

IN THE COURT OF APPEALS OF IOWA

No. 2-113 / 11-1874
No. 2-114 / 11-2077
Filed February 29, 2012

**IN THE INTEREST OF S.J.F.,
Minor Child,**

**C.S.J., Mother,
Appellant,**

**W.F., Father,
Appellant.**

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

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

Kristin Denniger, Cedar Rapids, for appellant mother.

Edward Crowell, Cedar Rapids, for appellant father.

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

Cynthia Finley, Cedar Rapids, for minor child.

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

DANILSON, J.

A mother and father appeal¹ from the order terminating their parental rights to S.F., born in March 2009. They contend the State failed to prove the grounds for termination by clear and convincing evidence and termination is not in the child's best interests. Upon our de novo review, and considering the ongoing concerns regarding the parents' tumultuous and violent relationship; ongoing substance abuse; and lack of insight into appropriate parenting skills and potential dangers to the child, we conclude grounds exist to terminate the mother and father's parental rights and that termination is in the best interests of the child. We further conclude the juvenile court properly denied the father's motion to amend or expand and motion for new trial. We affirm.

I. Background Facts and Proceedings.

Prior to her removal, S.F. lived with the mother, father, and her half-brother, D.J. (the mother's son from a previous relationship). The family came to the attention of the Iowa Department of Human Services (DHS) in April 2010, due to an incident of physical abuse perpetrated by the father on D.J., when the father hit D.J. on the head with a sippy cup, causing him to have a bruise. S.F. had just turned one year of age at that time and D.J. was almost two years of age.

The incident resulted in a founded child abuse report against the father. A no contact order was issued between the father and D.J. The mother filed

¹ On January 4, 2012, the supreme court issued an order consolidating the mother and father's appeals for purposes of submission, but retaining separate docketing numbers for the petitions and responses. We therefore issue one decision addressing the parents' respective appeals.

assault charges against the father, but dropped the charges two days later because she needed him in the home to assist in paying rent. The father denied hitting D.J. with the sippy cup, but provided no explanation for the child's injury.

Upon further investigation, DHS observed the family home was in "very poor shape," and posed "several health and safety risks to the children," including cigarette butts on the floor, dirty dishes, old food, and other small items strewn throughout the home. The children's beds were covered with boxes and clothing.

There were also pending allegations of sexual abuse against the father to his step-children from a previous relationship. Those allegations ultimately resulted in a founded report of denial of critical care. The father's criminal history included charges for domestic violence, sexual abuse, disorderly conduct, and driving offenses. In 2008, he was charged with sexual abuse in the second degree, but pleaded to harassment in the first degree. He was scheduled to serve 20 days in jail for that charge, beginning on August 13, 2011.

The mother's criminal history included theft in the first degree, as well as 12-15 cases involving domestic violence, both as victim and perpetrator. She has a history of abusive relationships, marrying men with felony records, and being associated with persons who use drugs and are inappropriate to be around the children. She has had five children. The mother's parental rights to her three oldest children had been terminated and all were adopted. The mother acknowledged that she was previously placed on the child abuse registry for child neglect. The mother reported that she did not believe the father has

sexually abused a child and indicated she had left the father in a caretaker role for the children.

On April 20, 2010, the juvenile court entered a temporary removal order removing S.F. and D.J. from the family home. The children were placed in family foster care. In May 2010, they were adjudicated in need of assistance. S.F. has remained in family foster care since her removal from the family home. At some point during these proceedings, D.J. was placed with his biological father, where he remains. This appeal is in regards to the parental rights to S.F.

The parents were offered numerous services, including domestic violence counseling, mental health evaluations and treatment, drug testing, substance abuse evaluations, family team meetings, clothing and daycare funding, visitation, and safety planning. Despite more than one year of services and removal of the child from the home, the parents did not demonstrate any significant improvement such that the child could be returned to the family home.

The mother “has unmet substance abuse and mental health needs.” Her mental health needs relate to her history of depression. She also “has a long history of drug use without treatment.”

Substance abuse by the parents was an ongoing concern throughout the proceedings. Both tested positive for drugs during these proceedings. The mother was ordered by the court to participate in drug testing, but she only did so two times—in November 2010 and January 2011. Both tests were positive for cocaine. She did complete a substance abuse evaluation, but not until March 2011. She was recommended to participate in extended outpatient treatment, but was subsequently discharged due to her lack of follow through.

The father also has a long history of substance abuse. He did not begin drug testing as ordered by DHS until early 2011. Since that time, he tested positive for cocaine five times, and methamphetamine, opiates, and tetrahydrocannabinol one time. The father claimed the tests were false “and due to trips to the emergency room where he received medications or that he cleaned off a table with cocaine residue.” The father completed a substance abuse evaluation, but not until April 2011. He began extended outpatient treatment on May 24, 2011. The father was diagnosed with a history of attention deficit hyperactivity disorder, oppositional defiant disorder, and depression, but did not take medication.

