

IN THE COURT OF APPEALS OF IOWA

No. 0-529 / 10-0981
Filed August 11, 2010

**IN THE INTEREST OF D.M.-L.J. and D.M.J.,
Minor Children,**

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

Appeal from the Iowa District Court for Woodbury County, Mary Jane Sokolovske, Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Stephanie Forker Parry, Sioux City, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Coleman McAllister, County Attorney, and J. Aaron Kirsch, Assistant County Attorney, for appellee State.

Robert Pierson, Sioux City, for minor children.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

MANSFIELD, J.

Ashley appeals from a juvenile court order terminating her parental rights to two children under Iowa Code sections 232.116(1)(b), (h), and (l) (2009). She argues: (1) the State failed to prove each of the statutory grounds by clear and convincing evidence; (2) termination was not in the children's best interests; and (3) termination would be detrimental to the children due to the closeness of the parent-child relationship. For the reasons stated herein, we affirm.

I. Background Facts and Proceedings.

Ashley, an unfortunate victim of sexual abuse as a child, has had a difficult first twenty years of her life. She has admitted using marijuana as early as the age of eleven, and cocaine and methamphetamine by the age of fifteen. As a result of substance abuse and behavioral issues, Ashley was adjudicated delinquent and placed into a residential treatment facility as a teenager.

In February 2007, when she was eighteen, Ashley was charged with possession of a controlled substance (cocaine), a class four felony, in South Dakota. On July 16, 2007, Ashley pled guilty to the charge under a plea agreement. Ashley was subsequently sentenced to five years' incarceration with two and a half years suspended. At the time of Ashley's sentencing, she was pregnant with D.M.J.

Ashley served six and a half months in prison before being transitioned into the New Start Program in Sioux Falls, South Dakota. New Start is a residential and chemical dependency treatment center for parenting women and their children. Ashley gave birth to D.M.J. in January 2008 while at New Start. During her stay, Ashley received drug treatment and therapy, parenting classes,

anger and stress management classes, and job placement and financial planning classes.

In June 2008, Ashley completed the New Start program and was released on parole. At this time, Ashley moved in with her mother. For the next year, Ashley maintained sobriety and employment. However, she continued to struggle in several aspects of her life.

In September 2008, the Sioux City police were called to an apartment building because of a disturbance. At the time, Ashley and her boyfriend were arguing about D.M.J.'s being sick. They were apparently frustrated because the child would not stop crying. After the police arrived, Ashley took D.M.J. to the hospital.

In January 2009, the Sioux City police were again called to an apartment building on a domestic matter. On this occasion, Ashley and a man had got into a physical altercation. During the fight, Ashley initially held D.M.J. in her arms, but set the child down so she could tackle the man. At the time, Ashley was pregnant with D.M.-L.J. This incident resulted in domestic assault charges for both Ashley and the man.

D.M.-L.J. was born in May 2009. Following his birth, Ashley relapsed into illegal drugs. Ashley struggled with marijuana, cocaine, and methamphetamine abuse.

On July 16, 2009, the Iowa Department of Human Services began its involvement in this case. Ashley admitted to smoking marijuana and using methamphetamine intravenously just two days before as well as using cocaine in late June. Ashley's probation officer later reported Ashley had failed three

separate drug tests. Arrangements were made for Ashley to enter an inpatient substance abuse treatment program with her children the following day. However, Ashley failed to report to the treatment center, and her whereabouts were unknown. As a result, South Dakota issued a warrant for Ashley's arrest for violating her parole.

On July 28, 2009, Ashley was arrested following a traffic stop. The children were in the vehicle at the time. A subsequent search of Ashley's vehicle revealed a glass pipe and syringes. The children were removed from Ashley's care and placed into a family foster home. Hair stat tests were performed on both children and both children tested positive for cocaine.

Ashley was extradited to South Dakota where she was found to be in violation of her parole, and sentenced to incarceration until 2012. Ashley returned to prison on August 5, 2009. Since that time, she has not seen either child. Both children have remained in the same foster home. They have made good progress and the foster parent is willing to adopt and permanently integrate the children into her home.

On August 26, 2009, the children were adjudicated as children in need of assistance under Iowa Code sections 232.2(6)(a), (b), (c)(2), and (n). A month later, the State filed an application to waive reasonable efforts based upon aggravated circumstances. The juvenile court granted the application on November 5, 2009.

The State petitioned for the termination of parental rights on December 15, 2009. A trial was held on the petition on February 18 and March 11, 2010.

