

IN THE COURT OF APPEALS OF IOWA

No. 2-218 / 12-0072
Filed April 11, 2012

**IN THE INTEREST OF L.W. and R.W.,
Minor Children,**

S.P., Mother,
Appellant,

J.W., Father,
Appellant.

Appeal from the Iowa District Court for Linn County, Susan Flaherty,
Associate Juvenile Judge.

A mother and a father separately appeal a juvenile court order terminating
their parental rights to two children. **AFFIRMED ON BOTH APPEALS.**

Cynthia S. Finley, Cedar Rapids, for appellant mother.

Michael M. Lindeman, Cedar Rapids, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Jerry Vander Sanden, County Attorney, and Kelly J. Kauffman,
Assistant County Attorney, for appellee.

Julie Trachta, of Linn County Advocate, Inc., Cedar Rapids, attorney and
guardian ad litem for minor children.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

MULLINS, J.

The mother and the father of two children, L.W. (born January 2010) and R.W. (born November 2010), appeal from a juvenile court order terminating their parental rights. Both parents argue the State failed to prove the statutory grounds and termination is not in the children's best interests. The mother also argues she should have been given an additional six months to work towards reunification. Upon our review, we affirm.

I. Background Facts and Proceedings.

The mother and the father have a very tumultuous and intermittent relationship dating back to their teenage years. Each parent has children from other relationships, but none of their other children are in their custody. The mother has three teenage daughters that reside with their father. The mother's parental rights to two other children have already been terminated, and those children have been adopted by relatives.

Both parents also have significant criminal histories, repeated incarcerations, and several founded child abuse assessments. In May 2005, the mother had a founded report after her child at birth tested positive for methamphetamine and a metabolite of cocaine. In June 2006, the father had a founded report after he assaulted the mother of one of his children in front of the child. This incident resulted in the father being convicted of simple assault. In addition, during the assessment, the father was determined to be responsible for the abuse of another one of his children from a different previous relationship.

This child reported that the father had grabbed him and thrown him against a television causing minor injury.

In July 2009, the Iowa Department of Human Services (DHS) received a report that the father had assaulted the mother in front of one of the mother's daughters. According to the police report, the mother and her daughter had left the apartment after a verbal altercation with the father. However, the daughter had forgotten her insulin bag and needed to return to the apartment. When they returned, the verbal altercation resumed and the father grabbed the mother's hair and punched her in the face. The mother and daughter ran away and called the police. The mother was found with a bruised and swollen right eye. During the police investigation, the mother was noted to be uncooperative and intoxicated even though she was five months pregnant. The father fled the apartment, and a warrant was issued for his arrest. The father was eventually arrested and charged with domestic abuse assault. DHS subsequently determined the assessment was founded for denial of critical care failure to provide proper supervision, and both parents were placed on the child abuse registry.

In January 2010, immediately following L.W.'s birth, DHS initiated a child-in-need-of-assistance (CINA) assessment due to concerns regarding the mother's history of substance abuse and the parents' history of domestic violence, criminal activity, and founded child abuse assessments. The parents were offered voluntary services, but they were unwilling to participate. Accordingly, on February 18, 2010, the State filed a petition seeking to adjudicate

L.W. as a CINA. The parents challenged the petition, and the matter was set to be heard on April 14, 2010.

While the hearing was pending, the parents were involved in two separate criminal incidents resulting in L.W.'s removal from their care. The first incident occurred on April 9, 2010, when the police were called to the parents' home due to a loud argument. When the police arrived, the mother was highly intoxicated. She told the officers that she and the father had been arguing. When she attempted to leave, the father tripped her causing her to fall, and then punched her in the side of the head. The father was arrested and charged with domestic abuse assault causing injury. As the police were investigating, the father's mother arrived on the scene and attempted to start a fight with the mother. The father's mother was placed under arrest for disorderly conduct. L.W. was in the residence at the time of the incident, and neighbors stepped in and resumed responsibility for L.W.'s care. The neighbors informed police that the fighting between the parents was nonstop.

