parent's past performance is the best indicator of future conduct. [The mother] has demonstrated brief periods of engagement in the past, but then drops off the radar screen for months at a time. Although she no longer evidences an intent to abandon her children, it is clear that it is too little, too late to entrust their safety, well-being, and permanency to her.

We agree. It is unlikely the mother will be able to responsibly parent the children now or in the near future. Applying the factors in section 232.116(2), we

conclude termination of the mother's parental rights is in the children's best interests. See *P.L.*, 778 N.W.2d at 37 (outlining a best-interests analysis).

Iowa Code section 232.116(3) lists factors weighing against termination including presence of evidence "that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." Iowa Code § 232.116(3)(c) (2009). The factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *P.L.*, 778 N.W.2d at 38; *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply the factors in this section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993).

Although the children clearly love and care about the mother, any bond she shares with them is not sufficient to maintain the parent-child relationship. The children need permanency and have been severely hurt as a result of the mother's inconsistency and carelessness toward them. Under the facts and circumstances in this case, we conclude the factors listed in section 232.116(3) are not sufficient to save these parent-child relationships. See *id.* at 454.

III. Permanency Order.

The mother further contends the court erred in failing to enter a permanency order under section 232.104(2)(b) finding that the children could be returned to her care if granted an additional six months. The mother argues she would be able to make strides in the next six months and would be able to provide the children with a permanent home.

Upon our review, we find that granting the mother more time would only be a further detriment to the children. The juvenile court was correct in concluding that the mother's history of instability, lack of concern, and mental illness would not be corrected in the near future. As the juvenile court stated:

[The mother's] relationships with her children are virtually nonexistent at this time. They are young children and need consistent contact with a parent. [The mother] has prioritized her relationships with men over restoring her relationships with her children. Although it is encouraging that she renewed interest in her children's lives following the filing of a Petition to Terminate Parental Rights, she has failed to complete assignments to apologize to the children and she remains too disorganized to meet her own needs, let alone those of her children. Providers have gone above and beyond the call of duty to assist her in organizing her life, but she refused to work with them. There is no confidence that waiting a few more months for [the mother] to benefit from services would do anything other than harm the children by delaying permanency.

The record shows that the mother lacks the ability or willingness to respond to services and that an additional period of rehabilitation would not correct the situation. The mother has repeatedly missed appointments relating to mental health therapy, vocational services, and parenting services—even during the time period immediately prior to the termination hearing. The children cannot wait any longer for the mother to provide the permanency and stability they need in order to thrive.

We affirm the termination of the mother's parental rights.

AFFIRMED.