

**IN THE COURT OF APPEALS OF IOWA**

No. 1-230 / 11-0231

Filed April 27, 2011

**IN THE INTEREST OF H.W., L.F., and W.F.,  
Minor Children,**

**P.W., Mother,**  
Appellant.

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

A mother appeals from the order terminating her parental rights.

**AFFIRMED.**

Nancy Trotter, Des Moines, for appellant mother.

Nancy Pietz, Des Moines, for father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Attorney General,  
John P. Sarcone, County Attorney, and Christina Gonzalez, Assistant County  
Attorney, for appellee State.

M. Kathryn Miller, Des Moines, for minor children.

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

**DANILSON, J.**

A mother appeals the termination of her parental rights to three of her children, ages five, three, and one years old. She contends the State failed to prove the grounds for termination by clear and convincing evidence. The mother further contends the court erred in terminating her parental rights despite a strong parent-child bond and in failing to grant her additional time for reunification. Considering the mother's minimal progress throughout these proceedings, as well as her inability to care for herself or the children now or in the foreseeable future, we affirm the termination of her parental rights. We further agree that termination is in the children's best interests and affirm termination of the mother's parental rights.

**I. Background Facts and Proceedings.**

The mother and father are from Sierra Leone, Africa. They have some language challenges with English and live without the support that a stable home and extended family can provide. They have histories of suffering significant traumas, including civil war, refugee camps, and the loss of family members due to the violence of war. The mother has suffered the loss of another child who did not come to the United States with her, and has been diagnosed with post-traumatic stress disorder.

The father and mother are not married. Initially, the mother was not forthcoming about identifying the paternity of the children and appeared to be shielding the father from involvement with the Iowa Department of Human Services (DHS). The parties have since agreed he is the father to all four of their

children in the United States. Their vacillating relationship has included incidents of domestic violence. The father does not provide for the mother and children, and he is not involved with parenting the children.

Although the mother denies having contact with the father, there is evidence he continues to see the family. For example, during visits, different men stopped by the mother's home—the mother referred to the men as uncles, but a child referred to one of the men as “dad.” The father has had minimal involvement in these proceedings and has not resisted any court orders in regard to adjudication, removal, or placement of the children. He does not appeal the termination of his parental rights.

The family first came to DHS's attention in December 2008, when the mother gave birth to D.W., who was born HIV-positive. The mother is also HIV-positive, but was prescribed medication to take during her pregnancy to prevent her from passing the virus to D.W. The mother failed to take the medication and could not explain why she did not follow the physician's instructions. D.W.'s medical condition upon his birth required hospitalization. The mother spent little time visiting D.W. during the hospitalization and failed to learn how to care for him. (D.W.'s care is complicated and requires regular medication, home oxygen, and follow-up appointments.) The mother also refused to provide releases for her older children, H.W. and L.F., to be tested for HIV.

In March 2009, D.W., H.W., and L.F., were removed from the mother's care and placed in the custody of DHS for foster care placement, as a result of the mother's failure to take care of her own health issues and lack of parenting

skills and ability to take care of the children. There were concerns about neglect, physical abuse, and the children's failure to receive medical care, immunizations, and dental care. The children were adjudicated in need of assistance (CINA) in June 2009. At that time, D.W. was placed in family foster care, and H.W. and L.F. were placed with the mother under DHS supervision.

In December 2009, the court became aware the mother was not cooperating with services and H.W. and L.F. were malnourished and anemic. H.W. and L.F. were removed from the mother's care and placed in family foster care. The children have not been returned to the mother's care since that time.

In March 2010, the mother gave birth to W.F., her sixth child. Again, the mother had not received adequate prenatal care, and it was unknown whether the child had contracted HIV in utero. W.F. was adjudicated CINA, and the mother stipulated to W.F.'s immediate removal from her care. W.F. was later placed in the same foster family home as H.W. and L.F.

