

IN THE COURT OF APPEALS OF IOWA

No. 2-1135 / 12-1237
Filed January 24, 2013

**IN THE INTEREST OF K.M., D.M.,
J.M. and C.M.,
Minor Children,**

L.M., Mother,
Appellant,

R.M., Father,
Appellant.

Appeal from the Iowa District Court for O'Brien County, David C. Larson,
District Associate Judge.

A mother appeals the termination of her parental rights. **AFFIRMED.**

Melinda L. Román of Román Law Office, Spirit Lake, for appellant-mother.

Bethany Brands, Spirit Lake, for appellant-father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Micah J. Schreuers, County Attorney, and Lori J. Kolpin,
Assistant County Attorney, for appellee.

John M. Sandy, Spirit Lake, for intervenor.

Michael Johnson, Spirit Lake, for intervenor.

Tisha Halverson of Klay, Veldhuizen, Bindner, DeJong, DeJong &
Halverson, PLC, Paullina, attorney and guardian ad litem for minor children.

Considered by Doyle, P.J., and Mullins and Bower, JJ.

MULLINS, J.

A mother appeals from a juvenile court order terminating her parental rights to four children. The mother contends the State failed to present clear and convincing evidence of grounds for termination, termination was not in the children's best interest, the court should have granted additional time to work toward reunification, and statutory exceptions preclude termination. We affirm.

I. Background Facts & Proceedings

The mother and father are married to each other and have four children together: K.M. (born 2005), D.M. (born 2007), J.M. (born 2007), and C.M. (born 2010). Their relationship has been riddled with significant substance abuse issues, including the abuse of alcohol, methamphetamine, cocaine, ecstasy, marijuana, and prescription drugs. Reflecting on his relationship with the mother, the father stated, "We used [drugs] all the time and it was everything."

Both parents have a long history with the Department of Human Services (DHS). The mother's parental rights to her first child—a child not at issue in the present case—were terminated because of substance abuse issues. From March 2006 to July 2007, DHS filed three founded and two unfounded child protective assessments against the parents involving concerns of domestic violence and substance abuse.

In August 2010, DHS investigated reports of domestic violence and child abuse. After a domestic altercation between the parents, the father grabbed K.M. and left bruises on the child's arms. The mother then took the children to a safe home. When police investigated the allegations, they found the father

sleeping in a camper outside the family residence because the home did not have working utilities. Police discovered drug paraphernalia in the father's possession, and he admitted to using drugs with the mother in the family home.

On October 20, 2010, the children were adjudicated children in need of assistance. The parents did not contest the adjudication. The court placed the children with DHS for the purposes of foster family care placement.

On November 15, 2010, the mother was discharged from New Life Treatment Center after voluntarily spending over a month and a half in treatment. She agreed to work on supervision, substance abuse, mental health, and domestic violence issues identified in the case. The mother eventually moved into a transitional housing program in early 2011.

DHS placed D.M. and J.M. with the mother on April 8, 2011, for a trial period. On April 20, 2011, the mother had an episode at a court review hearing where she was loud, flopping around on the floor, and making suicidal threats. As a result, she was committed to a local psychiatric unit, and the children were removed from her care. D.M. and J.M. were placed with the maternal grandparents. On April 25, 2011, K.M. and C.M. were placed into relative care with the maternal aunt and uncle.

In June 2011, the mother alleged the father brought men into her home and raped her. She reported feeling like she was pregnant with twins, and indicated she could feel babies moving around inside her. She was also suspicious that her home was being watched, or bugged. She was again committed to a psychiatric unit. She was then discharged to a mental health

institute with concerns about hygiene and guarded, suspicious, paranoid, and delusional behavior.

