

**IN THE COURT OF APPEALS OF IOWA**

No. 0-374 / 10-0626  
Filed June 16, 2010

**IN THE INTEREST OF R.L. and A.L.,  
Minor Children,**

**B.E.L., Mother,  
Appellant.**

---

Appeal from the Iowa District Court for Montgomery County, Susan Larson Christensen, District Associate Judge.

A mother appeals the termination of her parental rights to her children.

**AFFIRMED.**

Justin R. Wyatt of Peters Law Firm, P.C., Glenwood, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Bruce Swanson, County Attorney, for appellee.

Larry J. Melcher, Council Bluffs, for father.

Katherine J. Kaminsky of Katherine J. Kaminsky, P.L.C., Glenwood, attorney and guardian ad litem for minor children.

Considered by Vaitheswaran, P.J., and Doyle and Tabor, JJ.

**TABOR, J.**

A mother appeals the termination of her parental rights to her five-year-old son, R.L., and her seven-year-old daughter, A.L. She contends the State should have given her more time to work toward reunification with her children after she successfully completed substance abuse treatment. We affirm.

**II. Background Facts and Proceedings.**

The Iowa Department of Human Services (DHS) removed R.L. and A.L. from their mother's care on July 2, 2007. The removal followed an investigation revealing the mother was not providing adequate shelter and supervision due to her use of methamphetamine. On August 30, 2007, the juvenile court adjudicated the children to be in need of assistance (CINA) as defined in Iowa Code section 232.2(6)(c)(2) and (n) (2007). The court noted the mother's extensive history of substance abuse and her lack of success with treatment programs. Between September 12, 2007, and November 1, 2007, the mother used illegal drugs at least seven times. On December 4, 2007, she entered an in-patient drug treatment program.

The brother and sister have remained in family foster care continually since the initial placement in July of 2007, except for a three-month trial home visit during the summer of 2008. The home visit did not go well. The mother reported being overwhelmed and feared she would relapse into substance abuse if the children stayed with her. On August 13, 2008, the DHS again placed the children in foster care.

The juvenile court held review hearings on October 20, 2008; December 16, 2008; March 12, 2009; May 28, 2009; September 10, 2009; January 14, 2010; and April 8, 2010. The DHS workers consistently reported that despite multiple services directed at the special needs of the family, the mother could not provide a safe and structured environment for her two children for an extended period of time. Both children face developmental and behavioral challenges. R.L. has limited communication skills and A.L. is intermittently defiant and was diagnosed with post traumatic stress disorder. School officials reported the children would often revert to negative behaviors after spending time with their mother.

In March of 2009, some twenty months after the children were removed from her care, the mother tested positive for illegal drugs on two occasions. Despite these setbacks, the mother made progress in her recovery and successfully completed her in-patient substance abuse treatment program on December 4, 2009.

In September of 2009, the DHS recommended the children's visitations with their mother be changed from unsupervised to supervised due to the pendency of a child abuse assessment. The mother refused supervised visitations, reasoning it would be too difficult on the children. The allegation of abuse was not confirmed, but the investigation revealed issues with parental supervision. On November 6, 2009, the juvenile court suspended the mother's visitation with R.L. and A.L. on the motion of the guardian ad litem. The court found continued visitation would be detrimental to the children. The guardian ad

litem noted the mother had stopped attending therapy sessions and medical appointments with her children. The mother missed visitation appointments because, instead of staying at her Sioux City apartment, she was spending time with a paramour in Creston, more than two-hundred miles away from the children's foster home. When the mother did see the children she inappropriately discussed termination, telling them she would "no longer be their mother." When back at their foster home following these discussions, A.L. was so upset she soiled herself and R.L. had "random emotional breakdowns."

On November 9, 2009, the State filed a termination petition. Three weeks later, the mother moved to Creston with her new paramour. The paramour was on parole after being incarcerated for committing child endangerment and domestic abuse assault and his parental rights had been terminated for three of his six children. The juvenile court heard evidence at a contested termination hearing on December 22, 2009. On April 1, 2010, the court terminated the mother's parental rights to R.L. and A.L.<sup>1</sup> under Iowa Code section 232.116(1)(f) (2009). The mother appeals.

## **II. Scope and Standard of Review.**

We review the juvenile court's decision to terminate parental rights de novo. *In re Z.H.*, 740 N.W.2d 648, 650 (Iowa Ct. App. 2007). The State must prove grounds for termination under section 232.116(1) by clear and convincing evidence. *Id.* at 650-51. In considering whether to terminate, our primary

---

<sup>1</sup> The children have different fathers. A.L.'s father is deceased. R.L.'s father has not had contact with his son since R.L. was a baby and has provided no support; he did not contest the termination of his parental rights in the juvenile court.

considerations are the children's safety; their physical, mental, and emotional condition and needs; and the placement that best provides for the long-term nurturing and growth of the children. Iowa Code § 232.116(2) (2009).

### **III. Merits.**

#### **A. Clear and Convincing Evidence under Section 232.116(1)(f)**

The juvenile court relied on section 232.116(1)(f) to terminate the mother's rights to R.L. and A.L.<sup>2</sup> The court found clear and convincing evidence of the following four factors: (1) the children are four years of age or older, (2) the children had been adjudicated in need of assistance, (3) the children had been removed from the home for at least twelve of the last eighteen months, and (4) the children could not be returned to their mother at the time of the termination hearing. See Iowa Code § 232.116(1)(f).

The mother disputes that she was given enough time after completion of her substance abuse treatment to reunify with her children. She also faults the DHS for not investigating her new home for placement of the children. We agree with the juvenile court's decision to terminate her parental rights.