The mother and father’s relationship was off and on “numerous times,” and DHS “lost track of how many times they have said they are together and then broken things off.” Both seemed to want to make the relationship work, but both have taken the alternative position of trying to keep the other from the child to prevent continued removal. The parents’ relationship is a cause of ongoing concern for DHS throughout these proceedings. The parents have “an unstable relationship with domestic violence and substance abuse.” The father is “controlling” of the mother; the mother depends on the father to “ensure that her needs are met.” Further, any contention by the parents to blame the other or disassociate themselves from the other is not credible, and is not supported by the evidence.

The mother was offered two supervised visits per week with S.F. and D.J. She “consistently cancel[ed] at least one visit per week.” The mother seemed “overwhelmed” during visits, struggled to handle both children at once, and was

not engaged. Case providers observed there was “often yelling and swearing during the visits.” The mother often had “questionable individuals coming and going” from her home, and “persons living in her home whom the department could not approve of to be around S.F.” Further, child safety and health concerns were frequently observed when visits took place at the mother’s home.

The father’s visitation with the child was consistent, but never increased beyond fully-supervised visits. Case providers observed that the father was not always engaged during visits, and that he had unrealistic expectations for the child. The father’s participation decreased “markedly” when his own mother (S.F.’s paternal grandmother) returned to the home,² because he permitted her to assume the parenting role. Further, case providers testified that “a huge factor” keeping the father from reunifying with the child was “the instability of the relationship” between the mother and father and the father’s inability to keep the mother away from the child. As the case provider stated: “I do not believe that he could keep the mother away without the Department being involved. If he was at unsupervised visits, I believe the mother would be there.”

The State filed a petition to terminate parental rights to S.F. in April 2011. A termination hearing took place over two days in June and August 2011. The State, guardian ad litem, and caseworkers unanimously recommended termination of the mother and father’s parental rights. The juvenile court entered its order terminating the mother and father’s parental rights pursuant to Iowa Code sections 232.116(1)(d), (h), and (l) (2011). They now appeal.

² The father lives with his parents.

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)(h) provides termination may be ordered when there is clear and convincing evidence a child

under the age of three who has been adjudicated CINA and removed from the parent's care for at least the last six consecutive months cannot be returned to the parent's custody at the time of the termination hearing. Iowa Code § 232.116(1)(h).

S.F. was just over one year old when she was removed from the care of the mother and father and placed in family foster care. The child has remained in family foster care continuously for more than one year. During that time, the parents have been offered numerous services to eliminate the need for the child's continued removal. However, at the time of the termination hearing, concerns about the parents' dramatic and violent relationship; ongoing substance abuse; and lack of insight into appropriate parenting skills and dangers to the child still remained, and the parents had not demonstrated any significant improvement such that the child could be returned to the family home. Indeed, as the juvenile court observed:

[The mother's] inconsistent drug testing [and positive tests] indicates she is still using.

. . . .
The Court believes [the father] has continued to use illegal substances [throughout these proceedings].

. . . .
[The parents have] an unstable relationship with domestic violence and substance abuse. . . . When they are together, their lives are full of drama. At times the mother says she wants to work on their relationship but live separately. The father says they are looking for an apartment together. This Court does not believe the parents are done with each other. It is likely that they will continue in their chaotic and unhealthy relationship.

. . . .
Nothing much has changed from the beginning of this case. The parents have a tumultuous relationship as does the mother with her siblings and neighbors. There is significant potential for the child to be exposed to violent situations in either parents' home. There also remain substantial concerns of substance abuse by both parents as

each have tested positive for cocaine in the past and neither parent has followed through with a substance abuse treatment program. Further, neither parent is providing regular drug testing results as ordered. There are further concerns about the individuals with whom the parents surround themselves. These individuals also have histories of substance abuse and both the parents have stated that some of their positive tests were the result of being around using friends. Their ability to parent and protect their child is severely hampered if they are under the influence of illegal drugs. Neither parent appears committed to changing their lifestyle so they can parent on a full-time basis.

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 quotation marks 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.")). We find clear and convincing evidence that grounds for termination exist under Iowa Code section 232.116(1)(h).

For these reasons, we also find the juvenile court properly denied the father's motion to amend or expand and motion for new trial.

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 child's best interests require termination of the mother and father's parental rights. We agree with the juvenile court that the parents' past performance is indicative of the quality of care they are capable of providing for the child in the future. The parents have shown they are not committed to providing for the child on a full-time basis. Their substance abuse, violent and negative relationships, and lack of insight demonstrate that they are unable to adequately supervise the child, keep her safe, and meet her needs.

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).

Here, the child was removed from the family home when she had just turned one. She has been out of the parents' care for more than a year, and during that time, she has had supervised visitation with the parents twice weekly at most. During visits, both parents have appeared to be disengaged. The mother has anger issues; the father has allowed the paternal grandmother to assume the parenting role of the child. Although some bond may exist between the child and her parents, under these circumstances, we cannot maintain a relationship where there exists only a possibility that 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 child'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 and father's parental rights.

AFFIRMED ON BOTH APPEALS.