

IN THE COURT OF APPEALS OF IOWA

No. 0-922 / 10-1698
Filed January 20, 2011

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

**J.M.R., Father,
Appellant,**

**C.H., Mother,
Appellant.**

Appeal from the Iowa District Court for Bremer County, Peter B. Newell,
District Associate Judge.

A mother and father appeal from the order terminating their parental
rights. **AFFIRMED ON BOTH APPEALS.**

Michael H. Bandy of Bandy Law Office, Waterloo, for appellant-father.

Kelly J. Smith, P.C., Waterloo, for appellant-mother.

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

Heather Prendergast, Waterloo, attorney and guardian ad litem for minor
children.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

SACKETT, C.J.

A mother and father appeal from the juvenile court order terminating their parental rights to two children. The mother contends the court erred in finding grounds for termination instead of deferring permanency for six months. The father contends the court erred in terminating his parental rights because “his current criminal sentence, which includes inpatient drug treatment followed by a period of placement in a residential facility, will allow him to resume care of his children if he is granted a six-month deferment of permanency.” We affirm on both appeals.

I. Background.

The children were born in June of 2007 and May of 2009. The family came to the attention of the Department of Human Services most recently in February of 2010 when police executed a search warrant on the family home and discovered illegal drugs in the home. At the time both parents were under the influence of controlled substances. The father was arrested and charged with possession of methamphetamine with intent to deliver, and possession of methamphetamine and marijuana. The children were removed and placed with the mother’s uncle and aunt.

The court found the children in need of assistance in late April. It ordered the parents to have substance abuse evaluations and obtain any recommended treatment, to submit to random drug tests, to have mental health evaluations, and to participate in services.

Outpatient substance abuse treatment was recommended for the mother. She did not participate in the group sessions. The mother stated methamphetamine was not that big of a problem for her and she did not need help to abstain. She either tested positive for use of methamphetamine or admitted she used the drug on March 3, April 14, May 19, June 3, and June 16. On June 3 she was detained by law enforcement personnel at a casino because she was visibly under the influence of methamphetamine. As a result, her parole in Missouri was revoked and she was returned to Missouri to complete her sentence for possession of drug paraphernalia. She was released after completing her sentence on September 8. Following her release, she missed two of four scheduled visits with the children before the termination hearing on September 24.

On May 3 the father was released from jail on pretrial supervision. On May 11 he reported to his probation officer that he had used methamphetamine. Although he followed the recommendation for inpatient substance abuse treatment by entering a program on May 14, he left one program before completion and entered another. He tested positive for methamphetamine on June 2 and on June 13 reported he had used again. He reentered inpatient treatment on June 21, but was returned to jail on June 28 for violating the terms of his pretrial release. At the time of the September termination hearing, the father was still in jail awaiting sentencing on felony drug charges.

After a disposition hearing in June, the court advised the parents the conditions leading to the children's removal "must be corrected as quickly as

possible” because the consequences of removal may include termination of their parental rights. After a permanency hearing in August, the court again advised the parents that termination of their parental rights was a possible consequence of failure to correct the conditions that led to the children’s removal. The court directed the State to file a petition to terminate parental rights within thirty days after the August 9 permanency order.

The State petitioned to terminate both parents’ parental rights on August 17. Following a hearing on September 24, the court filed an order on October 11 that terminated both parents’ parental rights under Iowa Code section 232.116(1)(h) and (l) (2009). The court also found termination was in the children’s best interests and the factors in section 232.116(3) did not prevent termination. Both parents appeal.

II. Scope and Standards of Review.

Our review of termination-of-parental-rights proceedings is de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We review the facts and the law and adjudicate rights anew. *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999). We give weight to the juvenile court’s factual findings but are not bound by them. *In re E.H., III*, 578 N.W.2d 243, 248 (Iowa 1998).

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); *Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35 (1972). When the juvenile court terminates a parent’s rights, we affirm if clear and convincing evidence supports the termination under the cited statutory

provision. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The State has the burden of proving the allegations by clear and convincing evidence. “Clear and convincing evidence” is evidence leaving “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) (quoting *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa Ct. App. 1983)). If the juvenile court terminates parental rights on multiple statutory grounds, we may affirm if any ground is supported by clear and convincing evidence. See *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

III. Merits.

Mother. The mother contends the juvenile court “erred in determining that sufficient grounds existed to terminate . . . rather than enter a permanency order deferring permanency for an additional six months.” She argues she did not have enough time after her second incarceration to reengage fully with services to accomplish reunification. She further argues the need for permanency is not as urgent in this case because the children are placed with a relative. She notes the children are bonded to her.

There is clear and convincing evidence supporting both statutory grounds for termination. The children could not be returned to the mother’s care at the time of the termination hearing. See Iowa Code § 232.116(1)(h)(4). Even though the previous assistance case was closed successfully in 2009, the mother continues to use methamphetamine and does not recognize her substance abuse is a problem. The mother has a chronic substance abuse problem and has been unwilling to recognize her need for treatment or unsuccessful in

maintaining sobriety. The prognosis for her recovery indicates the children could not be returned to her care within a reasonable period of time. See *id.* § 232.116(1)(f). We conclude the juvenile court correctly refused the mother's request for an additional six months to work toward reunification.

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.

In re P.L., 778 N.W.2d 33, 41 (Iowa 2010). These very young children need and deserve permanency their mother cannot provide. The evidence shows continued contact with the mother already is having a detrimental effect on the older child. Looking at the immediate as well as the long-term interests of the children, and considering the mother's past and current performance as an indication of her ability to provide future care, we agree with the decision of the juvenile court to terminate the mother's parental rights. This best satisfies the considerations set forth in section 232.116(2). The factors in section 232.116(3) that permit a court not to order termination are not sufficient to prevent termination of the mother's parental rights. We affirm.

Father. The father contends the court erred in terminating his parental rights because he "believes his current criminal sentence, which includes inpatient drug treatment followed by a period of placement in a residential facility, will allow him to resume care of his children" if the court defers termination for six months. We cannot agree.

The father does not challenge the statutory grounds for termination. The father's substance abuse problems and criminal involvement with use and

distribution of illegal substances have necessitated the removal of his older child twice.¹ He has been unsuccessful in treatment before. At the time of the termination hearing, the father still had to complete his time in prison, then serve some time in a residential facility before the court could even begin to consider reunification. Giving “primary consideration to the child[ren]’s safety, to the best placement for furthering the long-term nurturing and growth of the child[ren], and to the physical, mental, and emotional condition and needs of the child[ren], including the father’s “imprisonment for a felony” and the children’s placement “in a stable, satisfactory environment and the desirability of maintaining that environment and continuity for the child[ren],” we conclude the juvenile court did not err in denying the father’s request for additional time. See Iowa Code § 232.116(2)(a)-(b). We affirm.

AFFIRMED ON BOTH APPEALS.

¹ The younger child had not been born at the time of the older child’s first removal.