A June 2011 psychological evaluation revealed the mother has “severe and longstanding mental health issues.” The evaluation indicated the mother is morbidly obese, has bipolar disorder with severe manic states, has borderline personality traits, struggles with polysubstance dependence, and is involved in an abusive relationship with her husband, the children’s father. After the evaluation, the clinical psychologist “did not feel that [the mother] was mentally stable to have her children back and that she is not able to take care of herself much less parent five young children.” The psychologist also reported that,

Due to the fact that [the mother] is not medication compliant, has longstanding mental health issues that she has not taken care of, is unemployed, is financially unstable, and is medically unstable, the examiner would in no way recommend that she have custody of her children. Also it appears that it will be a very poor prognosis for having her children back in her custody at any point in the future.

The father participated in a psychological evaluation in September 2011. According to the clinical psychologist, “It appears that this man is or has been deeply involved in the abuse of drugs.” The report noted, “During his drinking bouts, his chronic level of anger and irritability is greatly aggravated and may lead to irrational accusations and intimidation, if not brutality, toward family members.” The psychologist “recommended that he continue to comply with providers and that DHS stay involved with [the] supervision with his children. Because of his wife’s instability and the volatility of the relationship, it is not clear that the reconciliation would be a healthy environment for the children.”

The State filed a petition to terminate parental rights. On March 2, April 24, and April 25, 2012, the juvenile court held contested hearings on the State's petition. The father testified that he was in no position to resume caring for the children at that time, but requested additional time to work toward reunification. The mother did not testify. The State, DHS, and the children's guardian ad litem recommended termination. The juvenile court terminated the mother's and the father's parental rights to K.M., D.M., and J.M., under Iowa Code section 232.116(1)(f) (2011). The juvenile court terminated the mother's and the father's parental rights to C.M. under section 232.116(1)(h). The mother now appeals.¹

II. Standard of Review

We review decisions to terminate parental rights de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). While we give deference to the juvenile court's factual findings, we are not bound by them. *Id.* Our primary concern is the best interests of the children. *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007).

III. Analysis

A. Statutory Grounds

The mother asserts the juvenile court erred in finding clear and convincing evidence the children could not be returned to her care. The mother does not argue, and so concedes, the children have been adjudicated in need of assistance, have been removed for the requisite period of time, and are of the requisite age pursuant to section 232.116(1)(f)(1)–(3), (h)(1)–(3).

¹ The father's appeal was dismissed on December 11, 2012.

At issue is whether the State proved by clear and convincing evidence the children could not be returned to the mother's care at the time of the termination hearing as provided in section 232.102. See Iowa Code § 232.116(1)(f)(4), (1)(h)(4). To meet its burden to show the children cannot be returned to the mother's care, the State must present clear and convincing evidence the children have suffered or are imminently likely to suffer an adjudicatory harm upon return. See *id.* §§ 232.116(1)(f), .102(5)(a)(2), .2(6)(c); *In re A.M.S.*, 419 N.W.2d 723, 725 (Iowa 1988). The State need only show the child is likely to suffer an adjudicatory harm; it need not show that the circumstances leading to the original adjudication exist at the time of termination. *A.M.S.*, 419 N.W.2d at 725.

The father testified neither he nor the mother were in any position to take custody of the children at the termination hearing. The mother did not testify on her own behalf. She has a long, troubled history of substance abuse and mental instability. Despite recommendations to undergo intensive outpatient substance abuse treatment, the mother was not participating in substance abuse counseling or treatment in the months leading up to the termination hearing. Although the children have been exposed to substantial episodes of domestic violence, the parents have only minimally participated in couple's counseling to address these concerns. As evidenced by the mother's courtroom behavior on April 20, 2011, her refusal to manage her mental health medications and follow through with treatment recommendations places these four young children at an imminent risk of suffering adjudicatory harm under the mother's care. Upon our *de novo* review, we find the State presented clear and convincing evidence the children

could not be returned to her care at the time of the termination hearing. See Iowa Code § 232.116(1)(f)(4), (1)(h)(4).