At the time of trial, Ashley was still incarcerated at the South Dakota women's prison in Pierre. Ashley was able to participate and testify via telephone. At the hearing, Ashley testified that she anticipated the opportunity to be released to the New Start program again in mid-June 2010. Ashley testified that at this placement she would be able to care for her children in a structured environment, just as she had done during her first parole. Ashley stated she could remain at the New Start program for a year, and then be transitioned into a halfway home for an additional two years. As to her relapse, Ashley testified:

I moved to my friend's house. He's somebody that is also in recovery, but I got to the point that I thought that I was okay. I stopped calling my sponsor. I quit going to meetings, and I happened to see one of my old friends at a store, and she asked if I wanted to go out one night, and I said, "Yeah," and that led to my first use.

Ashley also believed that a part of her relapse was due to postpartum depression. On cross-examination she clarified:

Q. You stated in your testimony that you relapsed when you met a friend and went out; is that correct? A. Yes.

Q. So you didn't relapse because you were depressed? A. Half and half. Before when I would use I'd use because I felt down, like I wasn't worth anything. And that's kind of—I didn't feel like I wasn't worth anything, but I was just—you know, I was going through a lot. I had two kids, and I just, you know, felt like I needed something to lift me up.

On May 27, 2010, the juvenile court terminated Ashley's parental rights to both children pursuant to Iowa Code sections 232.116(1)(b), (h), and (l). Ashley appeals.

II. Standard of Review.

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

III. Analysis.

Ashley challenges each of the statutory grounds for termination. However, when the juvenile court terminates parental rights on more than one statutory ground, we need only find one of the grounds to be proper to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Upon our review, we find clear and convincing evidence supports termination under section 232.116(1)(h). The sole issue under this subsection is whether the children can presently be returned to Ashley's care. See Iowa Code § 232.116(1)(h)(4).

At the termination hearing, Ashley admitted the children could not be returned to her care while she was incarcerated. Further, she acknowledged that at the earliest, the children could not be returned to her care until mid-June 2010. Accordingly, termination was proper under section 232.116(1)(h).

Ashley does not argue the juvenile court should have granted her an additional six months to work towards reunification under Iowa Code section 232.104(2). Even if she did, the juvenile court would have had to determine that "the need for removal of the child from the child's home will no longer exist at the end of the additional six-month period." *Id.* § 232.104(2)(b). We do not see grounds for such a determination. Ashley had already gone through the same New Start program once before. Although she testified that she is now ready to "put my whole heart into it," her past actions undermine this assertion. See *In re*

C.K., 558 N.W.2d 170, 172 (Iowa 1997) (stating a parent's past performance "may indicate the quality of care the parent is capable of providing in the future"). Ashley has a lengthy substance abuse history. She has ended up in abusive relationships with men that harm both her and the children. She relapsed in June/July 2009 while the children were in her care. She then tried to abscond with the children when the parole officer told her she needed to check herself into a recovery center. At the termination hearing, Ashley acknowledged she was at least a year away from completion of her drug treatment, even if it were successful. Ashley admitted, candidly, that she has "a severe and chronic substance abuse problem." The trial record strongly indicates that Ashley's best prospects for recovery from drug abuse hinge on a single-minded pursuit of that goal, without the additional task of caring for two toddlers.

Ashley also challenges whether termination was in the children's best interests. See *In re P.L.*, 778 N.W.2d 33, 40 (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.* (quoting Iowa Code § 232.116(2)).

Ashley has been unable to provide for the needs of her children due to her imprisonment for a felony drug offense. See Iowa Code § 232.116(2)(a). Moreover, while the children were in her care, she exposed them to domestic abuse and illegal substances, and both children tested positive for cocaine upon their removal. See *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) ("Insight for the determination of the child's long-range best interests can be gleaned from

evidence of the parent's past performance for that performance may be indicative of the quality of the future care that parent is capable of providing.”). In addition, both children are less than three years old, healthy, and doing well in a pre-adoptive placement. Both children have become integrated into this family. See Iowa Code § 232.116(2)(b). Thus, we conclude termination of Ashley's parental rights is in the children's best interests.

Ashley also argues the court should not terminate her parental rights due to the closeness of the parent-child bond. See *id.* § 232.116(3)(c). We disagree. These children are both under three years old. They have been out of their mother's care the majority of their lives. At the time of the termination hearing, because of the mother's incarceration, she had not seen these children for the previous eight months. Any bond that these young children have is clearly insufficient to outweigh the importance of providing the children safety, permanency, and stability.

For the foregoing reasons, we affirm the order of the juvenile court terminating the mother's parental rights.

AFFIRMED.