

IN THE COURT OF APPEALS OF IOWA

No. 1-450 / 11-0662

Filed June 15, 2011

**IN THE INTEREST OF B.J. and W.J.,
Minor Children,**

K.H., Mother,
Appellant.

Appeal from the Iowa District Court for Fayette County, Alan D. Allbee,
Associate Juvenile Judge.

A mother appeals the juvenile court's order terminating her parental rights
to two children. **AFFIRMED.**

John J. Sullivan of Sullivan Law Office, P.C., Oelwein, for appellant
mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, W. Wayne Saur, County Attorney, and Nathan J. Lein,
Assistant County Attorney, for appellee State.

Jeremiah W. White of Elwood, O'Donohoe, Braun & White, L.L.P., West
Union, for appellee father, C.J.

John Hofmeyer III, Oelwein, for appellee father, M.R.

Melissa Anderson-Seeber of Waterloo Juvenile Public Defender Office,
attorney and guardian ad litem for minor children.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

POTTERFIELD, J.

A mother appeals the termination of her parental rights pursuant to Iowa Code section 232.116(1)(h) (2011).¹ Because the statutory grounds have been proved, termination is in the children's best interests, reasonable efforts at reunification have been made, and there are no factors that weigh against termination, we affirm.

I. Background Facts and Proceedings.

Kayce is the mother of a girl, B.J., born in 2007, and boy, W.J., born in 2008. In October 2010, a child abuse assessment was conducted in Fayette County after B.J. was found alone at about 4 a.m. two stories below her apartment trapped in the laundry room. The apartment building maintenance man stated the child had been outside unattended the month before. Upon inspection of the apartment, the child abuse investigator found that although a hook had been placed on the door to keep B.J. in the apartment, the hook had been pulled out. The investigator also found garbage, old food, and dirty diapers on the floor accessible to the children. Because the investigator found the residence unsafe and unsanitary, the abuse report was founded against Kayce

¹ Iowa Code section 232.116(1)(h) allows the termination of parental rights if it finds all of the following have occurred:

- (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.

and her live-in partner, Martin R.,² for failure to provide adequate shelter. However, the allegation of inadequate supervision was not founded.

During the child abuse assessment, Kayce provided information that the family had moved from Oklahoma to Iowa in August; she had just had a miscarriage; she had previously voluntarily surrendered her parental rights to four other children as she was unable to care for them;³ she had had prior involvement with departments of human services in other states; she had seen a therapist in the past; she was married to Charles J., who was physically abusive to her and to the children; and she was returning to Oklahoma to get a divorce. The children were left in the mother's care and the Department of Human Services (DHS) offered family-centered services.

On January 4, 2010, a child-in-need-of-assistance (CINA) petition was filed and, on February 12, the children were adjudicated CINA as defined in Iowa Code section 232.2(6)(c)(2) (failure of parent to exercise reasonable supervision) pursuant to the parties' stipulation. DHS was ordered to provide family safety, risk, and permanency (FSRP) services focusing on child safety, parenting skills, and homemaking skills; Area Education Association services; and a psychological evaluation for Kayce.

A dispositional hearing was held on April 9, 2010. The juvenile court made the following findings:

² Charles J. is listed as the father on both children's birth certificates; he and Kayce were married at the time these children were born. Martin R. is the putative biological father of W.J. Both men's parental rights have been terminated and neither appeals.

³ Kayce stated she had four older children, ages five to eleven. She testified she voluntarily gave up her rights to two children in a private action in Kansas and to two children in a state action in Missouri. She moved to Texas from Missouri in 2007 to avoid B.J. being removed from her care.

The children's mother participated in a psychological evaluation. She was diagnosed with a generalized anxiety disorder, attention deficit hyperactivity disorder, and polysubstance abuse in full remission. Individual therapy was recommended and she has an appointment to begin the same [B.J.] is in Early Headstart. [W.J.] has shown some aggression. . . . The children's mother had been keeping company with Billy [S.], although that relationship is reported to have ended. The home is now reported clean and there are no safety concerns for the children. The children's mother is reported cooperative with parenting training.

Kayce did not request additional services and the children remained in her custody.

On May 3, 2010, Kayce contacted her case manager, DHS social worker Rudy Schaff, and asked that he do a record check on Robert H. On May 4 Schaff notified Kayce that a record check in Florida, Robert's prior residence, indicated he was a sex offender. Schaff advised Kayce that Robert was not to care for the children or live with the family. Kayce assured Schaff that Robert was living with his sister elsewhere.