In June 2010, the mother consented to the termination of her parental rights to D.W. Termination proceedings for H.W., L.F., and W.F. began several months later. Caseworkers, including the family therapist, and the guardian ad litem recommended termination of the mother's parental rights.<sup>1</sup> It was clear to caseworkers the mother was not able to safely parent the children and the children were at risk of further physical, mental, and emotional setbacks at this critical stage in their development if they remained in her care.

By that time, the mother had received services for over one year. At first, the mother "was not entirely cooperative" with services and only when she

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<sup>1</sup> Termination of the father's parental rights was also recommended.

learned the services might benefit her, “then she might follow through.” Unfortunately, the mother’s parenting skills increased slowly and minimally. Caseworkers noted the mother’s failure to make significant progress “in any area of concern.” Even the father agreed the mother “is kind of slow in taking care of the kids” and noted the mother’s inability to be responsible for the needs of the children. In addition, there were concerns about the mother’s “ability to adapt to the ongoing changing challenges growing children present.”

The mother began living at the House of Mercy in April 2010, and supervised visitations with the children took place there. Caseworkers described visits as going well “when the mother is in a structured environment,” but noted that the mother needed constant reminders and assistance to meet the needs of the children. And “things became more problematic” for the mother when she “had all three children together.”

Caseworkers maintained concerns about the mother’s ability to meet the basic health needs of the children, such as taking them to the doctor and providing them appropriate nourishment. After months of supervised visits, the mother still did not know how to prepare food for W.F., who has special dietary needs. H.W. and L.F. were malnourished and anemic when removed from her care. All children lagged in physical development.

There were concerns about the mother’s ability to further the children’s development and education, such as understanding how to encourage the children and develop insightful relationships with them. The mother’s interactions with the children were often inappropriate, and she called them names, made fun

of them, and laughed at them when they were hurt or scared. The family therapist observed that the mother and children had a “reasonable” to “good” attachment, but that the mother needed more progress and consistency on furthering her bonds with the children. As another service provider explained, “She lacks follow-through on so many different things that unfortunately it’s costing the children, you know, their education, health, development.”

In addition, caseworkers also voiced concerns about the overall safety of the children while in the mother’s care. The mother continued to use physical punishment of the children, such as shaking W.F. when he cried, dragging the older children by their arms, intending to force the children into a closet, and threatening to strike them. The mother was described as “wear[ing] her emotions on her sleeve” and taking it “out on the children” when she is in a bad mood. The mother also lacked the insight and ability to make proper decisions in regard to the children’s safety and care. On at least one occasion, the mother did not strap W.F., an infant, into his car seat, and did not use safe procedures when bathing him. As one caseworker observed, “I still have imminent safety concerns on visits, not every time, but enough times that it scares me for the kids.”

The father had informal visitation with H.W., L.F., and W.F. for approximately one year after their removal in March 2009. However, the father stopped having visitation with the children sometime in early 2010 because, as he states, he did not have transportation to get to the visits and his friends were not available to give him rides. He then moved to Houston, Texas, for “a couple of months” with his aunt. He moved back to Des Moines in September 2010.

Following a hearing over three days in October and November 2010, the juvenile court entered its order terminating the mother's parental rights pursuant to Iowa Code sections 232.116(1)(d) (children adjudicated CINA for abuse or neglect by parent; circumstances continue despite offer or receipt of services), (f) (L.F.) (child four or older; adjudicated CINA; removed twelve of last eighteen months, or last twelve months with any home trial period less than thirty days; cannot be returned at present time), (g) (adjudicated CINA; parental rights terminated to another child in same family; parent continues to lack ability of willingness to respond to services to correct situation; additional period of rehabilitation would not correct situation), and (h) (H.W. and W.F.) (child three or younger; adjudicated CINA; removed six of last twelve months, or last six months with any home trial period less than thirty days; cannot be returned at present time) (2009). The mother appeals.

