

IN THE COURT OF APPEALS OF IOWA

No. 1-386 / 11-0081

Filed June 15, 2011

**IN THE INTEREST OF Z.F. and A.F.,
Minor Children,**

**D.M.F., Mother,
Appellant.**

Appeal from the Iowa District Court for Linn County, Susan Flaherty,
Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Kristin Denniger, Cedar Rapids, for appellant mother.

Erek P. Sitting, Cedar Rapids, for father of Z.F.

Dawn Wilson, Cedar Rapids for father of A.F.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Jerry Vander Sanden, County Attorney, and William Croghan,
Assistant County Attorney, for appellee State.

Deborah Skelton, Walford, for minor children.

Considered by Vogel, P.J., Vaitheswaran, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

HUITINK, S.J.**I. Background Facts & Proceedings.**

Darcelle is the mother of two children, who were born in 1999 and 2006.¹ Due to her illegal drug use, Darcelle has a long history of involvement with the Iowa Department of Human Services (DHS). In 2003, it was determined Darcelle had not provided adequate supervision to the older child and Darcelle participated in voluntary services. In 2006, the younger child tested positive for cocaine at birth. The children were placed in foster care and adjudicated to be in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2), (n), and (o) (2005). Darcelle tested positive for cocaine in April 2007, October 2007, and January 2008.

In August 2008, Darcelle had been sober for several months, and ultimately both children were returned to her care by January 2009. However, by mid-2009, Darcelle began missing drug screens and was not at home for safety checks. Over the following months, she was arrested for operating while intoxicated, evicted from her apartment, and admitted she relapsed by smoking crack cocaine while she had the younger child with her. The children were again removed from her care in February 2010, at which time the older child tested positive for exposure to cocaine and the younger child tested positive for exposure to cocaine and methamphetamine and positive for ingestion of cocaine. Only days later, Darcelle was arrested for intent to manufacture methamphetamine. She was released from jail shortly thereafter, but only visited

¹ The fathers' parental rights were also terminated, and they do not appeal.

the children three times in three months. In May 2010, she began to consistently visit the children and participate in extended-outpatient treatment again.

On June 10, 2010, the State filed a petition seeking the termination of Darcelle's parental rights. A hearing was held September 3, 2010, after which the district court terminated Darcelle's parental rights pursuant to Iowa Code section 232.116(1)(d) and (h) (2009). Darcelle appeals.

II. Standard of Review

Our review is de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Although we give weight to the juvenile court's factual findings, we are not bound by them. *Id.* Our primary concern is the best interests of the children. *Id.*

III. Merits.

Darcelle challenges both the statutory grounds for termination. *See In re S.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."). Specifically, she argues her parental rights should not have been terminated because the State did not prove (1) the drug use that led to the initial adjudication continued to exist despite services being offered (section 232.116(1)(d)), and (2) the children could be returned to her care within a reasonable amount of time due to her substance abuse issues (section 232.116(1)(h)). Both arguments rely on her contention that she was in recovery and "simply relapsed" in February 2010. However, the record demonstrates otherwise. DHS workers testified that throughout the course of the proceedings she relapsed many times. Although she was able to remain sober for a period of

time and have the children returned to her care, shortly thereafter she began exhibiting signs of drug use, which was later confirmed. Darcelle has struggled with addiction for many years. After approximately four years of services and treatment, she was still unable to care for her children because of her drug usage. Although she had made some progress prior to the termination hearing, given her past performance there is no indication the children would be able to return to her care in the near future. See *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990) (explaining that after completing several inpatient and outpatient programs, the parent reverted to his old ways). We find both grounds for termination were proved by the State.

Next Darcelle argues termination is not in the children's best interests. She argues there is a strong parent-child bond and severing that bond will be damaging to the children. Under section 232.116(2), in determining a child's best interests, "the court shall give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child." The evidence did show there was a strong parent-child bond and Darcelle was loving and nurturing towards the children during visitation. Nevertheless, Darcelle's drug use has prevented her from providing the children with a safe and stable home. After several years, the children were in need of permanency. "At some point, 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). The children had found a foster family that attended to their needs. The children were also bonded with their foster parents, who were willing to adopt them. The court

found there was a parent-child bond, but after this amount of time the children's need for permanency had greater weight and it was in their best interests that Darcelle's parental rights be terminated. We agree and find termination was in the best interests of the children.

Finally, Darcelle argues her parental rights should not be terminated due to the close parent-child bond. Under section 232.116(3)(c), a court need not terminate parental rights if there is clear and convincing evidence it would be detrimental to the children due to the closeness of the part-child relationship. As discussed above, the court weighed the parent-child bond and the children's need for permanency, and found it would be more detrimental to the children not to terminate Darcelle's parental rights. We agree and affirm.

AFFIRMED.