

IN THE COURT OF APPEALS OF IOWA

No. 0-370 / 10-0568

Filed June 16, 2010

**IN THE INTEREST OF P.T. and H.T.,
Minor Children,**

**J.M.T., Mother,
Appellant.**

Appeal from the Iowa District Court for Crawford County, Charles K. Borth,
District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Peter A. Goldsmith of Boerner & Goldsmith Law Firm, P.C., Ida Grove, for
appellant mother.

Jack White, Missouri Valley, for father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Vicki Ryan, County Attorney, and Julie Schumacher, Assistant
County Attorney, for appellee State.

Daniel Dlouhy, Denison, 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 six-year-old daughter, H.T., and her five-year-old daughter, P.T. The mother contends the court erred in ordering termination because (1) she should have been given additional time before her parental rights were terminated and (2) the close parent-child bond between the mother and the children should have refuted termination. We affirm.

These children came to the attention of the Iowa Department of Human Services (DHS) in September 2008, when they were removed from the mother's custody as a result of the mother's methamphetamine use. The mother's boyfriend had recently kicked her out of his home due to her methamphetamine use, and it was also reported that the mother was sleeping for long periods of time and not properly supervising the children. The children were placed in the care of their maternal grandmother, where they have remained since that time, except for a brief placement with the mother in inpatient substance abuse treatment.

In October 2008, the children were adjudicated children in need of assistance (CINA). The mother received services including drug testing, mental health counseling, extensive substance abuse evaluation and treatment, visitation, relative placement, and family safety, risk, and permanency services. Despite these services, the mother's efforts to address her substance abuse issues were minimal. Her attitude was combative and "verging on violent," and she repeatedly fluctuated between agreeing to do substance abuse treatment and refusing to do so. There is evidence that the mother was using

methamphetamine two to three times per month and marijuana daily in the year preceding November 2009. The mother eventually completed inpatient treatment and began to show a little progress in the months preceding the termination hearing, but relapsed within days after the hearing. The juvenile court noted that concerns remained about the mother's chronic substance abuse problem and her ability to responsibly parent the children within a reasonable period of time. The court also noted that the mother was unable to maintain a stable residence throughout the proceedings. Parental rights were terminated on March 25, 2010.¹

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 district 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. Additional Time.

The juvenile court terminated the mother's parental rights pursuant to Iowa Code sections 232.116(1)(f) and (l) (2009). On appeal, the mother does not contest that facts exist to support these grounds for termination of her parental

¹ The father's parental rights were also terminated, but he does not appeal.

rights. Rather, she requests additional time to improve her parenting skills and resume care of the children.

The children were removed from the mother's care in September 2008. Initially, the mother was combative and resistant to nearly all services offered to her. The record indicates that she has not consistently and sufficiently accessed services designed to address her substance abuse issues, nor has she demonstrated significant improvement over eighteen months of services. As the juvenile court stated:

Notwithstanding urging from the beginning of this case that the mother address her substance abuse issues, her efforts were dismal. Early in the case, the mother fluctuated between agreeing to do substance abuse treatment and refusing to do so. Her attitude, however, appeared to always be combative and verging on violent. The mother had a substance abuse evaluation on October 21, 2008, to Jackson Recovery. Outpatient treatment was recommended, but the mother did not follow through with the recommendations. The mother had another substance abuse evaluation at Jackson Recovery on January 6, 2009, which resulted in a recommendation for inpatient treatment at the Women's and Children's Program. The mother was scheduled for admission on January 21, 2009, but for a variety of reasons, none of which appear to the Court to have had merit, the mother did not enter treatment that date. She was eventually admitted on February 4, 2009. She had trouble adjusting to the program and often refused to even get out of bed. The children were allowed to join her at the program on February 24, 2009. The mother struggled, however, when the girls joined her. The mother left the program on March 25, 2009, against medical advice, and the children were therefore returned to the care of the maternal grandmother. The mother obtained an additional substance evaluation on April 8, 2009, at Integrated Counseling Practice. The mother reported to DHS staff that she was entering Synergy on May 28, 2009, and West Iowa Community Medical Center which recommended that the mother participate in inpatient substance abuse treatment and in-home services. At a family team meeting on July 21, 2009, the mother continued to refuse to go to inpatient treatment. She also refused mental health counseling and drug testing. She did admit that until nine days prior to that meeting she was using marijuana daily.

The State filed a petition for termination of parental rights on September 24, 2009. The mother did eventually enter inpatient treatment at Synergy on November 4, 2009, and completed the program on December 2, 2009. The juvenile court noted that the mother's demeanor improved for a short time after completing inpatient treatment, during which she had several sweat patches that tested negative for drugs. On January 13, 2009, however, a sweat patch tested positive for methamphetamine. The court did not find the mother's excuse for the positive test credible. On February 16, 2010, the mother tested positive for marijuana and amphetamine, and she admitted to using methamphetamine on February 12 and 13, the two days following the termination hearing. On March 11, 2010, the court also received into evidence an additional sweat patch test that had negative results, but with a notation that the patch "appear[ed] to be tampered with or compromised."

The mother contends she should be allowed more time because of her recent progress. We disagree. The mother has been unable to successfully complete or maintain sobriety on her own. There continue to be major concerns about the mother's history of substance abuse, accountability, relapse, animosity toward treatment, and lack of responsibility for the trauma she has caused to the children. The mother still has a long way to go, and has not yet sustained a period of substance-abuse-free living that would justify giving her more time to create a safe environment for the children. The mother entered and completed inpatient treatment only after she was facing the termination of her parental rights, and she relapsed immediately after the termination hearing.

Although the mother requests additional time to repair the deficiencies in her parenting, the children should not be forced to endlessly await the maturity of her mother. See *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). 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 are convinced the children's interests are best served by terminating the mother's parental rights and continuing their placement in a safe and stable home. The record clearly supports the finding that the mother is unable to provide a safe environment for the children, and returning them to her home is not an option. There is no reason to further delay the children the permanency they need and deserve.

II. Parent-Child Relationship.

The mother also contends her parental rights should not be terminated because of the close parent-child bond she shares with the children. Iowa Code section 232.116(3) lists factors to avoid termination in certain enumerated circumstances, including where "there is clear and convincing evidence that the termination would be detrimental to the children at the time due to the closeness of the parent-child relationship." Iowa Code § 232.116(3)(c). 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 weighing against termination 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 know their mother and love her, the mother has let them down in the past and exposes them to a volatile home environment. Throughout these proceedings, the children have continued to be adversely affected by the mother's substance abuse. The mother has been combative and disagreeable toward the DHS case plan, has refused to participate in services, and has made very little progress to address her substance abuse issues. The mother has not had custody of the children since September 2008. We are unable to find that a close parent-child relationship exists such that termination will be detrimental to the children. Under the facts and circumstances in this case, we conclude the exceptions under section 232.116(3) are not sufficient to save this parent-child relationship. See *id.* Looking at long-range and immediate interests, we conclude termination is in the best interests of the children. See *P.L.*, 778 N.W.2d at 40, *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997).

AFFIRMED.