

IN THE COURT OF APPEALS OF IOWA

No. 0-837 / 10-1586
Filed December 8, 2010

**IN THE INTEREST OF L.W., N.W., A.W., A.K., and O.W.,
Minor Children,**

B.W., Father of L.W., N.W., and O.W.,
Appellant,

L.D., Mother,
Appellant.

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

A mother and father appeal the termination of their parental rights to their
children. **AFFIRMED.**

Jason T. Hauser of Pargulski, Hauser & Clarke, P.L.C., Des Moines, for
appellant-father.

Stephie N. Tran, Des Moines, for appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Stephanie Brown,
Assistant County Attorney, for appellee.

Kimberly Ayotte, Des Moines, attorney and guardian ad litem for minor
children.

Considered by Mansfield, P.J., and Danilson and Tabor, JJ.

TABOR, J.

This termination of parental rights case involves five children: A.K., A.W., N.W., L.W., and O.W. At the time of the termination hearing, the children ranged from eight to two years of age. Their mother challenges the juvenile court's termination of her parental rights to all five children. She asserts the State failed to prove the children cannot be returned to her care. The mother further argues that termination is not in the children's best interests and seeks a six-month extension to regain custody.

The father of the three youngest children—N.W., L.W., and O.W.—also appeals the order terminating his parental rights.¹ He likewise asks for additional time for reunification and alleges that termination is not in the children's best interest because he enjoys a strong bond with them.

In our de novo review, we conclude that neither parent is currently in a position to properly care for these children. Convinced by the testimony of professionals concerning the children's urgent need for permanency, we reject the parents' requests for additional time and affirm the juvenile court's termination order.

I. Background Facts and Proceedings

This case involves a very young mother, who gave birth to her oldest child when she was sixteen years old. She had four more children before her twenty-fifth birthday and cared for them with little family support. The mother has been diagnosed with depression and has used marijuana and methamphetamine in

¹ The biological father of the two oldest children—A.K. and A.W.—did not contest the termination of his parental rights at the juvenile court and does not do so on appeal.

the past. She became involved with B.W., the father of the three youngest children, in 2003 when she was pregnant with her second child. B.W. has a history of substance abuse, violence, and criminal activity. He was serving a prison sentence for conspiracy to deliver controlled substances and assault causing injury at the time of the termination hearing.

The family has participated in programming offered by the Department of Human Services since April 2007. In October 2008, the State filed petitions alleging the children to be in need of assistance (CINA) given three founded reports of failure to supervise, including an incident where the father, B.W., had smoked marijuana and passed out on the couch while caring for the two youngest children. In December 2008, the juvenile court adjudicated all five siblings as CINA, but left them in the custody of their mother. Due to his incarceration, B.W. did not appear at review hearings held in February, May, July, and October of 2009. By contrast, the juvenile court found the mother was making "remarkable progress" maintaining the children safely in her care during most of 2009.

But the mother's progress derailed when she left the four youngest children home alone and they were found wandering outside clad only in their underwear in very cold temperatures. On January 20, 2010, the juvenile court ordered the children removed from their mother's custody. They have been out of the home ever since.

The juvenile court observed little progress in the mother's efforts toward reunification with her children by the time of a June 2010 review hearing. The mother struggled to manage all five children at the same time during the supervised visitations. To allow the mother to better engage with each child, the social workers divided the sessions so that the mother would spend one hour with three children and another hour with the other two children. The workers described the overlap of twenty minutes, where all five children were present, as "chaotic." The visits were especially stressful for the oldest child, A.K., who felt guilty for his younger siblings' removal from their mother's care, and for L.W., who was angry with her mother and had frequent outbursts during and after visits.

Despite her case plan, which had recommended since April 2010 that the mother seek placement at Hope Ministries or a similar recovery program, she did not follow through with entry into that program until July 2010.

On July 9, 2010, the State filed a petition to terminate the parental rights of the mother and both fathers. The juvenile court held a hearing on September 3, 2010, and issued its order terminating parental rights on September 17, 2010. The juvenile court determined the State offered clear and convincing evidence to support termination of the mother's parental rights under Iowa Code sections 232.116(1)(d) and (k) (2009)² as to the four oldest children and sections 232.116(1)(d), (h), and (k) as to the youngest child. The juvenile court found the

² The court also listed section 232.116(1)(f) as a ground for termination, but the State concedes on appeal that this ground was not pled with respect to the mother in the termination petition.

State had not proved the elements of section 232.116(1)(l), alleging a severe and chronic substance abuse problem. As for the father, B.W., the juvenile court relied on section 232.116(1)(b), (d), (e), (f), (k), and (l) for N.W. and L.W. and section 232.116(1)(b), (d), (e), (h), (k), and (l) for O.W.

The mother and father now appeal.

II. Standard of Review

We review termination orders de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We are not bound by the district court's factual findings, but we give weight to them, especially those that involve witness credibility. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). The grounds for termination must be supported by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Evidence is clear and convincing when it leaves "no serious or substantial doubt about the correctness of the conclusion drawn from it." *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002) (citation omitted).

