

IN THE COURT OF APPEALS OF IOWA

No. 1-796 / 11-1454
Filed November 9, 2011

**IN THE INTEREST OF B.G., R.G., and R.G. Jr.,
Minor Children,**

**R.M.G., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Colin J. Witt, District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Lynn C.H. Poschner of Borseth Law Office, Altoona, for appellant mother.

Victoria Meade, West Des Moines, for father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Michelle Chenoweth, Assistant County Attorney, for appellee State.

Paul White, Des Moines, for minor children.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

DOYLE, J.

A mother appeals from the order terminating her parental rights to her three children. She claims (1) the State failed to prove the grounds for termination by clear and convincing evidence, (2) termination was not in the children's best interests, and (3) termination was not necessary because the children were in a relative placement. We review these claims de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

This family has a lengthy history with the Iowa Department of Human Services due to ongoing domestic violence between the parents. The father was first arrested for assaulting the mother in 2000 and has been arrested several other times since then for domestic abuse assault. The mother struggles with depression and has been hospitalized twice for suicidal ideations. As a result of these issues, the children were adjudicated as children in need of assistance (CINA) in November 2003 and again in April 2008. Both cases were successfully closed after the parents cooperated with services.

Despite those services, the family again came to the attention of the Department in February 2010 when the father assaulted the mother in front of the children. The mother said that he dragged her by her hair into their bedroom where he punched and kicked her. During this assault, she screamed for her two youngest children to come help her. The father threatened to kill her and took her cell phone so that she could not call the police. The next day, the mother was able to send a text message to her mother, asking her to call the police. The mother told the police the father has "assaulted her 'at least 500 times' in the past" and that she "has had '10-20 restraining orders on him' but . . . she always

had them dismissed.” The father was arrested and a five-year protective order prohibiting contact between the parents was entered.

The children were adjudicated as CINA pursuant to Iowa Code sections 232.2(6)(c)(2) and (n) (2009) in May 2010. They were allowed to remain in their mother’s custody under the supervision of the Department. In June 2010, immediately after a dispositional hearing at which the juvenile court reminded the parents they were to have no contact with one another, the parents took the children to an amusement park and spent the rest of the day together. The State filed a motion to modify the dispositional order, requesting the children be removed from their mother’s care and placed with the paternal grandparents. The court granted the State’s motion, and the children have since remained in their grandparents’ care.

The mother was initially cooperative with the services offered to her. She regularly visited her children and participated in weekly therapy sessions. She secured housing at a domestic violence center and found a job at a restaurant. The providers involved with the case were nevertheless hesitant to move forward with reunification given the parents’ history of violating protective orders and reuniting with one another.

These concerns were validated in December 2010 when the Department learned that the court-appointed special advocate assigned to the case and an employee of one of the parents’ service providers had seen the parents together. The mother denied having any contact with the father. But she refused to provide her new address to the Department so that drop-in visits could be

scheduled. Visitation between the mother and the children was accordingly suspended at the end of December.

The mother filed a motion to reinstate visitation in February 2011. The motion was denied following a hearing, and the juvenile court ordered the State to file a petition to terminate parental rights. After this turn of events, the criminal protective order between the parents was rescinded at the mother's request. The mother was asked to undergo urinalysis and hair stat testing because of concerns about her behavior. Her urine sample was dilute, and she refused to undergo the hair stat test, leading the Department to suspect she was using drugs.

The State filed a petition to terminate parental rights in March 2011. Neither parent attended the hearing on the petition. The juvenile court entered an order terminating the parents' rights to the children under Iowa Code sections 232.116(1)(d) and (e) (2011). The mother appeals.

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). In this case, we choose to focus our attention on section 232.116(1)(d). Under that section, parental rights may be terminated if the court finds by clear and convincing evidence the children were previously adjudicated as CINA and if, after services have been offered to the parents, the circumstances that led to the adjudication continue to exist. Iowa Code § 232.116(1)(d).

The mother argues the second element of section 232.116(1)(d) was not met because "[n]o one testified at the hearing on termination of parental rights claiming to have personal knowledge of [the parents] together. In fact no one

testified at the termination hearing at all.” While no testimony was presented at the hearing, the State offered several exhibits into evidence and the juvenile court took judicial notice of the current and past CINA cases.¹ Upon our de novo review of this evidence, we have no trouble concluding the circumstances that led to the adjudication continued to exist at the time of the hearing despite the numerous services offered to and received by the mother.