B. Best Interests

The mother states the juvenile court erred in finding termination in the children's best interest. Iowa Code section 232.116(2) governs the best interest analysis. To determine whether terminating parental rights is in the children's best interests, the court must consider "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." *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010) (internal citations and quotation marks omitted).

The mother also contends the juvenile court erred in refusing to grant the parents additional time to work toward reunification. Iowa law has long established "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. Iowa courts "must reasonably limit the time for parent to be in a position to assume care of their children because patience with the parents can soon translate into intolerable hardship for the children." *In re A.Y.H.*, 508 N.W.2d 92, 96 (Iowa Ct. App. 1993) (internal citations and quotation marks omitted).

Beyond the assertion the juvenile court erred in its best interest analysis and in its refusal to grant additional time, the mother fails to set forth any facts or

argument supporting her position.² The mother's severe mental health issues, unresolved substance abuse issues, and volatile, often violent, relationship with the father create substantial safety risks for these young children. The children are in need of a stable, nurturing environment. The children have bonded to relatives who are ready, willing, and able to provide the children with the type of long-term, nurturing care they need and deserve. The mother's psychological evaluation concluded that she is unable to meet the physical, mental, and emotional needs of these children. Credible evidence supports that conclusion. It is unlikely granting additional time would change the mother's prognosis. We find no error under section 232.116(2), and no error in the court's refusal to grant the parents additional time to work toward reunification.

C. Statutory Exceptions

The mother alleges the juvenile court erred in finding the exceptions contained under Iowa Code section 232.116(3) did not preclude termination. The mother does not assert which exception she thinks should apply to prevent termination nor does she set forth any facts or argument in support of her contention.³ Under the facts of this case, only two exceptions could apply. The

² See Iowa R. App. P. 6.1401-Form 5 (requiring the appellant in termination cases to set forth findings of fact or conclusions of law with which the appellant disagrees and explain why).

³ As a general rule, "we will not speculate on the arguments [appellant] might have made and then search for legal authority and comb the record for facts to support such arguments." *Hylar v. Gardner*, 548 N.W.2d 864, 876 (Iowa 1996). In most cases the appellant's "random mention of an issue, without analysis, argument or supporting authority is insufficient to prompt an appellate court's consideration." *State v. Mann*, 602 N.W.2d 785, 788 n.1 (Iowa 1999); *Soo Line R.R. v. Iowa Dep't of Transp.*, 521 N.W.2d 685, 691 (Iowa 1994). The mother's brief does not set forth the "findings of fact or conclusions of law with which [the mother] disagree[d]" as directed under paragraph

court need not termination parental rights if (1) a relative has legal custody of the child and (2) there is clear and convincing evidence that the termination would be detrimental to the closeness of the parent-child relationship. See Iowa Code § 232.116(3)(a), (c).

Ostensibly, the mother argues termination is unnecessary because relatives have custody of the children, and termination would be detrimental to the parent-child relationship. See *id.* §. The exceptions contained under section 232.116(3) are permissive, rather than mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997), *overruled on other grounds by In re P.L.*, 778 N.W.2d 33 (2010). A court may decline to terminate parental rights when one or more factors under section 232.116(3) are present, but it is not required to do so. *Id.* In deciding whether or not to apply the section to preclude termination, the court must look to the child's immediate and long-term best interests. *Id.*

Notwithstanding an unsuccessful twelve-day trial period with the mother, the children have been out of the parent's home since August 2010. Both D.M. and J.M. expressed an unwillingness to return to the mother's care. Given the mother's severe mental health issues, unresolved substance abuse issues, abusive relationship with the father, and the children's best interests discussed above, we find no error in the juvenile court's decision under section 232.116(3). Upon our de novo review, we affirm.

AFFIRMED.

number 8 on Form 5 provided under Iowa Rule of Appellate Procedure 6.1401. Given the stake of innocent children in this action, we are hesitant to find the mother failed to preserve error with respect to these issues.