

IN THE COURT OF APPEALS OF IOWA

No. 1-111 / 10-2120
Filed February 23, 2011

**IN THE INTEREST OF J.G. Jr. and M.P.,
Minor Children,**

**A.R.P., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Louise Jacobs,
District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Jami J. Hagemeyer of Williams & Blackburn, P.L.C., Des Moines, for
appellant mother.

Lane Lucas, Des Moines, for father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Annette Taylor,
Assistant County Attorney, for appellee State.

Erin E. Mayfield of the Youth Law Center, Des Moines, for minor children.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.

DANILSON, J.

A mother appeals from the termination of her parental rights to her two children. Because there is clear and convincing evidence to support termination pursuant to Iowa Code section 232.116(f) (2009), and we conclude termination is in the children's best interests and there are no pertinent factors weighing against termination, we affirm.

I. Background Facts and Proceedings.

J.G. Jr., age four at the time of termination, and M.P., age five, were removed from their parents' custody in October 2009 because the mother and father were arrested for manufacturing methamphetamine in the home and in the presence of the children. The children were adjudicated children in need of assistance (CINA) on December 2, 2009. They have not seen their mother since October 2009 when she was jailed. The mother was convicted of conspiracy to manufacture a controlled substance and neglect of a dependent person. She is serving two ten-year prison sentences, to be served consecutively. Her first request to have her sentence reconsidered was denied.¹

On December 29, 2010, the juvenile court terminated the mother's parental rights² pursuant to Iowa Code section 232.116(1)(b), (d), (e), (i), (j), and (l). The court rejected the mother's request that termination not occur and that the grandparents be named long-term guardians instead. The court specifically found terminating parental rights so the children can be permanently placed was

¹ The mother has filed two motions for reconsideration. The first was denied on September 7, 2010. The second motion was filed on January 12, 2011, and remains pending.

² The father's parental rights were also terminated. He does not appeal.

in the children's best interests. The court stated, "It is in the children's best interest to be able to move on to an appropriate adoptive family and [they] should not have to wait until the parents serve their lengthy sentences and then face a disruption." The mother appeals.

II. Standard of Review and Analysis.

Our review of all termination decisions is de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We are not bound by the juvenile court's findings of fact, but we do give them weight, especially in assessing the credibility of witnesses. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

Termination of parental rights under chapter 232 requires a three-step analysis. See *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010).

First, the court must determine if a ground for termination under section 232.116(1) has been established. If a ground for termination is established, the court must, secondly, 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. Third, if the statutory best-interest framework supports termination of parental rights, the court must consider if any statutory exceptions set out in section 232.116(3) should serve to preclude termination of parental rights.

Id. at 706-07 (citations omitted).

A. *Statutory grounds.* Iowa Code section 232.116(f) authorizes the termination of parental rights if the child (1) is four years or older; (2) has been adjudicated CINA; (3) has been removed from the parent's physical custody for at least twelve of the last eighteen months; and (4) cannot be returned to the parent at the present time. Iowa Code § 232.116(f). Clear and convincing evidence of each of these statutory elements exists here: the children are age four or older, have been adjudicated CINA, have been removed from the

mother's care for more than one year, and cannot now be returned to her custody as she is serving a lengthy prison sentence. Because we find statutory grounds for termination under section 232.116(1)(f), we need not address the arguments pertaining to the other statutory grounds listed by the district court. *In re J.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (“When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm.”).

B. Best-interest framework. Section 232.116(2) states that in considering whether to terminate parental rights based on a particular ground, we must give primary consideration to “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.”

The mother contends that under section 232.116(2) the best placement for the children is with their grandparents “until she is released from prison and until she is stable.” While this plan may be in the mother’s best interests, our primary concern is the best interests of the children. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). These children need permanency and stability. The mother has not seen her children for more than a year. She does correspond by letter and occasional telephone calls but can offer very little to her children in terms of safety; physical, mental, and emotional needs; or long-term nurturing. Unfortunately, the paternal grandfather and his wife did not complete the requirements to become foster/adoptive parents, and DHS has determined the grandparents are not a safe and appropriate long-term placement. We find

terminating the mother's parental rights so the children can find a permanent home gives primary consideration to factors enumerated in section 232.116(2).

C. Exceptions to Termination. The mother also contends the court need not terminate because section 232.116(3)(c) applies. That paragraph provides an exception to termination if “[t]here 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). The record does not support a finding of a close parent-child relationship. The mother and grandmother both testified that for all but about six to eight months, the children have resided in the grandparents' home. While the children may, as the mother states, “know who their mother is,” as already noted, the mother has not seen her children for more than a year. Her occasional written correspondence and telephone calls to four and five-year olds do not support a finding of a close parent-child relationship.

The mother's essential argument is that having lost their parents, the children will be harmed upon being moved from their grandparents' home, where the children have been for all but a few months of their lives.³ The application of section 232.116(3)(a) is discretionary, and depends on the circumstances of each case and the best interests of the children. *In re Y.R.*, 690 N.W.2d 464

³ The mother argues a guardianship should be established. For more than a year the children have been in the care of their paternal grandparents under the supervision of the DHS. The DHS's concurrent plan was to place the children with the grandparents. However, the record reveals that the grandparents did not pass a home study and requests for exception to the recommendation have been denied. The DHS is exploring alternative arrangements for an appropriate long-term placement for the children. We believe the DHS is responsibly discharging its duties as guardian. See *In re E.G.*, 738 N.W.2d 653, 656 (Iowa Ct. App. 2007) (stating the legislature, while giving the juvenile court continuing oversight consistent with the best interests of the child, did not give the court the right to establish custody).

(Iowa Ct. App. 2004). We conclude no exceptions to termination exist under section 232.116(3). We affirm the termination of the mother's parental rights.

AFFIRMED.