

IN THE COURT OF APPEALS OF IOWA

No. 2-044 / 11-1943
Filed February 29, 2012

**IN THE INTEREST OF D.B. and S.B.,
Minor Children,**

A.S., Mother,
Appellant,

K.B., Father of S.B.,
Appellant.

Appeal from the Iowa District Court for Linn County, Barbara Liesveld,
District Associate Judge.

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

Kara McFadden, Cedar Rapids, for appellant mother.

Robin Miller, Marion, for appellant father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Jerry Vander Sanden, County Attorney, and Lance Heeren,
Assistant County Attorney, for appellee State.

Michael Lindeman, Cedar Rapids, for minor children.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

DANILSON, J.

The mother of D.B.,¹ born in June 2002, and S.B., born in January 2004, as well as the father of S.B., appeal from the order terminating their parental rights. They contend the State failed to prove the grounds for termination by clear and convincing evidence and termination is not in the best interests of the respective child or children. Upon our de novo review, and considering the parents' continued substance abuse, their unwillingness to acknowledge any problem with substance abuse, and ongoing concerns regarding domestic violence in their home, we conclude grounds exist to terminate the mother and father's parental rights and that termination is in the best interests of the children. We affirm.

I. Background Facts and Proceedings.

The mother has four children, all with different fathers. The mother's older children, A.M., born in March 1996, and L.J., born in September 1999, are not involved in this appeal. Rather, the mother's younger two children, D.B. and S.B., are the focus of the instant proceedings. Apparently, the mother has a longstanding relationship with only one of the fathers of her children—the father of S.B.—who is also a party in this appeal. The mother and father continue to be in a relationship.

This family initially came to the attention of the Iowa Department of Human Services (DHS) in 2001. Between 2001 and 2009, seventeen child abuse assessments were completed on the family. Seven of the assessments were

¹ The parental rights of D.B.'s biological father were also terminated, and he does not appeal.

founded, for various issues, including presence of illegal drugs in a child's body, physical abuse, denial of critical care, and lack of supervision. The mother and father have a longstanding history of substance abuse and domestic violence. Both D.B. and S.B. were born positive for tetrahydrocannabinol. All four children were previously adjudicated children in need of assistance (CINA) in 2005 and 2006, and the family has received voluntary services numerous times since 2001. D.B. and S.B. have both been diagnosed with attention deficit hyperactivity disorder and require medication.

In August 2009, DHS became aware of an incident of physical abuse, perpetrated by the mother on A.M., who was thirteen-years-old at the time. Apparently, the mother and A.M. were arguing and the mother punched A.M. in the face with a closed fist and "anywhere on A.M.'s body that she could." The family was homeless at that time and was staying in hotels. It was reported the mother and father left the four children alone while they went to the casino at night, not to return until the following day. The mother and father also used illegal drugs in the home, although not in the same room as the children. The children witnessed physical abuse between the parents. It was also reported that the father grabbed the children by their necks and threw them against the walls. The mother and father both had criminal histories that included charges for violent crimes.

The children were removed from the parental home in August 2009. D.B. and S.B. were placed with the maternal grandmother; A.M. was placed with a friend of the family; and L.J. was placed with his father. The children were

adjudicated CINA in September 2009, by stipulation of the mother and the fathers of the children. The children's respective placements were continued.

Despite two years of services and removal of the children from the home, the parents did not demonstrate any significant improvement such that the children could be returned to the family home. On several occasions, visitation did progress to semi- and unsupervised, but repeatedly went back to fully-supervised when the parents failed drug screens. The parents denied the existence of substance abuse problems. Neither successfully completed substance abuse treatment. The number of failed drug screens, "no shows" for drug screens, or diluted tests in this case is significant. In addition, domestic violence between the parents continued to be "an ongoing concern"; however to the father's credit, he did complete a Batterers' Education Program (BEP) in October 2010.

The State filed a petition to terminate parental rights of D.B. and S.B.² in March 2011. In July 2011, D.B. and S.B. were placed with a foster family that has since expressed an interest in adopting them.³ A termination hearing took place over two days in September and October 2011. The State, guardian ad litem, and caseworkers unanimously recommended termination of the mother's and father's parental rights. The juvenile court entered its order terminating the

² In December 2010, the parties agreed to change the permanency goal for L.J. from reunification with the mother to placing custody of the child with his biological father. Custody of A.M. remained with DHS; she has alternatively resided in residential treatment and with a friend of the family.

³ The maternal grandmother was not physically or mentally able to care for the children long-term.

mother's and father's parental rights pursuant to Iowa Code sections 232.116(1)(d), (f), and (l) (2011). They now appeal.

II. Standard of Review.

We conduct a de novo review of termination of parental rights proceedings. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). Although we are not bound by the juvenile court's findings of fact, we do give them weight, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under section 232.116. *Id.* Evidence is considered "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.