Two days later, the mother was arrested and charged with two counts of simple assault, public intoxication, and third-degree theft. The mother was arrested for trying to shoplift nearly \$1000 worth of merchandise from a Wal-Mart. The father was in a vehicle in the parking lot but fled when he saw the mother being stopped by security officers. Following these incidents, DHS sought and obtained a temporary removal order. L.W. was placed into family foster care, where he has remained.

On April 14, 2010, the mother and guardian ad litem stipulated to L.W.'s removal and adjudication as a CINA under Iowa Code sections 232.2(6)(c)(2), (n), and (o) (2009). However, the father contested these findings, and the court withheld ruling as to him pending further hearings. On May 4, 2010, the father stipulated to L.W.'s removal and adjudication as a CINA under sections 232.2(6)(c)(2), (n), and (o).

Both parents were offered supervised visits during which they were found to be capable of meeting the child's needs, but their attendance was inconsistent. The mother also missed appointments for mental health counseling, medication management, and substance abuse counseling, and did not attend any women-in-recovery groups. The father also needed to complete a psychological evaluation and participate in anger management. Moreover, the parents' conduct continued to result in arrests and criminal charges.

On July 30, 2010, the father was the driver of a vehicle stopped for a traffic offense. The father was slow to pull over, and upon stopping, he exited the vehicle and ran from the scene. The mother, who was the front seat passenger, denied knowing who the driver was even when the officer told her he recognized the driver as the father. The father was found forty-five minutes later and was arrested and charged with driving with license under suspension, interference with official acts, and related traffic offenses. The mother was also arrested and charged with interference with official acts.

On September 8, 2010, the mother attempted to walk out of a Kmart with \$240 worth of merchandise. When stopped by security as she attempted to put

the merchandise in a van, the mother fled on foot. The father, who was sitting in a van, also fled on foot before police arrived on the scene. The mother was charged with fourth-degree theft, and arrest warrants were issued for both parents.

By November 2010, the mother had completed a second substance abuse evaluation and was recommended to attend extended outpatient treatment. The father had undergone a psychological evaluation, but the therapist found that he “presented in a very defensive manner and acknowledged very little in the way of problems and difficulties. It sounded very much as if the only reason he was here at all was to meet the expectation of the DHS worker.” The father further denied being a perpetrator of domestic abuse, and denied having any issues requiring counseling or mental health services.

In November 2010, R.W. was born. At the hospital, the mother and father reported to hospital staff that they were living together, but continued to report to DHS that they were living separately. DHS met with the parents at the hospital and presented them with the option to place R.W. either with his maternal grandmother or with DHS for family foster care. The parents agreed to have R.W. placed with the maternal grandmother. R.W. has remained in the care of his maternal grandmother since his release from the hospital.

On December 16, 2010, the State filed a petition to terminate the parental rights of the parents to L.W. The State also filed a petition seeking to adjudicate R.W. a CINA on February 1, 2011. A joint hearing was scheduled for February 14, 2011, but the hearing was continued after the parents’ attorneys informed the

juvenile court that the parents were unavailable due to being arrested and placed in jail the night before. The hearing was held on April 14 and 18, 2011. Following the hearing, the juvenile court adjudicated R.W. a CINA under Iowa Code sections 232.2(6)(c)(2) and (n) (2011).

