

IN THE COURT OF APPEALS OF IOWA

No. 1-840 / 11-1458
Filed November 23, 2011

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

M.M.B., Mother,
Appellant,

S.C., Father of B.M.B.,
Appellant.

Appeal from the Iowa District Court for Scott County, John G. Mullen,
District Associate Judge.

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

Lauren M. Phelps, Davenport, for appellant mother.

Stephen W. Newport of Newport & Newport, P.L.C., Davenport, for
appellant father of B.M.B.

Jean Capdevila, Davenport, for father of B.B.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Michael J. Walton, County Attorney, and Julie Walton,
Assistant County Attorney, for appellee State.

G. David Binegar, Davenport, for minor children.

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

DOYLE, J.

A mother and father appeal separately from the termination of their parental rights. We affirm on both appeals.

I. Background Facts.

M.B. is the mother of B.M.B., born May 2001; B.B. born October 2003; and J.J., born August 2006. The mother has a history of mental health issues, including diagnoses of depression, a personality disorder, and panic attacks, for which she is prescribed medications. She also has a history of unhealthy relationships. S.C., a registered sex offender, is the father of B.M.B. D.J., a registered sex offender, is the father of J.J.¹ Both the mother and S.C. have a history of founded child abuse assessments by the Iowa Department of Human Services (Department).

The children have numerous behavioral and anger issues, and all of them have acted out sexually. B.M.B. was diagnosed with attention deficit disorder, oppositional defiant disorder, and an adjustment disorder, for which he is prescribed medication. B.B. was diagnosed with “attention-deficit/hyperactivity disorder and post traumatic stress disorder, secondary to a history of neglect and abuse.” J.J. has significant developmental issues and has been diagnosed with disruptive behavior disorder as well as mild mental retardation.

A. The Mother.

The children were adjudicated children in need of assistance (CINA) in October 2008 after it was reported B.B., then age four, had gotten out of the

¹ The parental rights of B.B.’s father and J.J.’s father are not at issue in this appeal.

mother's home and the mother could not find him. He was found four hours later riding his bike home. When the Department's worker went to the mother's home to speak with the mother about the incident, concerns arose regarding the mother's relationship with her then paramour, J.D. The Department worker was informed J.D. had pushed B.M.B. off a mattress in anger due to the child not following directions and that there was fighting between the mother and J.D. in front of the children. B.M.B. reported he had seen J.D. smoking marijuana in front of him and his siblings, and there were other reports J.D. had been using cocaine. The mother denied J.D. used drugs in front of the children. A safety plan was put in place, and the mother agreed she would not allow J.D. to be around the children.

In early 2009, the mother agreed to have B.B. placed with his father, and it was believed the mother would be able to better handle just two children in her care. However, it was reported thereafter that the mother was not maintaining B.M.B.'s medication as he needed, and she was only taking B.M.B. to his counseling appointments sporadically. B.M.B.'s school reported B.M.B. had once walked to school at 7 a.m., along the highway, and the mother did not even know he had left the home until school personnel called her. There were reports the mother's home was unclean, with animal feces on the floor and pets eating off the table, sharing the children's food.

The mother also began dating J.J.'s father, D.J., again and allowed him to live with her and the children, despite her knowledge he was a registered sex offender and her agreement with the Department that she would not allow him to be around her children. The children later reported D.J. had sexually abused

them. B.M.B. and J.J. were then removed from the mother's care in November 2009. They have not since been returned to her care.

The children continued to exhibit behavioral problems in their placements. In April 2010, B.M.B. was removed from foster care due to severe aggressive and behavioral issues. He was placed in respite care for a week, only to be removed after acting out sexually with another child. B.M.B. was then placed in an inpatient pediatric psychiatric unit. In September 2010, B.M.B. was admitted to the Mental Health Institute (MHI) due to his lengthy and ongoing history of serious and dangerous behaviors displayed at home, school, and foster care. B.M.B. remains in the MHI awaiting a move into a Psychiatric Medical Institute for Children.

It was reported in August 2010 that B.B. demonstrated extreme behavioral problems after visits with the mother, including hiding knives under his mattress, urinating on the floor, and playing with fire. J.J.'s psychiatrist recommended the mother have limited contact with J.J. B.B. remains in the care of his father, who is continuing his therapy.

J.J.'s foster mother reported J.J. continued to act out sexually. She observed he ate food out of the garbage, and she believed he was drinking water from the toilet. He continued to display severe anger issues. J.J. remains in his adoptive foster home.

The mother received numerous services throughout the case. Although she acknowledged she had been involved in unhealthy relationships and her poor choices had allowed her children to be abused, she continued to associate with registered sex offenders throughout the case. In addition to her renewed

relationship with J.J.'s father, she also allowed a woman, who also had child custody concerns due to her own associations with sex offenders, and the woman's boyfriend to move in with her in 2010. In late 2010, she allowed a different woman and her sex offender boyfriend to move in with her. She did not admit until 2011 that the couple was living in her home, and she did not seem to comprehend the danger of letting such people reside with her. Rather than require the couple to move out, she sold her trailer to the couple and began looking for new housing. The mother then began missing visits with the children, citing apartment hunting and occasionally, sickness. The mother's failure to maintain visits upset the children and disrupted the structure required to maintain their behavioral issues.