Kayce and the children were evicted from their home on May 6. On May 10, Kayce and Robert applied to stay at a Salvation Army homeless shelter in Black Hawk County. They provided a certificate indicating they had been married on May 6, 2010. On May 18, 2010, a Black Hawk County social worker visited with Kayce and Robert, at which time they denied they were married or residing together. It was determined Robert was required to register as a sex offender in Iowa.

Schaff then filed an application for temporary removal of the children in the Fayette County CINA proceeding. The application was accompanied by an affidavit in which Schaff asserted Kayce was "allowing a known sex offender to

live in her home and have responsibility for the care of her 2 and 3 year old children” and “ha[d] lied to this worker to protect her relationship with a known sex offender to the detriment of her children.” A temporary removal order issued on May 19, 2010. However, Kayce took the children and left the state before the removal occurred.

A May 25, 2010 order setting the temporary removal matter for hearing indicated “[t]he children were located in Oklahoma and are being returned to Iowa today.” The children were placed in foster care upon their return to Iowa.

On June 4, 2010, a temporary removal hearing was held. The juvenile court noted the mother “recognizes her marriage to [Robert] was a mistake and will be seeking either an annulment or dissolution of marriage.” The court also noted the mother “has resumed mental health counseling” and was to receive FSRP services and supervised visits with her children. The court also ordered DHS to provide FSRP services focusing on parenting skills, child safety, and co-dependency, mental health treatment for the mother, AEA Early ACCESS developmental services for the children, HeadStart, and housing referral for the mother.

The following responsibilities were listed for the mother on the “Refrigerator List,”⁴ which is dated June 16, 2010:

1. Find housing that is appropriate, safe and clean.
2. Find employment, stay employed and be consistent in her employment.
3. Mental health at NEIBH . . . consisting of:
 - a. Counseling—co-dependency, regulating emotions related to anger management and irritability.

⁴ The “refrigerator list” explains “[w]hat each person must do to make this plan work.”

b. Medication management ADHD and borderline personality.

4. Make every scheduled appointment with the FSRP provider.
5. No serious relationships or moving in together with a man and no introducing another man into the children's lives.
6. Make all scheduled visits, be appropriate and interactive with the children.

In a July 2, 2010 modification order, the juvenile court noted the guardian ad litem (GAL) believed W.J. was suffering from high levels of aggression that may be attributable to lack of consistent parenting, and B.J. was suffering from a speech delay that may be attributable to hearing problems. The court also noted the mother was working on obtaining longer term housing and employment and continued to need to "work on co-dependency issues and controlling her emotions to ensure her children's safety by avoiding romantic involvement with men who pose a danger to the children." The children were moved to family foster care in Delaware County. DHS was ordered to continue to provide FSRP services, mental health counseling for the mother, and developmental services for the children. DHS was also ordered to provide medication management for the mother, health and education information concerning the children to the foster care provider, and paternity testing for Martin R. The court set November 2010 as a target date for the children to be returned home or some other permanent placement made.

On September 14, 2010, the mother filed a motion for a thirty-day home trial placement. She asserted she was in compliance with the case plan and DHS had refused to make reasonable efforts at reunification. The GAL resisted.

On October 8, 2010, a review hearing was held. In its review order, the court outlined the mother's several moves and her many relationships with men

in the course of these proceedings. The court noted the mother reports her current boyfriend, Justin, has a bad temper.⁵ The court wrote in part:

[C]ontrary to the directions of the Department and case plan, she entered into a romantic relationship with [Justin]. She became pregnant, although in August 2010, she lost the child. Justin is reported living with his mother in Independence, but spending several nights per week in Oelwein in the apartment of the children's mother. She has been in the company of Justin's friend Dave, who is a registered sex offender and danger to the children. She was involved in a bar fight with one of Justin's former girlfriends and suffered internal injuries and two broken ribs. She is also now reported having a new friend, Robert, in whose apartment she spent the night. She has not demonstrated the ability to refrain from repeated romantic encounters even at the cost of losing her children.

The court further found the mother's lack of compliance with the case plan "indicative of lack of progress toward alleviating or mitigating the cause necessitating foster care placement." The court credited the mother with participating in a parenting class, but found she "has not demonstrated much in the way of nurturing her children as a result." Similarly, the court noted the mother had participated in individual counseling, "but has shown little improvement in issues of codependency." The court stated the children should remain in family foster care as placing them in their mother's care would "plac[e] them at risk of lack of a safe, stable home free of a continual stream of different negative romantic partners and friends and lack of proper nurture from a mother who has apparently chosen her romantic affairs over her children." The court stated DHS had made reasonable efforts toward reunification.

