

**IN THE COURT OF APPEALS OF IOWA**

No. 0-371 / 10-0452  
Filed June 16, 2010

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

**A.N.J., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Linn County, Barbara Liesveld,  
District Associate Judge.

A mother appeals from an order terminating her parental rights.

**AFFIRMED.**

Sharon Hallstoos, Cedar Rapids, for appellant mother.

Thomas J. Miller, Attorney General, Janet Hoffman, Assistant Attorney  
General, Harold Denton, County Attorney, and Robert Hruska, Assistant County  
Attorney, for appellee State.

Angela Railsback, Cedar Rapids, for minor children.

Considered by Sackett, C.J., and Eisenhauer and Mansfield, JJ.

**MANSFIELD, J.**

Ariea appeals a juvenile court order terminating her parental rights to two of her children, An.J. (born 2008) and Ar.J. (born 2009), pursuant to Iowa Code sections 232.116(1)(g) and (h) (2009).<sup>1</sup> She contends that the State failed to prove the statutory grounds by clear and convincing evidence and that termination was not in the children's best interests. We affirm.

**I. Background Facts and Proceedings.**

Ariea is the mother of six children. Since June 2006, Ariea has had ongoing involvement with the Iowa Department of Human Services (DHS) based upon exposing her children to illegal substances, domestic violence, unstable housing, unemployment, and mental health issues. Ariea's inability to address these concerns has already resulted in the termination of her parental rights to her four oldest children. See *In re D.J.*, No. 09-0412, 2009 WL 1681462 (Iowa Ct. App. June 17, 2009).

In April 2008, while the termination action concerning her four oldest children was pending, Ariea gave birth to a daughter, An.J. Ariea cared for An.J. until November 2008 when it was discovered that Ariea was living in an apartment building that was in foreclosure and had had its heat shut off for several days. A temporary removal order was obtained, but before it could be enforced Ariea sent An.J. out of state to live with An.J.'s paternal relatives. Ariea then refused to provide DHS with any contact information until a contempt action was filed against her. An.J. was not returned to Iowa until mid-January 2009 and

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<sup>1</sup> The juvenile court also terminated the parental rights of the children's father pursuant to Iowa Code sections 232.116(b), (e), (g) and (h). He has not appealed.

was subsequently placed in family foster care. In March 2009, a contested hearing was held where An.J. was adjudicated to be a child in need of assistance (CINA).

At this time, Ariea was receiving services from DHS including family safety, risk, and permanency services, supervised visitations, parenting skills services, substance abuse evaluations, drug testing, mental health evaluations, medication management, in-home services, and domestic violence counseling.

Ariea gave birth to a son, Ar.J., in July 2009. Ar.J. lived with Ariea following his birth. By September 2009, Ariea was making progress, and visitations with An.J. were increased to semi-supervised. However, on September 9, 2009, Ariea's apartment was raided by narcotics officers. Although Ariea and Ar.J. were not at the apartment, a person who was there was found to be in possession of marijuana and scales. The following day, narcotics officers reported to DHS that an arrest warrant had been issued for Ariea for selling crack cocaine to an undercover informant. Ariea was arrested on September 10, 2009. At this time, Ar.J. was placed into the same family foster care home as An.J. A hair stat test was eventually performed on Ar.J., which returned positive for cocaine. As a result of these events, Ariea has been charged with child endangerment and possession with intent to distribute a controlled substance (crack cocaine) within 1000 feet of a public park. Ariea has pled not guilty to both charges.

Ar.J. was stipulated to be a CINA on September 23, 2009. During the fall of 2009, Ariea was released from jail, but cancelled several visits with An.J. and Ar.J., although she attended some other visits. Ariea has not maintained regular

employment, although she has had sporadic jobs through a temp agency. In her hearing testimony, the DHS case manager testified she does not believe that Ariea is a current user of illegal substances, but expressed concern as to where Ariea is getting the money to pay her bills.

