

**IN THE COURT OF APPEALS OF IOWA**

No. 1-1015 / 11-1797  
Filed February 1, 2012

**IN THE INTEREST OF A.N.,  
Minor Child,**

**B.G., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Scott County, John G. Mullen,  
District Associate Judge.

A mother appeals from the order terminating her parental rights.

**AFFIRMED.**

Matthew Hatch, Bettendorf, for appellant mother.

Joel Walker, Davenport, for father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant  
Attorney General, Michael J. Walton, County Attorney, and Julie Walton,  
Assistant County Attorney, for appellee State.

Christine Frederick, Davenport, for minor child.

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

**DANILSON, P.J.**

A mother appeals from the order terminating her parental rights to A.N., born in May 2009.<sup>1</sup> She contends the State failed to prove the grounds for termination by clear and convincing evidence and termination is not in the child's best interests. Upon our de novo review, and considering the mother's marginal compliance with case plan requirements, history of poor judgment in choosing relationships, irregular and disinterested attendance at visitation, lack of commitment to the child, and inability to care for the child at the present time, we conclude grounds exist to terminate the mother's parental rights and that termination is in the best interests of the child. We affirm.

**I. Background Facts and Proceedings.**

This family came to the attention of the Iowa Department of Human Services (DHS) in June 2010, due to child protective concerns that involved bite marks to the back and face of A.N. and a fracture to A.N.'s arm. The bite marks were determined to be made by an adult and were in various stages of healing. The mother told a police officer she did not cause the injuries but believed the injuries were caused a week prior by her boyfriend of three months, who had cared for the child. She also told the officer that over the past three months, the child had suffered three injuries while in the care of the boyfriend. A.N. was one year old at that time and showed fear of the boyfriend. The child was removed from the mother's custody and placed with the maternal grandmother. The mother did take a protective measure by kicking the boyfriend out of her home.

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<sup>1</sup> The parental rights of A.N.'s biological father were also terminated, and he does not appeal.

Since the child's removal, the mother has lived in several different residences and with several different friends. By the time of termination, the mother stated she lived by herself and was employed. The mother's honesty and credibility has been an issue throughout these proceedings. This is particularly troubling due to the fact the mother has a history of poor judgment in choosing paramours. The man who allegedly abused A.N. has a criminal history, including a drug offense; A.N.'s biological father has an extensive history of violence toward women and criminal activity; and the mother's ex-husband is a registered sex offender. In addition, the mother admitted during these proceedings that she was living with a friend who was prostituting out of the home.

Another barrier to reunification has been the mother's lack of involvement and participation in services. The mother gave many excuses why she could not meet case plan requirements. Indeed, the mother admitted the services would not do her any good and she did not see the point in her participation in such services. As a result, the mother made very little progress with the case plan in over a year. For instance, the mother stated she does not have a drug problem, but admitted she occasionally uses. She repeatedly failed to complete drug testing requested by DHS. She tested positive for marijuana in January 2011, and her sample was diluted in June 2011. Otherwise, the mother's failure to participate in testing has done nothing to rule out consistent drug usage. In addition, the mother did not adequately participate in anger management or the Batterer's Education Program, per case plan requirements.

The mother has made little progress on parenting skills, or improving her bond with A.N. As the mother failed to make consistent efforts to visit the child,

A.N. grew leery of the mother and clung to the caseworker when he arrived for visitation sessions. The mother cancelled visits or failed to contact DHS to schedule them in the first place. And despite the court's order that the mother could have unlimited contact with the child under the full supervision of the maternal grandmother, the mother took limited advantage of additional time with the child. Eventually, the maternal grandmother voiced a concern about the child's welfare if he were to be placed back in the mother's custody because the child did not have a strong bond with the mother due to the irregular visitation. When the mother did attend visits, she was distracted, uninvolved, tired, or spent time doing other things rather than interacting with the child. She had unreasonable expectations for A.N. and lost her temper or grew angry with his behavior. Caseworkers testified the mother had very little insight in proper parenting for the child. The mother was also unsupportive of A.N.'s needs for services from the Area Education Agency.

Due to the mother's lack of engagement in or commitment to services and visitation with the child, A.N. has not returned to the mother's care since removal. There have been no trial home placements, and visitation has not progressed beyond a fully-supervised status. The maternal grandmother has expressed a desire to adopt the child.

The State filed a petition to terminate parental rights in July 2011. A termination hearing took place in October 2011. The State, guardian ad litem, and caseworkers unanimously recommended termination of the mother's parental rights. The juvenile court entered its order terminating the mother's

parental rights pursuant to Iowa Code sections 232.116(1)(d), (e), (h) and (i) (2011). The mother now appeals.