The children were adjudicated as CINA because the parents’ relationship was plagued by domestic violence. The father violently assaulted the mother in February 2010 in front of two of the children. This followed the successful closure only eight months before of a prior CINA case involving the same issues. A criminal protective order was entered, and the parents were repeatedly admonished to abide by it. They nevertheless continued to have contact with one another, prompting their oldest child to tell her mother, “You always pick him over us.” The protective order was eventually canceled at the mother’s request. The children’s therapist stated the parents’ “behaviors and actions have caused their children . . . untold amounts of pain and difficulty.” See *In re Marriage of Brainard*, 523 N.W.2d 611, 615 (Iowa Ct. App. 1994) (detailing the detrimental effects of violence between parents on children).

The mother’s continued involvement with the children’s father, despite their history of domestic violence, provides a strong basis for termination. See *In re L.B.*, 530 N.W.2d 465, 468 (Iowa Ct. App. 1995) (finding mother’s choice to remain with abusive husband prevented her from providing a safe, nurturing environment for the child). “It is essential in meeting a child’s needs that parents

¹ Neither parent appeared at the hearing.

recognize and acknowledge abuse. Meaningful change cannot occur without this recognition.” *Id.* (internal citation omitted). As the family’s caseworker stated, “It is clear that [the parents] do not feel their dysfunctional lifestyle has had a negative effect on their children because they continue the cycle.” See *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (stating evidence of a parent’s past performance signals the future quality of care that parent is capable of providing). When a parent is not capable of changing to allow a child to return home, termination is necessary. *In re T.T.*, 541 N.W.2d 552, 557 (Iowa Ct. App. 1995).

We further find the best-interest framework in Iowa Code section 232.116(2) supports termination of the mother’s parental rights.² The children have been in the care of their paternal grandparents, who wish to adopt them, since June 2010. See Iowa Code § 232.116(2)(b)(1) (stating the court should review the “length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining that environment and continuity for the child”). The oldest child was in favor of her parents’ rights being terminated, expressing to the caseworker that she “wants to move on with her life.” See *id.*

² We reject the mother’s assertion that the “juvenile court failed to make adequate specific findings regarding this code section.” See *P.L.*, 778 N.W.2d at 39 (stating any best interest findings under section 232.116(2) “should be contained in the judge’s decision”). The court’s termination order stated,

Nothing in the records indicates that these Parents have or soon will have the ability to provide a safe or long-term nurturing environment for these Children. The needs of the Child[ren] are being met in their current placement with the paternal grand[parents] based on the record provided to the Court.

We believe that statement, in conjunction with the factual findings that preceded it, was sufficient under *P.L.* given our de novo review of the record. See *Lessenger v. Lessenger*, 261 Iowa 1076, 1078, 156 N.W.2d 845, 846 (1968) (stating in a de novo review, we may “draw such conclusions from our review as we deem proper”); accord *In re Marriage of Rhinehart*, 704 N.W.2d 677, 680 (Iowa 2005) (“In undertaking our [de novo] review, we examine the entire record and *decide anew* the issues properly presented.” (emphasis added)).

§ 232.116(2)(b)(2) (directing the court to consider the “reasonable preference of the child” in making its best-interest assessment). By all accounts, the children are bonded with their grandparents and doing very well in their home. Termination will provide them with the safety, security, and permanency they deserve. See *P.L.*, 778 N.W.2d at 41.

Finally, we consider the mother’s argument that the statutory exception to termination in section 232.116(3)(a) should serve to preclude termination of her parental rights. That section states termination is not necessary if the court finds a relative has legal custody of the child. Iowa Code § 232.116(3)(a). The juvenile court declined to invoke the exception though the children were in the custody of their paternal grandparents. See *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 (stating section 232.116(3) is “permissive, not mandatory”). We agree with the court’s decision for the same reasons expressed above.

We accordingly affirm the juvenile court order terminating the parental rights of the mother to her three children.

AFFIRMED.