The mother then moved to Illinois into a low-income apartment complex for elderly and disabled individuals that did not allow children. Her move to Illinois disqualified her from continuing her mental health counseling in Iowa. The Department then recommended the mother's parental rights be terminated, and the State in May 2011 filed its petition for termination of the mother's parental rights.

B. B.M.B.'s Father.

In 2003, the Department determined a report S.C. had sexually abused B.M.B. was founded. The Department also found S.C. had failed to provide B.M.B. proper supervision. A month later, the Department founded another report S.C. had sexually abused another child. The father was thereafter convicted of assault with intent to commit sexual abuse and sentenced to prison. A safety plan was put in place for the mother, and B.M.B. continued to reside

with her. The father was released in 2007 and has had no contact with B.M.B. since 2008.

After the CINA case was opened in 2009, the father requested he be allowed visitation with B.M.B. The Department required the father to complete a ten-step sex offender treatment program before it would consider allowing visitation with B.M.B.; however, he did not participate in the program and did not have any contact with B.M.B. during the case. The State in May 2011 also filed its petition for termination of S.C.'s parental rights.

II. Proceedings.

In August 2011, a hearing on the State's petition was held. The mother testified termination was not in the children's best interests and she would make the needed changes for reunification with her children. S.C. did not appear.

On September 12, 2011, almost three years after the CINA case was opened, the juvenile court entered its order terminating the mother's and S.C.'s parental rights. The court's order specifically terminated the mother's parental rights "pursuant to sections 232.2(6)(d), 232.2(6)(e), 232.2(6)(f), 232.2(6)(i), 232.2(6)(j), 232.2(6)(l), and 232.117." S.C.'s parental rights were terminated "pursuant to sections 232.116(1)(d), 232.116(1)(e), 232.116(1)(f), 232.116(1)(i), 232.116(1)(j), 232.116(1)(l), and 232.117."

The mother and S.C. now appeal, separately.

III. 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). 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.

IV. Discussion.

A. The Juvenile Court's Order.

The mother argues the juvenile court's order did not cite the appropriate sections and subsections for termination of her parental rights, citing section "232.2(6)" rather than "232.116(1)," and therefore her parental rights were not terminated under the order. However, she noted she believed it was a technical error. We agree it was merely a technical error and find the court's order terminated the mother's parental rights.

The State's petition set forth appropriate statutory sections, subsections, and paragraphs of grounds for termination of the mother's parental rights. The paragraphs cited in the juvenile court's order matched the State's corresponding paragraphs in the petition. The paragraphs cited in the juvenile court's order matched the paragraphs cited in the order for termination of S.C.'s parental rights, in which the court did cite section "232.116(1)." It is plainly evident the court's erroneous use of section "232.2(6)" rather than "232.116(1)" in its order was unintended and merely a typographical error. The mother acknowledges such, and she does not dispute she was on notice the State asserted those grounds for the termination of her parental rights. Furthermore, she concedes grounds for termination of her rights existed as to all three children. We find this issue to be moot. See *In re D.A.W.*, 552 N.W.2d 901, 903 (Iowa Ct. App. 1996).

B. Best Interests and Iowa Code section 232.116(3).

Both the mother and S.C. argue termination of their parental rights was not in the children's best interests. We disagree.

If a statutory ground for termination is determined to exist, the court may terminate a parent's parental rights. *P.L.*, 778 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 children. *Id.*

Furthermore, even though a court may find termination appropriate under 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. *See id.* Section 232.116(3)(a) provides termination is not required when a relative has legal custody of the child. Section 232.116(3)(c) provides termination is not required where it would be detrimental to the child due to the closeness of the parent-child relationship. The exceptions set forth in 232.116(3) have been interpreted as permissive, rather than mandatory. *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. In determining whether to apply this section, we consider the children's long-term and immediate best interests. *See P.L.*, 778 N.W.2d at 37. 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).

Taking the above mentioned factors into account, we conclude termination of the mother's and S.C.'s parental rights is in the children's best interests.

It 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. 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." *J.L.W.*, 570 N.W.2d at 781.

Here, S.C. has had no involvement in B.M.B.'s life since 2008. The mother has failed to make progress in the case, which has been open since 2008. Her children have been sexually abused in the past and now have severe behavioral disorders and trauma, yet as late as 2011 she continued to associate with sex offenders and miss visits with her children, demonstrating she has no understanding of the risk and harm her choices could and do cause her children.

The record reveals the children cannot be returned to the mother's care at this time, nor can B.M.B. be returned to S.C.'s care at this time, and the children should not be forced to wait for permanency.

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).

Neither of the parents has made changes to show he or she is going to be a safe parent to the children. We cannot maintain a relationship where there exists only a possibility the mother or S.C. will become a responsible parent sometime in the unknown future. Given the mother's overall lack of progress and S.C.'s minimal involvement during the case and lack of contact with B.M.B., we agree with the juvenile court that termination of parental rights was in the children's best interests. Under the facts of this case, we do not find the mother's bond with the children, B.M.B.'s placement in the MHI, or B.B.'s placement with his father to be sufficient reasons to refuse to terminate the mother's or S.C.'s parental rights. Likewise, under the troubling facts of this case and the severe suffering of these children, we do not find B.M.B.'s asserted wish to maintain a relationship with his parents to be a sufficient reason to refuse to terminate his parents' parental rights. Accordingly, we affirm the juvenile court's termination of the mother's and S.C.'s parental rights.

AFFIRMED ON BOTH APPEALS.