III. Analysis

A. The juvenile court appropriately terminated the mother's rights.

The mother's petition argues for reversal of the termination decision based on section 232.116(1)(d) and (h) only. She mentions subsection (k) in the issue heading but does not advance an argument contesting that ground. Accordingly, any objection to termination based on subsection (k) is waived. See *In re Det. of Garren*, 620 N.W.2d 275, 285 (Iowa 2000) (holding the vagueness issue was waived when it was raised only in division heading of a brief).

Although we may affirm the termination based on subsection (k) alone, we also believe the State proved the elements for termination under section 232.116(1)(d)³ for all of the children and section 232.116(1)(h)⁴ for O.W. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (allowing appellate court to affirm on any of multiple grounds found by the juvenile court). The mother admitted at the termination hearing that even with the DHS services she struggled with parenting all five children. She acknowledged failing to consistently get the children to school; allowing her oldest child, A.K., to feel like he was shouldering parental responsibility for his siblings at age seven; failing to apply consistent discipline; and failing to maintain a healthy and clean environment for the children to live in. The social worker testified the mother was

³ The court finds that both of the following have occurred:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

Iowa Code § 232.116(1)(d).

⁴ The court finds that all of the following have occurred:

(1) The child is three years of age or younger.

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

Iowa Code § 232.116(1)(h).

“overwhelmed” by the task of supervising all five children at once and was not able to keep good tabs on them. The worker noted safety concerns during the visits. For instance, the worker had to prompt the mother to notice that the youngest child had retrieved medication from the diaper bag. The circumstances that existed at the time of the CINA adjudication and removal still exist despite the mother’s receipt of services; the evidence satisfied the grounds under section 232.116(1)(d).

In the case of O.W., who was two years old at the time of the termination hearing and had been out of the home for more than six months, the mother admitted in her testimony that neither he nor the other children could be returned to her custody at the present time. Grounds for termination were met under section 232.116(1)(h). “When the statutory time standards found in section 232.116 are approaching, and a parent has made only minimal progress, the child deserves to have the time standards followed by having termination of parental rights promptly pursued.” *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997), *overruled on other grounds by In re P.L.*, 778 N.W.2d 33 (Iowa 2010).

The mother next argues that termination is not in her children’s best interests. She urges that the juvenile court should have exercised its discretion under section 232.116(3)(a) because two of the five children were living with relatives. She also asks “at the very least” that she be granted a six-month extension to “regain custody of her children.” We note that while the law requires a “full measure of patience with troubled parents who attempt to remedy a lack

of parenting skills,” this patience has been built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000) (citation omitted).

Both the social worker and guardian ad litem recognized the mother had made positive strides in her self-confidence while living in the structured and supportive environment of Hope Ministries. But neither of these professionals believed the children could wait any longer for a more permanent living situation. We concur with their well-informed views and affirm the termination of the mother’s parental rights.

B. The juvenile court appropriately terminated the father’s rights.

The father contests the sufficiency of evidence for termination under sections 232.116(1)(d) and (g). His argument concerning subsection (g) is of no consequence because the juvenile court did not rely on that subsection for its termination decision. As for subsection (d), the father points out that while in prison he has completed drug relapse prevention and alternatives to violence programming. But despite those efforts, the father he has not had meaningful contact with his children since he went to prison in May 2009 and is not presently in a position to reunify with them, given his ongoing incarceration. The father has a history of violence, substance abuse, and drug dealing. He has not had time in the community since the prison programming to demonstrate his peacefulness or his sobriety. The evidence satisfied the grounds for termination under section 232.116(1)(b), (d), (e), (f), (h), (k), and (l).

The father also argues that termination is not in his children’s best interests because he has a strong emotional bond with them. We disagree that it

is in these children's best interests to wait for their father to be released from prison and then wait longer to see if he can overcome substance abuse and violent propensities to be a responsible care giver. See *In re E.K.*, 568 N.W.2d 829, 831 (Iowa Ct. App. 1997) (identifying father's bad choices as leading to his imprisonment and lack of contact with children and holding children should not have to wait for responsible parenting). The best-interests analysis prioritizes three factors: (1) a child's safety, (2) the best placement for furthering the long-term nurturing and growth of the child, and (3) the physical, mental, and emotional condition and needs of the child. Iowa Code § 232.116(2); *P.L.*, 778 N.W.2d at 41 (noting it is "well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child"). The father's criminal activity and resulting incarcerations have hindered his ability to remain active in his children's lives.

The father contends the juvenile court should have exercised its discretion not to terminate his parental rights because he has a bond with his children and because a sibling of the children lives with a family member. See Iowa Code § 232.116(3). He asserts that creating a family guardianship would serve the best interests of the children. We disagree. Because of the ages of the children, a guardianship would not be the best permanency plan.

The State proved the grounds for termination under section 232.116(1); termination is in the children's best interests for long-term nurturing and growth as set out in section 232.116(2); and the fact that one or more of the children are

placed with relatives under section 232.116(3) does not require reversal of the terminations given the circumstances of this case. We affirm.

AFFIRMED.