R.L. and A.L. had been out of their mother's care for more than two years at the time of the termination hearing. The only trial home visit occurred in the summer of 2008 and ended with the mother fearing a lapse into her methamphetamine addiction and relinquishing the children to the DHS. Despite two years of the DHS's intervention, the mother has not demonstrated the ability

---

<sup>2</sup> The mother argues insufficient grounds for termination under section 232.116(1)(b). However, abandonment was not the basis for termination identified by the juvenile court. Moreover, we only need to find one ground for termination to affirm the ruling. See *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

to handle the long-term parenting needs of her children. At the time of the termination hearing, she was unemployed, had no driver's license, and recently moved in with a convicted domestic batterer two-hundred miles from her children's foster home. The mother acknowledged at the termination hearing that the juvenile court could not return her children given her current living situation.

To her credit, the mother has made significant strides to overcome her methamphetamine addiction. However, as the juvenile court concluded: "[T]here is more to parenting than just completing [a substance abuse] program." The court recognized that the mother's mental capacity affected her ability to care for her children:

Throughout the life of this case, [the mother] has been unable to recognize the obligations of a parent or make decisions independently. DHS cannot be in her life indefinitely to provide services and give gentle nudges on what she needs to do to safely parent her children and provide an appropriate home for them.

On this record, we find clear and convincing evidence supports termination of the mother's parental rights.

**B. Best Placement for the Long-Term Nurturing and Growth Under section 232.116(2)**

We concur with the juvenile court's conclusion that the best interests of A.L. and R.L. would be served by terminating their mother's parental rights. The statutory description of a child's best interest includes consideration of the best placement for his or her long-term nurturing and growth. Iowa Code § 232.116(2). The court also must factor in how the mental capacity of the parent affects the parent's ability to provide for the needs of the children. *Id.*

§ 232.116(2)(a); *In re S.N.*, 500 N.W.2d 32, 36 (Iowa 1993). In this case, the mother's limited cognitive skills brought about by extensive methamphetamine use hindered her ability to meet the special needs of A.L. and R.L.

Determining what is best for children in the long run involves a close examination of how their parent has handled the demands of raising the children in the past:

The court is to consider what the future likely holds for the child if the child is returned to the parent . . . . Insight for that determination is to be gained from evidence of the parent[s] past performance, for that performance may be indicative of the quality of future care the parent [is] capable of providing. Case history records are entitled to much probative force when a parent's record is being examined.

*S.N.*, 500 N.W.2d at 34 (citation omitted).

The mother has experienced a high degree of frustration with trying to parent her children independently. By contrast, the children's current foster parents have provided a stable and structured environment. The children's behaviors have improved and they are showing success in school. Interactions with their mother have slowed such achievements. The juvenile court noted that it was not clear whether their current foster family intended to adopt the children, but concluded that it was better for them to transition into a pre-adoptive foster home than return to the uncertainty of their mother's care. We concur.

**C. No exceptions under section 232.116(3)**

As a final step, we determine that no exception to termination exists under section 232.116(3). See *In re P.L.*, 778 N.W.2d 33, 41 (Iowa 2010). The juvenile court need not terminate the parent child relationship if there is clear and

convincing 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). Although the juvenile court concluded that R.L. and A.L. have bonded with their mother, it also found that they have been “thriving” while in the home of their current foster family. We do not find the children’s relationship with their mother to be so close that termination would be detrimental to them.

**D. Mother’s prior counsel not ineffective**

Finally, the mother contends she received ineffective assistance of counsel from attorney Charles Richards who represented her from July 5, 2007, until November 9, 2009, when current counsel took over her representation. Richards moved to withdraw from the representation on November 5, 2009, after his client allegedly made threats on his life. The mother argues on appeal that Richards breached a material duty by not adequately explaining the court orders to her and by not asking the DHS to provide additional services.

The State and guardian ad litem argue that the mother did not preserve error on this claim because she did not appeal from court orders issued in the CINA proceedings. We do not believe it was necessary for the mother to appeal from the CINA dispositional orders to challenge the performance of counsel in the proceedings leading up to the termination decision. See *In re D.W.*, 385 N.W.2d 570, 579 (Iowa 1986) (deciding claim that counsel was ineffective in CINA proceedings in context of termination appeal) *holding modified by In re J.P.B.*, 419 N.W.2d 387 (Iowa 1988). The decision to terminate parental rights most often results from cumulative actions taken by parents during their



involvement with the DHS and counsel's performance throughout those proceedings may impact the ultimate determination. The mother's claim of ineffective assistance of counsel was adequately preserved.

We reject the mother's claim that attorney Richards's performance was deficient and that she suffered prejudice because of his alleged omissions. The mother cannot show a reasonable probability existed that had her attorney more thoroughly explained the court's orders or asked for additional services on her behalf, her parental rights would not have been terminated. At the review hearings, the juvenile court summarized the State's recommendations in the mother's presence so she would understand what was expected of her. The mother had ample opportunity to request additional services. Contrary to her argument on appeal, she was not so cognitively impaired that she could not have personally requested child care assistance if that was the lynchpin to a successful reunification with her children during the summer of 2008. Moreover, the juvenile court's termination order lists a dozen different services that were provided to this family from July of 2007 until the date of termination. The DHS case supervisor testified at the termination hearing that there were no additional services to offer the mother and her children to support their reunification. The mother's resistance to termination of her parental rights was not prejudiced by her attorney's performance during the CINA proceedings.

We find termination appropriate in this case.

**AFFIRMED.**