

IN THE COURT OF APPEALS OF IOWA

No. 1-478 / 11-0703
Filed July 13, 2011

**IN THE INTEREST OF H.C. and S.C.,
Minor Children,**

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

Appeal from the Iowa District Court for Warren County, Kevin Parker,
District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Cathleen J. Siebrecht of Siebrecht Law Firm, Des Moines, for appellant
mother.

Diana Rolands, Osceola, for father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John Criswell, County Attorney, and Karla J. Fultz, Assistant
County Attorney, for appellee State.

Paul White, Des Moines, for minor children.

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

DOYLE, J.

A mother appeals the termination of her parental rights to her children. We review her claims de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

The children, S.C., born in 2001, and H.C., born in 2005, came to the attention of the Iowa Department of Human Services (Department) in January 2010, after it was reported that the family's home was very dirty, including dirty dishes and moldy food and piles of clothing everywhere. The children were reported to be dirty and smelling of urine. The heat and electricity had been shut off to the home. There were also allegations that the children had witnessed domestic violence between the mother and her paramour.

The Department's caseworker spoke with S.C., who had been staying with the maternal grandmother. S.C. related that the family's home was "gross," describing that dirty diapers were on the floor and that she had been bitten by fleas. She also detailed witnessing several instances of domestic abuse in the family's home.

The mother denied the domestic violence reports. However, she acknowledged her home was not clean. She stated that the pipes in the home had burst and that she and H.C. were staying with a friend. The mother also admitted she smoked marijuana. She agreed to a safety plan, which required that she and H.C. stay with the friend, but if the mother left, H.C. was to remain in the friend's care.

Five days after agreeing to the safety plan, the mother left her friend's home with H.C. The Department was unable to locate the mother and left her messages. When the mother returned the Department's call, she refused to tell

the Department where she and H.C. were. When the mother returned to her friend's house with H.C. on January 12, 2010, H.C. was temporarily removed from the mother's care.

On March 10, 2010, the juvenile court adjudicated the children as children in need of assistance (CINA), and it placed H.C. with his biological father and S.C. with her maternal grandmother, where both children have since remained. Thereafter, services were offered to the mother, including visitation, a substance abuse evaluation, drug screens, substance abuse treatment, family team meetings, a psychological evaluation, and Family Safety, Risk, and Permanency services. However, the mother participated minimally in the offered services. She continued to use marijuana throughout the case. After December 25, 2010, she had no contact with the children. She stopped all communication with service providers in February 2011.

In February 2011, the State filed its petition to terminate the mother's parental rights. Hearing on the petition was held on April 13, 2011. The mother testified she was living with a friend and was unemployed. She testified that her unemployment and limited funds had caused her to be unable to participate in services offered to her in the case. However, she acknowledged she had not seen her children since December 2010. She testified she had used marijuana throughout the case, but stated she had not used marijuana for two months. She acknowledged she had not provided any financial support to her children. She admitted that she was not in a position to have the children returned to her care at that time.

On April 25, 2011, the juvenile court terminated the mother's parental rights to H.C. and S.C. under Iowa Code sections 232.116(1)(b), (d), (e), (f), and (l) (2009).¹ 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)(f) where:

- (1) The child is four years of age or older.
- (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 twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

Here, S.C. and H.C. are both over four years of age, both were adjudicated as CINA pursuant to section 232.96, and both have been removed from the mother's physical custody for twelve consecutive months. Additionally, we find the evidence presented at trial clearly established the children could not be returned to the mother's care at that time. The mother had minimally participated in services in the case, and at the time of trial, she had not seen her children in almost four months. The mother had not addressed her substance abuse issues. Moreover, the mother agreed the children could not be returned to her care at that time. We find the State met its burden.

¹ As to grounds (e) and (f), the mother asserts the State's petition for termination of her parental rights "did not include those . . . sections as grounds for termination," and argues the juvenile court erred in terminating the mother's rights under sections (e) and (f). However, our review of the original court record in this case reveals the State's petition clearly set forth both grounds (e) and (f) as alleged grounds for termination in paragraphs nine and ten of the petition. We therefore proceed to the merits of one of the challenged grounds.

The mother also argues termination is unnecessary because both children were in the custody of relatives. Even though a court may find termination appropriate under Iowa Code section 232.116(2), a court need not terminate the relationship between the parent and child if any of the enumerated circumstances contained in section 232.116(3) exist. *P.L.*, 778 N.W.2d at 37. One of those enumerated circumstances is when “[a] relative has legal custody of the child.” Iowa Code § 232.116(3)(a). However, section 232.116(3) has been interpreted to be permissive, not mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). A court has discretion, based on the unique circumstances of each case and the best interests of the children, whether to apply this section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). Considering the children’s long-term and immediate best interests, we agree with the juvenile court that termination of the mother’s parental rights was in the children’s best interests. Although the record shows the children are placed in the custody of relatives, under the facts and circumstances in this case, we decline to apply section 232.116(3). Accordingly, we affirm the termination of the mother’s parental rights.

AFFIRMED.