On November 19, 2009, the juvenile court entered an order waiving reasonable efforts. The guardian ad litem filed petitions to terminate the parental rights to An.J. and Ar.J. and a termination hearing was held on December 7, 2009. On March 5, 2010, the juvenile court entered an order terminating Ariea's parental rights pursuant to Iowa Code sections 232.116(1)(g) and (h). Ariea appeals.

## **II. Standard of Review.**

We review the termination of parental rights *de novo*. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We give weight to the juvenile court's factual determinations, but are not bound by them. *Id.*

## **III. Analysis.**

Ariea challenges whether the State proved the statutory grounds for termination by clear and convincing evidence. We find termination to be proper under section 232.116(1)(g). See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) ("When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one section cited by the juvenile court to affirm.").

Termination is proper under section 232.116(1)(g) when all of the following have occurred:

- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (2) The court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family . . . .
- (3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.
- (4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

Ariee concedes the first two elements under this section, but challenges whether the State proved the remaining elements by clear and convincing evidence.

The record reveals that Ariee has received substantial services for over three years. Despite these services, Ariee has not shown the ability to establish and maintain a safe and permanent home free from illegal substances. Also, Ariee's testimony shows that she is unwilling to acknowledge any deficiencies in her lifestyle or parenting.

Q. Tell me something, [Ariee], over the last three years have—if you could do things differently, what would you do differently? A. Move out of the State of Iowa.

Q. Anything else? A. I would have my kids.

Q. Would have you done anything else differently? A. No, I could still have all of my kids, I just couldn't live in the State of Iowa.

Furthermore, at the time of trial, Ariee was facing two felony charges. The evidence of guilt appeared to be strong. The evidence showed that on September 8, 2009, a confidential informant went to a nearby apartment in Ariee's apartment complex to make a crack cocaine buy. After the informant was told by the occupants of the nearby apartment that they were out of cocaine, the informant headed away. Ariee stopped the informant on the stairs and led the informant into her own apartment where she sold the informant a "40-piece" (\$40 of crack cocaine). According to an investigator who was providing surveillance,

Ariee's next action was to walk over to the other apartment, where she went in without knocking. A few seconds later, Ariee left and returned to her own apartment. The investigator then saw three young children walk out of Ariee's apartment and over to the other apartment. Ariee followed and let them into the other apartment, but did not go in herself.

In light of the foregoing, we conclude the State has shown by clear and convincing evidence that Ariee continues to lack the ability or willingness to respond to services that would correct the situation, and an additional period of rehabilitation would not correct the situation.

Ariee also challenges whether termination was in the children's best interests. See *In re P.L.*, 778 N.W.2d 33, 37-39 (Iowa 2010). In considering a child's best 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." *Id.* at 39 (quoting Iowa Code § 232.116(2)).

Ariee has been completely unable to provide her children with a safe environment in which to live. Her home and the people allowed within it are immersed within the drug lifestyle, and present a clear safety risk for the children. Upon removal, Ar.J. was found with illegal drugs in his body. At the time of the termination hearing, An.J. was a year-and-a-half old and Ar.J. was almost six months old, and each child had been removed from Ariee's care for a majority of their lives. Both children are adoptable, healthy, without special needs, and in desperate need of permanency. In applying the factors of section 232.116(2), we

conclude termination of Arie's parental rights was in An.J.'s and Ar.J.'s best interests.

Arie also maintains that her parental rights should not be terminated due to the "mutual, close bond she and the children share with one another." See Iowa Code § 232.116(3)(c); *P.L.*, 778 N.W.2d at 41. These are small children (both under two at the time of the hearing) who have been out of their mother's care most of their lives. We conclude that any bond is clearly insufficient to outweigh the importance of providing permanency, stability, and a safe living environment for these children.

Accordingly, we affirm the order of the juvenile court terminating the mother's parental rights.

**AFFIRMED.**