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

We review termination proceedings de novo. *In re Z.H.*, 740 N.W.2d 648, 650-51 (Iowa Ct. App. 2007). Although we are not bound by them, we give weight to the district court's findings of fact, especially when considering the credibility of witnesses. Iowa R. App. P. 6.904(3)(g); *In re M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993). 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). The State has the burden of proving the grounds for termination by clear and convincing evidence. *In re P.L.*, 778 N.W.2d 33, 34, 39 (Iowa 2010); *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). If a statutory ground for termination

exists, termination is in the child's best interests, and no factor weighing against termination exists, we will affirm. *P.L.*, 778 N.W.2d at 39.

### **III. Clear and Convincing Evidence.**

The mother contends clear and convincing evidence does not support termination under sections 232.116(1)(d), (f), or (h), alleging the circumstances that led to adjudication, including her "parenting deficiencies" and "inability to care for her children," had been resolved. The mother does not challenge the juvenile court's termination of her parental rights pursuant to section 232.116(1)(g), and we may thus affirm on that ground. "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." *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The mother's failure to raise an issue regarding section 232.116(1)(g) means she has waived that issue on appeal. See Iowa R. App. P. 6.903(2)(g)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue.").

We may affirm the termination if facts support the termination of the mother's parental rights under any of the sections cited by the juvenile court. See *S.R.*, 600 N.W.2d at 64. However, we need not rest our decision concerning statutory grounds for termination solely on section 232.116(1)(g). We elect to proceed to the merits of challenged grounds section 232.116(1)(f) as to L.F., and section 232.116(1)(h) as to H.W. and W.F. Those sections are nearly identical. There is no dispute the State proved the first three elements under those sections. Our inquiry therefore focuses on whether there is clear and convincing



evidence that at the time of the termination hearing, the children could not be returned to the custody of the mother. See Iowa Code §§ 232.116(1)(f)(4), 232.116(1)(h)(4).

Upon our de novo review of the record, we conclude the statutory grounds have been met under sections 232.116(1)(f) as to L.F. and 232.116(1)(h) as to H.W. and W.F. We share some of the same concern noted by the juvenile court in its assessment that

it is unclear if the mother can or will incorporate what she learns in the programs into her parental behaviors and decision making because despite her level of cooperation and/or participation, . . . the providers report that they have to go over and over the same behavior or skill,” and “the need for repetition continues despite the length of time the mother has been receiving services.

As the court explained:

Family, Safety, Risk and Permanency Service providers who work with the mother and supervise her interaction time with her children have reported that they have significant concerns about either her motivation and/or ability to safely parent her children if they were returned to her at House of Mercy. They testified that they have to repeat instructions over and over again. Resha Barker testified that she does not believe the mother has any insight into child development steps and that she would not be able to adjust to such without prompting. An example of ongoing difficulties is that the mother is not demonstrating, despite all the teaching, the importance of mixing formula properly and providing it appropriately to W.F. W.F. has special developmental needs and both the proper mixture of formula and how it is provided to him is more important than with many other children. Ms. Barker stated the mother has not made significant progress in any area of concern. For example, she testified the mother has a history of physical punishment of the children which has been addressed repeatedly by service providers. Yet, the mother has threatened to use a cable to strike them, intended to force a child into a closet, and has dragged the children by their arms, an action the FSRP workers observe frequently when the children do not listen to her directing them to come. Ms. Barker stated the mother can learn actions but not understand them. This affects the mother’s ability to sustain

change and apply the skills being taught to different circumstances including when service providers are not present. There are concerns about the mother's ability to adapt to the ongoing challenges growing children present.

After nearly two years of services, we do not find it unreasonable to expect the mother to exhibit more improvement in parenting skills, as well as an affirmative assumption and understanding of the duties encompassed by the role of being a parent. To elaborate on just one example, we cannot understand, *under any circumstances*, the mother's failure to take prescribed medication during pregnancy to prevent the passing of a highly contagious virus to her baby in utero, and her refusal to provide releases for her older children to be tested for the virus.

As the juvenile court observed:

[T]he mother has appeared at times to the Court to have significant intellectual challenges which together with the cultural, language, and histories of significant traumas, it is difficult to get an accurate assessment of her abilities or to separate out the exact sources of risk so as to best address such. However, DHS has done its best to address all possible sources of decision making and behaviors which put the children at risk.