⁵ There is also an indication in the record that Justin is learning disabled and receiving disability.

A permanency hearing was held on December 17, 2010, to determine whether “the children should be returned home, the dispositional order be continued for six months, the institution of proceedings to terminate the parent-child relationship begun, or the entry of an order establishing a permanent placement for the children made.” The State and GAL recommended termination; the mother sought reunification, or a thirty-day home trial, or a six-month extension.

In its permanency order, the court noted the mother had had her marriage to Robert annulled in September; had recently obtained a one-bedroom apartment with HUD assistance; had recently obtained part-time employment at Wal-Mart; was intending to obtain other employment in January that “could be a permanent position” earning \$7.25 per hour plus commissions; had obtained a washer and dryer by placing them in the name of her “former boyfriend” Justin; had obtained a used car with the assistance of Justin’s mother “who took title to the vehicle and also obtained insurance for the vehicle since the children’s mother has no insurance”; had attended mental health counseling; was taking medications as prescribed; and had participated in FSRP services. The court also found:

While taught parenting skills, she is often unable to use what is taught and resorts to bribing the children with sweets and other treats. The children are reported unmanageable for several days after visitation. Visitation previously was three hours twice per week but was recently reduced to three hours once per week. [Shari] Payne [of Lutheran Services of Iowa] observed very little interaction between the children’s mother and the children. She is content with allowing [B.J.] to watch a movie for 2 of the 3 hours of a visit. She will interact with [W.J.] but only if he throws a tantrum. Most problematic has been the mother’s failure to prioritize her children over male relationships.

The court listed the numerous services provided to the mother and children and stated, "The children's mother has not requested additional or more intensive services." The court concluded:

The placement of the children in family foster care continues to be necessary because the children's mother has not demonstrated an ability to prioritize her children over her male relationships. Proceedings for termination of parental rights should be commenced because the children are just 3 and 2 years of age and require a stable placement.

A petition to terminate parental rights was filed on December 17, 2010, and on March 7 and April 15, 2011, a termination hearing was held. At the hearing, Schaff recommended termination of Kayce's parental rights. With respect to the "refrigerator list" of expectations DHS had of the mother, Schaff testified Kayce had obtained housing, but often allowed others free access to the house, sometimes not knowing who they were. As for employment, Schaff stated Kayce had recently quit working at Wal-mart, which provided stable income, to pursue a telemarketing job, which had not panned out. He acknowledged Kayce had been attending counseling and her therapist indicated she was "making progress." As to the mother's request for more visits, Schaff stated he had not agreed to more visitations because "of the behaviors of the children once they returned home from a visit."

Schaff stated the "biggest bone of contention" was with the agreed upon expectation that the mother not enter into serious relationships. He stated he and Kayce fundamentally disagreed on what constituted a "relationship": Schaff testified, "I believe that when you have a relationship with a man and you're having sexual intercourse with that person and you get pregnant by that person

that that's a relationship." Schaff was asked why having no relationships with men had become a goal of the case plan. He responded:

Because I had seen in the past, that was the pattern, she had had several different men coming through these children's lives. The children were—I use the term feral; their language skills were very, very rudimentary, they were very uncontrollable in their actions and their behaviors. Um, and just no discipline at all with these children. And I wanted her to be able to focus on these children, focus on herself, getting herself stable and in a home, employment, you know, getting away from having to be reliant on others and focus on caring for the needs of her children in the whole area of needs, not just physical needs, but emotional, you know, disciplinary needs.

Shari Payne testified she had been the family support worker providing FSRP services to Kayce and the two children since November 2009. She provided individual sessions with Kayce (“focusing on completing her refrigerator list”) and parenting skills during the weekly three-hour supervised visit. She expressed concern with Kayce's lack of consistency in parenting, which led to W.J. hitting, spitting, acting out for some time after the visits. Payne also expressed concern about Kayce's lack of consistent income. Payne opined Kayce had not made sufficient progress with respect to co-dependency issues. Payne thought Kayce had made progress on her anger management issue and stated she was taking her medications for anxiety and depression.

