

**IN THE COURT OF APPEALS OF IOWA**

No. 2-076 / 11-2033  
Filed February 15, 2012

**IN THE INTEREST OF D.E.,  
Minor Child,**

**M.L., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Louise Jacobs,  
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.

Mark Reed of Marberry Law Firm, P.C., Des Moines, for father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney  
General, John P. Sarcone, County Attorney, and Annette Taylor, Assistant  
County Attorney, for appellee State.

M. Kathryn Miller, Des Moines, for minor child.

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

**DOYLE, J.**

A mother appeals the termination of her parental rights, claiming there is insufficient evidence in the record to support the termination and termination is not in the child's best interests. We affirm the decision of the juvenile court.

**I. Background Facts & Proceedings.**

M.L. is the mother of D.E., who was born in September 2010.<sup>1</sup> Less than a month before the child was born, the mother's parental rights to two other children were terminated. M.L. had permitted registered sex offenders to care for these two children, and they were physically and sexually abused. M.L. has a history of associating with men who are harmful to her children. Additionally, there were concerns because she had at times left the children unsupervised. M.L. received services during the juvenile court proceedings for these children.

D.E. was removed from the mother's care on October 5, 2010, and placed with the maternal grandparents, who were also caring for the mother's two other children. The State filed a petition alleging D.E. was a child in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(c)(2) (2009). D.E. was adjudicated to be a CINA on November 4, 2010.

The State filed a motion to change the child's placement, noting D.E. had respiratory problems, there were numerous smokers in the grandparents' home, and there was a chaotic environment. On December 3, 2010, the juvenile court issued a disposition order and modification of the placement order. D.E. was placed in a foster home.

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<sup>1</sup> The father of the child consented to termination of his parental rights. He has not appealed the juvenile court order terminating his parental rights.

The State filed a petition to terminate M.L.'s parental rights on September 8, 2011. M.L. had completed a parenting class and participated in supervised visitation, but had done very little else to put herself in a position where she could care for the child on a full-time basis. M.L. had been ordered to have counseling, but she had not seen a therapist since December 2010. She had failed to obtain employment or stable housing.

The termination hearing was held on November 1, 2011. M.L. testified she recently started counseling again in September 2011. She obtained a job about a week or two before the hearing and had not yet received a paycheck. M.L. was living with a friend but had not paid him any rent since July. M.L. had difficulty admitting to the physical and sexual abuse of her two other children, stating she was not aware of it.

The juvenile court terminated M.L.'s parental rights pursuant to sections 232.116(1)(d), (g), (h), and (i) (2011). The court found M.L. "had a long-standing history of instability." The court noted M.L. had failed to establish financial independence and that her financial vulnerability contributed to her poor judgment. Also, M.L. had lived with many different people and/or in different situations during the juvenile court proceedings. Additionally, the court found M.L. "does not place a value on addressing her mental health issues which contribute to her poor decision-making." The court concluded termination of M.L.'s parental rights was in the child's best interests. M.L. appeals the decision of the juvenile court.

## **II. Standard of Review.**

The scope of review in termination cases is de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). Clear and convincing evidence is needed to establish the grounds for termination. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Where there is clear and convincing evidence, there is no serious or substantial doubt about the correctness of the conclusion drawn from the evidence. *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). “The paramount concern in termination proceedings is the best interest of the child.” *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011).

## **III. Sufficiency of the Evidence.**

On appeal, M.L. claims there is insufficient evidence in the record to support the termination of her parental rights. M.L.’s parental rights were terminated on four separate grounds. Where the juvenile court terminates parental rights on more than one statutory ground, we may affirm on any one of the sections cited by the juvenile court that is supported by clear and convincing evidence. *D.W.*, 791 N.W.2d at 707.

Termination is appropriate under section 232.116(1)(g) where:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family or a court of competent jurisdiction in another state has entered an order involuntarily terminating parental rights with respect to another child who is a member of the same family.

(3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.

(4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

The evidence clearly shows D.E. was adjudicated to be a CINA, and M.L.'s parental rights to two other children were terminated, fulfilling the first two elements of this section. As to the third element, we determine there is clear and convincing evidence that M.L. lacked the ability or willingness to respond to services that would correct the situation. Despite receiving services in the earlier juvenile case, as well as the present proceedings, M.L. had still not addressed her mental health issues that contributed to her poor decision-making. Furthermore, then as now, M.L. failed to take steps to establish financial independence. As the juvenile court noted, "[h]er financial vulnerability contributes to her poor judgment about with whom she associates since she appears unwilling or unable to be proactive in ensuring that the child's needs can be met without risk of harm."

Finally, in addressing the fourth element, we find there is clear and convincing evidence that an additional period of services would not correct the situation. As noted above, M.L. received services in the earlier juvenile case and in this one. She had still not, however, addressed the problems that led to the termination of her parental rights to her other children and the removal of D.E. in this case. The juvenile court found, "she did not progress to unsupervised visitation because she did not demonstrate an ability to discern what men were unsafe to be around her child, which was an issue of great concern in the cases involving her other children." We do not believe an additional period of time would correct M.L.'s parenting deficiencies.

#### **IV. Best Interests.**

M.L. claims termination of her parental rights would not be in the child's best interests. M.L. asserts she and the child had a bond that would be permanently disrupted by the termination of her parental rights.

Having found that a basis for termination has been established, we then apply the analysis found in section 232.116(2). See *D.W.*, 791 N.W.2d at 706-07. Section 232.116(2) provides:

In considering whether to terminate the rights of a parent under this section, the court shall give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child.

See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010) (applying the provisions of section 232.116 (2)). We may consider the ability of the parent to properly care for the child and whether there is another family willing and able to adopt the child. *D.W.*, 791 N.W.2d at 708. Additionally, “[w]e gain insight into the child's prospects by reviewing evidence of the parent's past performance—for it may be indicative of the parent's future capabilities.” *Id.* at 709 (citation omitted).

After considering the evidence in this case, and giving primary consideration to the safety of D.E., we conclude termination of M.L.'s parental rights is in the child's best interests. The juvenile court concluded:

There are ongoing concerns about the safety of the child if returned to the care and custody of either parent. The child needs a long-term commitment by adults who can be appropriately nurturing, be supportive of her growth and development, and who can appropriately meet her physical, mental, and emotional needs. The child is currently placed with a family that meet such criteria and who is willing to provide the child a permanent home by adoption.

We agree with the juvenile court's assessment. M.L.'s past performance as a parent led to the physical and sexual abuse of two of her children. Placement with M.L. would not further the "long-term nurturing and growth" of D.E., or further the "physical, mental, and emotional condition and needs" of the child. See Iowa Code § 232.116(2).

M.L. has not cited any exceptions for termination of parental rights under section 232.116(3). See *P.L.*, 778 N.W.2d at 40 (noting that if factors for termination of parental rights under section 232.116(1) and (2) have been established, then the court may consider whether an exception under section 232.116(3) exists). We therefore do not consider this section. See Iowa R. App. P. 6.903(2)(g)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue.").

We affirm the decision of the juvenile court terminating M.L.'s parental rights to D.E.

**AFFIRMED.**