The mother has not put herself in a position to safely and effectively care for these children. Evidence of the parent's past performance may be indicative of the quality of the future care that parent is capable of providing. See *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000). Here, the mother has demonstrated little effort or ability to change or improve the problems that rendered her unfit to care for the children and they cannot presently be returned to her. Clear and convincing evidence supports termination of the mother's parental rights.

#### **IV. Additional Time for Reunification.**

The mother contends the juvenile court erred in “not finding that it would be reasonably likely that the children could be returned to the care and custody of the mother within the next six months, especially given her residence at the House of Mercy.” The State argues the mother failed to preserve error on this argument, when “she never requested any delay of permanency for the children, and, presumably for that reason, the juvenile court never addressed the possibility of delaying permanency in order for her to receive additional services.”

Indeed, it appears the mother did not raise the issue of delaying permanency to the juvenile court. The following observations by the court, however, give insight to the issue:

The children have been out of their parents’ care for a long time and for much of their very young lives. The lengthy period of removal can be contributed to parents’ lack of progress. During that period of time the older two children have become attached to their foster family. W.F., the younger child, had just moved to the same family shortly before the termination hearing and in the few weeks he had been there, he is reported to have been doing well. He was moved because the older children have been in a pre-adoptive foster home and the foster parent was also willing to take W.F. into their family.

While the mother appears to be a likeable person, it does not appear that she is likely to be successful in gaining the necessary parenting skills no matter how much more time she were to be provided. She has made progress, but not enough progress for the children to be safe in her care.

Further, even assuming the mother had raised the issue before the juvenile court, we find no evidence in the record to suggest the mother has made sufficient progress to justify providing additional time to work toward reunification. Although the law requires a “full measure of patience with troubled parents who

attempt to remedy a lack of parenting skills,” Iowa has built this patience into the statutory scheme of Iowa Code chapter 232, including a six-month limitation for children in need of assistance aged three and below, and a twelve-month limitation for children in need of assistance aged four and above. See Iowa Code §§ 232.116(1)(f)(3), 232.116(1)(h)(3); *In re D.A., Jr.*, 506 N.W.2d 478, 479 (Iowa Ct. App. 1993). Once the statutory limits established in section 232.116 have passed, “the rights and needs of the child rise above the rights and needs of the parents.” *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997), *overruled on other grounds by P.L.*, 778 N.W.2d at 33.

The record reveals the children cannot be returned to the mother at this time and the children should not be forced to wait for permanency. See *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) (“[P]atience with parents can soon translate into intolerable hardship for their children.”). Additional time for the mother would not eliminate the need for removal.

Without the mother’s recognition and understanding of the critical issues that have caused the removal of these children (and the termination of her parental rights to another child) in this case, no meaningful change can occur. Placement of the children with the mother would be contrary to their welfare.

#### **V. Close Parent-Child Bond.**

Lastly, the mother contends her parental rights should not be terminated due to the closeness of the parent-child relationship. Section 232.116(3) lists factors weighing against termination, including the presence of 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 factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *P.L.*, 778 N.W.2d at 38; *J.L.W.*, 570 N.W.2d at 781. 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).

Upon our review, we agree with the family therapist that a “good” bond exists between the mother and the two older children, and a “reasonable” bond exists between the mother and W.F. Under these facts, however, we do not believe these bonds can come before the safety and permanency the children need. Therefore, the exception under section 232.116(3)(c) is not sufficient to save these parent-child relationships.

#### **VI. Conclusion.**

We find no reason to further delay the permanency the children need and deserve. The children are all living in the same pre-adoptive home and are doing well in that placement. Termination of parental rights is in the children’s best interests, see Iowa Code § 232.116(2), and no factor weighing against termination in section 232.116(3) requires a different conclusion. Having found clear and convincing evidence supporting termination under sections 232.116(1)(f), (g), and (h), we affirm the termination of the mother’s parental rights.

**AFFIRMED.**