

IN THE COURT OF APPEALS OF IOWA

No. 1-447 / 11-0607
Filed June 15, 2011

**IN THE INTEREST OF C.P.H.,
Minor Child,**

**M.C.S., Mother,
Appellant,**

**B.P.H., Father,
Appellant.**

Appeal from the Iowa District Court for Linn County, Barbara H. Liesveld,
District Associate Judge.

A mother and father appeal separately from the termination of their
parental rights. **AFFIRMED ON BOTH APPEALS.**

Brandy R. Lundy, Cedar Rapids, for appellant mother.

Robin Miller, Marion, for appellant father.

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

Annette Martin, Cedar Rapids, for minor child.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

DOYLE, J.

A mother and father appeal separately from the termination of their parental rights to their child. Each parent contends the State failed to prove the grounds for termination by clear and convincing evidence and that termination was not in the child's best interests. We affirm on both appeals.

I. Background Facts and Proceedings.

B.H. is the father and M.S. is the mother of C.H., born in September 2009. In 2004, the mother voluntarily terminated her parental rights to her two older biological children, who were removed from the mother's care after they tested positive for illegal substances. The mother also has a history of mental health issues.

Both parents have significant criminal histories, including the mother's recent August 2009 arrest for pimping. She received a deferred judgment for that offense and was placed on probation. The father has three founded child abuse reports for physical abuse.

B.H. came to the attention of the Iowa Department of Human Services (Department) at birth, testing positive for marijuana and cocaine. The mother also tested positive for marijuana and cocaine. The child was removed from parental care and placed in foster care. In October 2009, the child was adjudicated a child in need of assistance (CINA).

Multiple services have been provided to the family, including family safety, risk, and permanency services; substance abuse evaluations and treatment; trial home placement; anger management; criminal probation; parenting instruction and services; supervised visitation; family team meetings; the batterer's

education program; and visitation. However, the father has not participated in services since December 2009. He has not provided any samples for urinalysis testing as requested nor participated in recommended substance abuse treatment. Because of the father's lack of participation, he was not to have unsupervised contact with the child.

In December 2009, the mother entered the Heart of Iowa treatment facility which allowed the child to be placed with her. The juvenile court granted the Department discretion to begin a trial home placement with the mother in the facility conditioned upon the mother demonstrating a commitment to sobriety, remaining at the treatment facility until successful completion of the program, following through with recommended aftercare treatment, providing clean drug screens, and having no relapses. The mother left the facility once without permission, but returned.

In March 2010, the juvenile court granted the parents an additional six months for reunification. Thereafter, the mother successfully completed the treatment program, but issues concerning her behavior towards staff and not following the program's rules remained. Thereafter, the mother and child moved in with the mother's aunt and uncle. The mother initially participated in aftercare.

In June 2010, the mother and father were seen together in a liquor store. Both were intoxicated, and the child was with them. The Department's caseworker went to the home where the mother was staying and the father was there, although he was not to be around the child without a service provider present. The father smelled of alcohol. The trial home placement was ended

and the child was again placed in foster care, where she has remained since that time. After the child's second removal, the mother moved in with the father.

In August 2010, an in-court review hearing was held. Both the Department and the child's guardian ad litem (GAL) recommended the mother be given an extra three months towards reunification. The GAL stressed that the child was in need of "permanency and if [the mother] is going to do this, the time is now." The court thereafter entered its order giving the parents three more months towards reunification.

The mother then stopped participating in aftercare. The mother's drug testing became sporadic, and she admitted to relapsing on marijuana, testing positive for the substance in October 2010. Despite her probation officer's recommendation, the mother did not immediately reenroll in any sort of treatment. In November, the State filed its petition for termination of the parents' parental rights.

Trial on the petition was held in April 2011. The mother testified that she had last used marijuana in February 2011. She testified she had been employed for a month. She further testified that beginning two weeks prior to the trial, she had been participating in intensive outpatient treatment, and she was hoping to be readmitted into the Heart of Iowa. She requested additional time to go back through the Heart of Iowa program and requested the child again be placed with her at the facility. She admitted she still lived with the father, but testified she was now willing to put the child before the father and do whatever it took to reunify her with the child. The father did not appear for the trial.

On April 6, 2011, the juvenile court entered its order terminating the parents' parental rights pursuant to Iowa Code sections 232.116(1)(d) and (h) (2009). Each parent appeals separately, contending the State failed to prove the grounds for termination by clear and convincing evidence and that termination was not in the child's best interests.

