

IN THE COURT OF APPEALS OF IOWA

No. 1-474 / 11-0406

Filed July 13, 2011

**IN THE INTEREST OF T.S.S., O.G.S.,
B.A.S., M.A.S, and L.P.S.,
Minor Children**

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

Appeal from the Iowa District Court for Buchanan County, Daniel L. Block,
Associate Juvenile Judge.

A mother appeals the termination of her parental rights to her children.

AFFIRMED.

Amy R. Dollash of Kollmorgen, Schlue & Zahradnik, P.C., Belle Plaine, for
appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, Alan W. Vanderhart, County Attorney, and Karl Moorman, Assistant
County Attorney, for appellee.

Craig Ament, Waterloo, for father.

Linnea Nichol, Waterloo, attorney for minor children.

Andrew Abbott of Abbott Law Office, P.C., guardian ad litem for minor
children.

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

TABOR, J.

A mother appeals the termination of her parental rights to five of her children who range in age from three to eleven. She contends the State failed to prove the grounds for termination by clear and convincing evidence and that termination is not in the children's best interests. After more than three years of the mother receiving services to correct the parenting deficiencies that led to the children-in-need-of-assistance (CINA) adjudication, those circumstances continue to exist. Because the record shows the children cannot be safely returned to the mother's care now or in the near future, we affirm the juvenile court order terminating her parental rights.

I. Background Facts and Proceedings.

The Department of Human Services (DHS) focused its attention on this family in the fall of 2007 when the children's older sibling, K.S.,¹ reported she was being sexually abused by the father.² The DHS removed K.S. from the home and placed her in family foster care after the mother refused to participate in services. For nearly one year, the mother denied that K.S. suffered abuse and only stopped supporting her husband when he admitted sexually abusing their daughter.

In July 2008, L.S., M.S., O.S., and B.S. were adjudicated in need of assistance (CINA).³ T.S. was adjudicated CINA in December 2009. In June

¹ K.S. is not the subject of these proceedings.

² The juvenile court terminated the father's parental rights to the children at issue. He did not contest the terminations and does not appeal.

³ The court adjudicated another child, I.S., as a CINA but in December 2010, all parties stipulated to the entry of permanency orders for placement in family foster care in

2009, K.S. was returned to the mother's care. By September 2009, all seven children were removed from the mother's care due to allegations of sexual contact between the children, the prior sexual abuse, and concerns about the mother's ability to adequately supervise the children. None of the children have been returned to the mother's care since that time. In fact, visitation between the mother and the children is supervised and takes place in a therapeutic setting because, as the juvenile court found:

Previously during unsupervised visitations the children have reported being verbally and physically [intimidated] by [the mother] and the older children after purportedly telling family secrets. This includes incidents of flushing the children's heads in the toilet, projecting blame on the children for their comments to professionals, the younger children being left unsupervised and allegations of further sexual perpetration between the children while in the mother's care.

For her part, the mother denied or minimized the concerns about her parenting and portrayed herself as a victim. A psychosocial evaluation completed in April 2010 found the mother to be "complex, defensive, and to have difficulty in acknowledging personal problems of a psychological nature." Her psychological make-up causes difficulties in reunifying her with the children. Instead of admitting that she needs to improve her parenting skills, the mother blames others and seeks out others whom she believes will support her beliefs.

On October 10, 2010, the State filed petitions to terminate the mother's parental rights to L.S., M.S., O.S., B.S., and T.S. The juvenile court held hearings in December 2010. On February 28, 2011, the court terminated the

accordance with the child's wishes. The court dismissed the termination petition regarding this child. He is not the subject of this action.

mother's parental rights pursuant to Iowa Code sections 232.116(1)(d), (f), and (h) (2009). The mother appeals the termination order.

II. Standard of Review.

We review termination orders de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). The juvenile court's findings of fact do not bind our decision, but should be accorded weight, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). Our court will uphold an order terminating parental rights if there is clear and convincing evidence of grounds for termination under Iowa Code section 232.116. *Id.* Evidence is "clear and convincing" when there are no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.*

III. Analysis.

The mother contends the State failed to prove the grounds for termination by clear and convincing evidence. She also asserts termination is not in the children's best interests.

The juvenile court terminated the mother's parental rights pursuant to three subsections. To affirm, we need only find termination appropriate under one of those grounds. 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.").

The court may terminate parental rights under section 232.116(1)(d) where the State proves by clear and convincing evidence the following:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

The mother does not dispute the first element was proved, but argues she has “more than adequately addressed” the circumstances that led to the CINA adjudication.

In support of her argument, the mother points to the testimony of psychologist George Harper, who provided her therapy known as Eye Movement Desensitization and Reprocessing (EMDR) for six sessions during the fall of 2010. The EMDR therapy was intended to address past traumas related to physical abuse the mother alleged to have suffered in her two marriages. Dr. Harper testified the mother successfully completed the EMDR therapy, which he believed “sets the stage for [the mother] to begin developing psychologically to become more and more mature.” He could not render an opinion as to whether she had advanced in her parenting skills and had “no information” about whether she was learning or receptive to new techniques for dealing with family dynamics. He could only testify that as of September 2010, months before the termination hearing, the mother was in a position to begin working on the issues that led to the CINA adjudication if she chose to continue her therapy.

We conclude the record is replete with evidence showing the circumstances that led to the CINA adjudication continued to exist at the time of

termination. Diane Schaeffer, a therapist who had been working with the family for almost two years, opined that based on her observations of the mother and the reports of the social worker and other providers, the mother's ability to supervise or discipline the children had not improved significantly. The juvenile court gave "great weight" to this therapist's testimony.

Other providers also testified the mother had not made significant progress on the issues that led to the CINA adjudication. John Upshaw, who provided play therapy for two of the children for more than one year, testified the mother's difficulty in providing proper parental supervision had not changed. Jamie Porter, who offered the mother help with her parenting skills and supervised visits for more than two years, testified she did not find the mother able or willing to implement what she had been taught. Deena Smock, who also supervised visits and worked with the mother on parenting skills on a weekly basis for more than one year, testified she continued to have qualms about the mother's ability to supervise and nurture her five children. The court-appointed special advocate, who had been involved with the family since the fall of 2008, testified the safety concerns that existed at the time of the children's removal still existed at the time of the termination hearing.

Because clear and convincing evidence shows the circumstances that led to the CINA adjudication continue to exist, we conclude termination is appropriate under section 232.116(1)(d).

The mother next argues termination was not in the children's best interests. In determining best interests, we must consider 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. *In re P.L.*, 778 N.W.2d at 37. The children's best interests require termination. The mother is unable to supervise the children and ensure their safety. Despite receiving services to correct her parenting deficiencies for more than three years, the children will continue to be exposed to harm if returned to their mother's care. The harm to the children generated by continued contact with their mother outweighs the mother's right to continue as their parent. *See In re C.S.*, 776 N.W.2d 297, 300 (Iowa Ct. App. 2009) (recognizing that at some point, the rights and needs of the children rise above the rights and needs of the parent).

Because the State proved the grounds for termination by clear and convincing evidence and termination is in the children's best interest, we affirm.⁴

AFFIRMED.

⁴ We note that the attorney for the mother filed an application for supplemental briefing or, in the alternative, asked for the matter to be set for full briefing. Our supreme court denied the request to file a supplemental brief, but submitted the question of full briefing for consideration with the appeal. Because time is of the essence in parental termination cases and because we find that the parties' petitions on appeal adequately illuminate the issues, we decline the request for full briefing.