The children's foster mother testified the children's behavior was “extreme” when they came to live with her in May 2010: B.J. was very withdrawn and compulsive; W.J. had aggressive temper tantrums. However, with consistent discipline and expectations, the children are “markedly improved.” She stated the problems with the children's behavior after visits to the mother are not so pronounced at present “because they know there's a here and there's a

there. They've learned that here and there are different." Now, she said, "[t]he visits are all about the toys." The foster mother stated the children have "never asked or cried for or inquired about their mom, not once in injury, in pain, in illness in the entire ten months they've been with me." She also stated Kayce had never called the children at her home even though that was an option.

The foster mother also testified that she was familiar with the prospective adoptive couple who have been providing occasional care for B.J. and W.J. She stated that W.J. tested limits the first three visits, but he now "knows exactly what is expected of him and he's done remarkably well, remarkably. The last two weeks ha[ve] been a dramatic improvement in his temperament over daycare."

Kayce testified no one ever told her she could call her children at the foster home. When asked about Ms. Payne's concerns about Kayce's follow-through of the recommended parenting techniques, she responded:

I have tried some of them. Like we said when we were in court in December, I don't always follow through with them. I try them, if they don't work I usually try something else. I went through a parenting class, okay, I passed that class with no problem at all. I'm not sure why there's—I mean if there was no problem with my parenting when this first started and now all of a sudden it's a problem. I get my children three hours a week. I don't want to constantly be there constantly be getting onto my son. I would like to be able to spend some time with my children without having to holler at them or make them take time outs the whole visit.

. . . .
 . . . I want to spend some time with my children and not them think I'm just some big meany because I have to constantly get onto them.

As to Schaff's concern about her leaving her apartment door unlocked, Kayce stated she did so to help with the family upstairs. She stated she had been working for the family upstairs "for a couple weeks now" and she quit

working at Wal-Mart as “it was just ended up costing too much to go back and forth.”⁶ She stated the woman upstairs paid her about \$100 to \$150 per week to help cook, care for the woman’s disabled husband, and provide clerical assistance.

Kayce stated she had obtained a one-bedroom HUD home and if the children were returned to her she would qualify for a three-bedroom. She stated that her current contract ends in November but she was confident she could continue to qualify for HUD housing even if she did not have any income.

Kayce stated no one else was living in her apartment. She denied being in any relationship and stated she had “backed the relationship off” with Justin after she miscarried his child. Kayce stated, “I haven’t seen Justin like relationship-wise in a while. We are friends.” She said Justin was sometimes at her house; she was buying a car from his mother but Justin was paying her monthly for the car so he could have it when he got his license back in 2013; and that Justin’s mother, Rhonda, was her “biggest help . . . Rhonda is like the one person that I know that will always be there.”

Kayce asked the court to return her children to her care, “[o]r at least extend it for six months or something so that I can prove that I can do this.”

The juvenile court terminated Kayce’s parental rights. The court found the mother had obtained acceptable housing:

⁶ Kayce testified she quit Wal-Mart because her part-time hours did not cover her transportation costs. She stated she was providing assistance to her neighbors, was a Scentsy consultant (Payne testified Scentsy is a wickless candle product), was “doing Passion parties” (home sales of adult novelty products—Kayce stated, “we do it in my house because it’s more a concealed place, but it’s money. I normally try to go to other people’s houses because I don’t like doing it at my house”), and was taking on-line classes to become a wedding planner.

Unusually, however, a family resides upstairs in the building and the children's mother leaves the door between the two apartments opened and unlocked. While she is currently residing alone, she has frequently allowed homeless people and other people to stay overnight in her home. She is not even certain of the last names of these people or whether they have a history that may pose a risk to the children if present there.

The court noted the mother "admits that she is unable to accept the authority of others including her employers."

She now claims to be providing some nursing and transportation services to the husband of the family residing upstairs in her apartment building HUD requires that the children's [mother] maintain regular employment if she is to maintain her subsidized housing.

The court found the mother's "co-dependency issues remain unresolved," expressing doubt as to the mother's claims to have ended her relationship with Justin.

The court noted the mother's unwillingness to implement parenting techniques and found the "Department has justifiably been resistive to [the mother's request for additional visitation] given the lack of progress in parenting and the children's regression after visitation." The court found that to return the children to her custody would subject them to imminent risk of neglect, harm due to lack of supervision, and a "lack of proper care as a result of their mother's mental condition." The court noted the four prior voluntary terminations of parental rights and the prior services offered to the mother. It found the mother's "neglect and lack of parenting her older children indicative of the future the children in interest would have if returned to her care." The court did not find the bond between mother and children to be a factor against terminating her parental rights.

On appeal, the mother contends the statutory grounds have not been proved; termination is not in the children's best interests; the State has not made reasonable efforts toward reunification; and there are factors that weigh against termination.