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

We conduct a de novo review of termination of parental rights proceedings. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). Although we are not bound by the juvenile court's findings of fact, we do give them weight, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under section 232.116. *Id.* Evidence is considered "clear and convincing" when there are no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.*

## **III. Analysis.**

Iowa Code chapter 232 termination of parental rights follows a three-step analysis. See *P.L.*, 778 N.W.2d at 39. The court must initially determine whether a ground for termination under section 232.116(1) is established. *Id.* If a ground for termination is established, the court must next apply the best-interest framework set out in section 232.116(2) to decide if the grounds for termination should result in a termination of parental rights. *Id.* If the statutory best-interest framework supports termination of parental rights, the court must finally consider if any statutory exceptions or factors set out in section 232.116(3) weigh against termination of parental rights. *Id.*

**A. Grounds for Termination.**

We need only find termination proper under one ground to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996). Section 232.116(1)(h) provides termination may be ordered when there is clear and convincing evidence a child under the age of three who has been adjudicated a CINA and removed from the parent's care for at least the last six consecutive months cannot be returned to the parent's custody at the time of the termination hearing. Iowa Code § 232.116(1)(h).

A.N. was just over one year old when he was removed from the mother's care and placed with the maternal grandmother. The child was removed after suffering physical abuse, allegedly caused by the mother's then-boyfriend. The mother did take a protective measure to kick the boyfriend out of her home; however, it is disconcerting that the mother acknowledged to police that she was aware the child suffered three injuries during three months while in the care of the boyfriend. Yet, none of the abuse was reported, and the mother did not take any action to protect the child. In addition, that boyfriend was the third known paramour of the mother's to have a criminal record and/or history of violence. The mother lacks insight into how her relationships could harm the child.

The mother has repeatedly refused or failed to submit to drug testing. She did take two tests: one was positive for marijuana, the other was diluted and not dispositive. The mother has not attended anger management classes and has only attended two BEP classes. She lacks insight into appropriate parenting skills. She also disregards the child's needs for AEA services. The mother has continued to make excuses for her lack of participation in services and visitation

throughout these proceedings. The child has grown “leery” of the mother during visitation. Caseworkers, as well as the juvenile court, observed that the mother is dishonest and not credible.

The child has not been returned to the mother’s care since removal, and visitation has not progressed beyond fully supervised sessions. Visitation has been irregular and minimal. And during visitation, the mother was disinterested, tired, and uninvolved. The mother’s lack of participation and engagement in services has resulted in minimal progress with the case plan requirements. As the juvenile court observed, “The Court is not satisfied that the mother has made any genuine effort to make changes in her life so that she could safely parent A.N. and meet his needs.” Meanwhile, the child has been out of the mother’s care for over one year.

Our legislature has carefully constructed a time frame to provide a balance between the parent’s efforts and the child’s long-term best interests. *D.W.*, 791 N.W.2d at 707. “We do not gamble with the children’s future by asking them to continuously wait for a stable biological parent, particularly at such tender ages.” *Id.* (quoting *In re D.W.*, 385 N.W.2d 570, 578 (Iowa 1986) (internal quotations omitted); see also *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990) (“Children simply cannot wait for responsible parenting. Parenting . . . must be constant, responsible, and reliable.”). We find clear and convincing evidence that grounds for termination exist under Iowa Code section 232.116(1)(h).

#### **B. Factors in Termination.**

Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of section 232.116(2).

*P.L.*, 778 N.W.2d at 37. In determining the best interests, this court's primary considerations are "the child's safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child." *Id.* Taking these factors into account, we conclude the child's best interests require termination of the mother's parental rights. We agree with the juvenile court's conclusions:

[T]he child cannot be safely returned to the custody of [the mother]. If placed in the custody of [the mother], the child would be subject to a high risk of adjudicatory harm in the nature of physical abuse, neglect, failure of supervision, failure to provide safety, and failure to provide necessities. The Court further concludes that additional services would not likely resolve the adjudicatory harm given the failure or refusal of [the mother] to participate in the services offered since the inception of this case. The permanency goal of the Department is adoption by the maternal grandmother. The child is doing very well in the grandmother's care. She has demonstrated commitment to the child and ability to meet his physical, financial, emotional, and educational needs. [The mother has] not demonstrated any commitment to providing permanency for the child. The Court is satisfied that the best interests of the child are served by termination of parental rights to allow implementation of the permanency goal of the Department.

### **C. Exceptions or Factors against Termination.**

Finally, we give consideration to whether any exception or factor in section 232.116(3) applies to make termination unnecessary. The factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply the factors in this section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). Under these circumstances, we cannot maintain a relationship where there exists only a



possibility the mother will become a responsible parent sometime in the unknown future.

#### **IV. Conclusion.**

There is clear and convincing evidence that grounds for termination exist under section 232.116(1), termination of parental rights is in the child's best interests pursuant to section 232.116(2), and no consequential factor weighing against termination in section 232.116(3) requires a different conclusion. We affirm termination of the mother's parental rights.

**AFFIRMED.**