II. Scope and Standards of Review.

We review the juvenile court's decision to terminate parental rights de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). The State must prove grounds for termination by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). In considering whether to terminate, our primary considerations are the children's safety; the physical, mental, and emotional condition and needs of the children; and the placement that best provides for the long-term nurturing and growth of the children. Iowa Code § 232.116(2); *P.L.*, 778 N.W.2d at 37.

III. Discussion.

A. Grounds for Termination.

We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Termination is appropriate under section 232.116(1)(h) where there is clear and convincing evidence:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

There is no dispute the first three elements of this section have been proved. However, the each parent contends there is insufficient evidence to show the child cannot be returned to either parent's care at the present time. Upon our de novo review, we find the State has met its burden.

While the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," this patience has been built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). The legislature incorporated a six-month limitation for children adjudicated a CINA aged three and younger. Iowa Code § 232.116(1)(h)(3). Our supreme court has stated that "the legislature, in cases meeting the conditions of [the Iowa Code], has made a categorical determination that the needs of a child are promoted by termination of parental rights." *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990) (discussing Iowa Code § 232.116(1)(e)). The public policy of the state having been legislatively set, we are obligated to heed the statutory time periods for reunification.

Here, the child was removed from the parents' care in September 2009. The child was placed back in the mother's care for approximately six months, only to have the child removed again in June 2010 because the parents were seen intoxicated with the child in a liquor store and the mother allowed the father, who was not participating in substance abuse treatment or providing drug screens, to have contact with the child without service provider supervision. Despite being given an extra nine months for reunification, the mother relapsed,

using marijuana and not participating in aftercare, and the father continued to refrain from participating in services.

While we recognize and commend the recent progress the mother has made in attempting to address her long-standing issues with substance abuse, such efforts are simply too little, too late.

We have repeatedly followed the principle that the statutory time line must be followed and children should not be forced to wait for their parent to grow up. We have also indicated that a good prediction of the future conduct of a parent is to look at the past conduct. Thus, in considering the impact of [an] addiction, we must consider the treatment history of the parent to gauge the likelihood the parent will be in a position to parent the child in the foreseeable future. Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting.

In re N.F., 579 N.W.2d 338, 341 (Iowa Ct. App. 1998) (citations omitted).

Here, the mother has relapsed several times. It is far too early to have any confidence that the mother will be able to maintain sobriety and her commitment to change. See *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (“A parent cannot wait until the eve of termination, after the statutory time periods for reunification have passed, to begin to express an interest in parenting.”). The father failed to participate in services and has not addressed any of the concerns reported by the Department at the start of this case. Under the circumstances presented, we find the State has proved by clear and convincing evidence the children could not be safely returned to either parent’s care at the time of the hearing. Accordingly, we agree with the juvenile court that termination of the parents’ parental rights was proper under Iowa Code section 232.116(1)(h).

B. Best Interests.

If a statutory ground for termination is determined to exist, the court may terminate a parent's parental rights. *P.L.*, 788 N.W.2d at 37. In considering whether to terminate, the court must then apply the best-interest framework established in section 232.116(2). *Id.* The legislature highlighted as primary considerations: 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 agree with the juvenile court that the child's best interests require termination of the parents' parental rights. While we do not doubt the parents' love for the child and the child's for them,

[i]t 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.

Id. at 41.

The record reveals that the child cannot be returned to either parent's care at this time, despite their being given an extra nine months for reunification, and the child should not be forced to wait for permanency. Children are not equipped with pause buttons. "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). "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), *overruled on other grounds by P.L.*, 778 N.W.2d at 39-40. The child should not be forced to endlessly suffer the parentless limbo of

foster care. *In re J.P.*, 499 N.W.2d 334, 339 (Iowa Ct. App. 1993). The child is in need of protection and permanency. We are not unsympathetic to the mother's struggle to maintain sobriety, yet the interests in permanency for the child must prevail over the mother's long and uncertain battle with drugs. *N.F.*, 579 N.W.2d at 341. Given the mother's most recent attempt at sobriety after several relapses and the child's need for permanency, we agree with the juvenile court that termination of the mother's parental rights was in the child's best interests. Furthermore, given the father's lack of participation in the case and failure to address serious concerns regarding his ability to safely parent the child, we agree with the juvenile court that termination of the father's parental rights was in the child's best interests. Accordingly, we affirm the ruling of the juvenile court terminating both parents' parental rights.

AFFIRMED ON BOTH APPEALS.