Iowa Code chapter 232 termination of parental rights follows a three-step analysis. See *P.L.*, 778 N.W.2d at 39. The court must initially determine whether a ground for termination under section 232.116(1) is established. *Id.* If a ground for termination is established, the court must next apply the best-interest framework set out in section 232.116(2) to decide if the grounds for termination should result in a termination of parental rights. *Id.* If the statutory best-interest framework supports termination of parental rights, the court must finally consider if any statutory exceptions or factors set out in section 232.116(3) weigh against termination of parental rights. *Id.*

A. Grounds for Termination.

We need only find termination proper under one ground to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996). Section 232.116(1)(f) provides termination may be ordered when there is clear and convincing evidence a child four years of age or older who has been adjudicated a CINA and removed from the parent's care for at least the last twelve consecutive months cannot be returned to the parent's custody at the time of the termination hearing. Iowa Code § 232.116(1)(f).

At the time of the termination hearing, D.B. and S.B. were nine and seven years old. The children were adjudicated CINA in September 2009, due to concerns about the parents' substance abuse, denial of critical care, and violence in the family home. They have been removed from the home since August 2009. After receipt of more than two years of services addressed to alleviate these concerns, the mother and father continued to use drugs, and their "domestically violent relationship" remained "an ongoing concern."

Initially, the parents "lied about their continuing relationship with each other." In January 2010, the father assaulted the mother by punching her in the face. He was charged with domestic abuse assault and was ordered to complete BEP. He did complete BEP in October 2010. At that point, the parents admitted they were in a relationship and were living together, and began seeing a couples' counselor, Virgil Gooding.

Gooding conducted family counseling for the family. However, the juvenile court noted there was no follow through by the mother to "take active steps to demonstrate that she fully understands how to protect herself and her

children from ever being physically abused again.” In addition, Gooding opined he did not believe the parents were “being honest” and recommended termination of parental rights.

The mother and father repeatedly failed drug screens throughout these proceedings by testing positive for both cocaine and marijuana. The parents failed drug screens just two weeks prior to the termination hearing. In addition, as the juvenile court found especially troubling, the parents failed to acknowledge they had a substance abuse problem, and had not successfully completed substance abuse treatment. The mother changed her position between completely denying any drug use; offering excuses for failed drug screens, such as that her prescribed medication made her test positive; and admitting drug use, but blaming relapses on her “mental health issues” and feeling stressed. The father claimed he would stop using if he had the children back because “they would keep him too busy to use illegal substances.” As the court observed, it is clear that “[b]oth parents continue to struggle with their addictions.” Although the parents claim they are now willing to address their issues of substance abuse, we find their longstanding history of denial, dishonesty, and continued drug use cannot be ignored.

Our legislature has carefully constructed a time frame to provide a balance between the parent’s efforts and the child’s long-term best interests. *D.W.*, 791 N.W.2d at 707. “We do not gamble with the children’s future by asking them to continuously wait for a stable biological parent, particularly at such tender ages.” *Id.* (quoting *In re D.W.*, 385 N.W.2d 570, 578 (Iowa 1986) (internal quotations omitted); see also *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990) (“Children simply

cannot wait for responsible parenting. Parenting . . . must be constant, responsible, and reliable.”). Considering the extensive time and services that have been provided to the mother and father, we are convinced additional time would not result in reunification of this family. We find clear and convincing evidence that grounds for termination exist under Iowa Code section 232.116(1)(f).

B. Factors in Termination.

Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of section 232.116(2). *P.L.*, 778 N.W.2d at 37. In determining the best interests, this court’s primary considerations are “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.” *Id.* Taking these factors into account, we conclude the children’s best interests require termination of the mother’s and father’s parental rights. We agree with the juvenile court’s conclusions that the parents have demonstrated “they are unable to adequately supervise the children and meet their needs.” It is clear the parental home is not the best placement for furthering the children’s long-term best interests. As one care provider testified at trial:

[Since the removal,] what’s different is that the kids are not in the parents’ care and so the kids have been safe and there have been no new founded abuse reports. What’s the same is, to me, the fundamental issue in this case, which is the substance use by the parents and then how that affects negatively their ability to supervise the children, parent their children, [and] the increased likelihood that they’ll be domestically violent with each other.

C. Exceptions or Factors against Termination.

Finally, we give consideration to whether any exception or factor in section 232.116(3) applies to make termination unnecessary. The factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply the factors in this section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). We acknowledge, as did the juvenile court, that the children “have a strong bond with their parents.” In addition, termination of parental rights could cause a severance of the bond between these children and their older half-siblings. As one case provider opined, “[I]t would be best case scenario if D.B. and S.B. could remain in the same home and be adopted by the same family and still have contact with the other siblings.” However, as the case provider further observed:

I think, again, that S.B. and D.B. need and deserve permanency and a permanent home where they’re safe and free from violence perpetrated amongst the adults but also perpetrated on themselves. I think it’ll be hard for them to not see their mom and dad anymore. Definitely they’ll be sad. Definitely it’s upsetting and will be hard. But do I think that is more important or overrides their need to be in a permanent, safe, stable home? No, I don’t.

We agree. Under these circumstances, we cannot maintain a relationship where there exists only a possibility the mother and father will become responsible parents sometime in the unknown future.

IV. Conclusion.

There is clear and convincing evidence that grounds for termination exist under section 232.116(1), termination of parental rights is in the children’s best

interests pursuant to section 232.116(2), and no consequential factor weighing against termination in section 232.116(3) requires a different conclusion. We affirm termination of the mother's and father's parental rights.

AFFIRMED ON BOTH APPEALS.