II. Scope and Standard 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). Although we are not bound by them, we give weight to the court's findings of fact, especially when considering the credibility of witnesses. Iowa R. App. P. 6.904(3)(g). The State must prove grounds for termination by clear and convincing evidence. *P.L.*, 778 N.W.2d at 34, 39. 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. Iowa Code § 232.116(3); *P.L.*, 778 N.W.2d at 39.

III. Analysis.

A. Statutory grounds. Iowa Code section 232.116(1)(h) allows for the termination of parental rights if a child is three years of age or younger, has been adjudicated CINA, has been removed from the physical custody of the child's parents for at least six months of the last twelve months, and there is clear and convincing evidence that the child presently cannot be returned to the parent's custody. There is no dispute the first three elements of this section have been proved. However, the mother contends that having met all items on her "refrigerator list," there is not clear and convincing evidence the children cannot be returned to her care at the present time.

We reject the mother's claim that she has accomplished all the items on her "refrigerator list."⁷ While the mother has made recent progress in gaining housing, her lack of stable employment threatens that housing. And even though she may have attended the majority of scheduled visits, she has not shown stable, predictable parenting skills. Additionally, the juvenile court found the mother's claim that she had ended her most recent romantic relationship not credible.

These children have been out of their mother's care since May 2010. The children, particularly W.J., need a structured, predictable, stable environment. The mother's "open door policy" in her home is the opposite of a stable environment. Historically, the mother has introduced a number of male acquaintances and partners into her life and the lives of her children. She continues to lack insight into the effect her choices in companions has on her children. She does not provide consistent parenting techniques at visits. After visits with their mother, the children have displayed very negative behaviors, to the extent that visits were reduced. The children currently see their mother for three hours of supervised visits a week. The State has met its burden of proving the children cannot be safely returned to the mother's care at the present time.

"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) (citation omitted). The legislature incorporated time limits in its statutory

⁷ Additionally, as noted earlier the list explains "[w]hat each person must do to make this plan work." While meeting those expectations is required, it may not be sufficient to allow the safe return of children.

scheme: under section 232.116(1)(h)(3), if a child is age three or younger, that time limit is met if 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.” The public policy of the state having been legislatively set, we are obligated to heed the statutory time periods for reunification.

B. Best interests of the children. In considering whether to terminate, our primary considerations are the child’s safety; their physical, mental, and emotional condition and needs; and the placement that best provides for the long-term nurturing and growth of the child. Iowa Code § 232.116(2); *P.L.*, 778 N.W.2d at 37. Here, we agree with the juvenile court that the best interests of the children “would be served by adoption by a family capable [of] providing the children with the structure, nurture, and attention they require.”

C. Reasonable efforts. Iowa Code section 232.102(5)(b), with exceptions not applicable here, provides that “reasonable efforts shall be made to make it possible for the child to safely return to the family’s home.”

[T]he reasonable efforts requirement is not viewed as a strict substantive requirement of termination. Instead, the scope of the efforts by the DHS to reunify parent and child after removal impacts the burden of proving those elements of termination which require reunification efforts. The State must show reasonable efforts as a part of its ultimate proof the child cannot be safely returned to the care of a parent.

. . . We have repeatedly emphasized the importance for a parent to object to services early in the process so appropriate changes can be made. Thus, in considering the sufficiency of evidence to support termination, our focus is on the services provided by the state and the response by [the parent], not on services [the parent] now claims the DHS failed to provide.

C.B., 611 N.W.2d at 493–94 (citations omitted).

The mother argues the denial of her request for increased visitation shows that reasonable efforts have not been made. We disagree. Here, numerous services have been offered to the mother for more than one year. Throughout the proceedings, the juvenile court consistently found that reasonable efforts were being made. The mother did not request additional services, but did ask for increased visitation in September 2010. The juvenile court found, and we agree that, DHS “has justifiably been resistive” to increased visitation “given the lack of progress in parenting and the children’s regression after visitation.”

D. Section 232.116(3) factors. The court need not terminate parental rights if the court finds “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). The mother argues the court erred in terminating her parental rights as she “has an established bond with her children.” The evidence is to the contrary. In fact, the foster mother opined it was unusual that these children not once asked for their mother. We find no pertinent factors weighing against termination in section 232.116(3) are present.

IV. Conclusion.

Because the statutory grounds have been proved, termination is in the children’s best interests, reasonable efforts at reunification have been made, and there are no factors that weigh against termination, we affirm.

AFFIRMED.