The incident on February 13 occurred at the mother's residence when the mother and the father were drinking alcohol with the mother's fourteen-year-old daughter and her fifteen-year-old friend. During the night, the father became very upset and began arguing with the mother and the friend. The father hit the mother and punched the friend in the face. The mother's daughter then stabbed herself in the stomach in an apparent effort to get everything to stop. The daughter and the friend ran across the street to a neighbor's house and called the police. The police found the daughter and the friend to be highly intoxicated. While paramedics were attending to the children, the mother came across the street. She was also highly intoxicated. Because the mother was extremely uncooperative and interfering with the paramedics, she was asked to leave the neighbor's residence. Both children were taken to the hospital. The friend received stitches for a laceration to her lip, and had a bruised jaw and a loose front tooth. As a result of this incident, the mother was arrested and charged with interference with official acts, public intoxication, and contributing to the delinquency of a minor. The father was arrested and charged with domestic assault, assault with injury, interference with official acts, and contributing to the delinquency of a minor. A no-contact order was entered between the mother and

the father. In addition, as a result of the incident, the mother received an eviction notice for her residence.

Following the incident, the parents continued to engage in conduct resulting in their arrests and criminal charges. On March 2, 2011, a police officer observed a vehicle swerving on to the inside shoulder. The officer began following the vehicle and saw what appeared to be a verbal altercation between the driver and the passenger. The driver was later determined to be the father, and the passenger the mother. The officer continued to follow the vehicle and observed several traffic violations. When the vehicle cut off another vehicle almost causing an accident, the officer activated his emergency lights and siren. At this time, the vehicle accelerated to speeds reaching ninety-three miles per hour. The officer pursued the vehicle and eventually the father lost control of his vehicle and crashed into the ditch. The father exited the vehicle and fled on foot. The officer radioed this information but stayed with the car and the mother. The mother also exited the vehicle, but refused to follow orders and instead attempted to make calls on her cell phone. The mother eventually complied, but denied that the father was the driver or knowing who the driver was. The father was apprehended in a grove of trees a short time later. As a result of this incident, the father was charged with attempt to elude, a class "D" felony, driving while license under suspension, and fourteen traffic citations, while the mother was arrested and charged with two counts of interference with official acts.

On April 4, 2011, the police were dispatched to a fight in the parking lot of an apartment building. A witness stated that she observed the mother, the

mother's half-sister, and a male in a verbal altercation in the parking lot. The male punched the half-sister knocking her to the ground. The witness went outside to intervene, but the mother confronted her and told her to mind her own business. The mother then hit the witness. The male fled the scene, and was never apprehended. Although the half-sister initially said it was the father who punched her, she later denied this. During the investigation, the mother was very uncooperative and confrontational. She was also observed to be highly intoxicated. The mother was arrested and charged with disorderly conduct and public intoxication.

Four days later, the mother was again arrested and charged with interference with official acts and public intoxication. These charges arose after the mother attempted to run from officers during a stop, and attempted to kick out the rear passenger window once apprehended and placed in the back of the police car.

On April 16, 2011, the mother and father were found to be passengers in the same vehicle during a traffic stop. Both the mother and the father gave the police a false name when asked for their identity. Both parents were arrested and charged with providing false information to law enforcement and violating a no-contact order. The mother, who was found to be intoxicated, received an additional charge for public intoxication.

On May 20, 2011, the State filed a petition seeking to terminate the mother's and the father's parental rights to R.W. The petition came to a hearing

on August 16 and September 6, 2011. At the hearing, the records for the two children (L.W. and R.W.) were merged.

At the first day of the hearing, the family advocate testified that despite the offer of weekly supervised visits, the parents had only attended three visits since March.

By the second day of the hearing, the mother had been arrested and was in jail for charges of public intoxication and interference with official acts. She also had pending assault and theft charges. The mother admitted that she was an alcoholic and was willing to go into inpatient treatment. The mother further testified that she was currently not in a position to have the children placed into her care, but believed she could complete treatment and be ready in the next six months.

The father testified that he was ready to resume custody of his children. He testified that he was employed, and has participated in ten in-person individual counseling sessions as well as ongoing telephone contact. The father had also been receiving one semi-supervised visit per week for the last two weeks, but missed one. The father continued to deny or minimize any instance of violence in his relationships.

On January 3, 2012, the juvenile court entered an order terminating the mother's parental rights to both children under Iowa Code section 232.116(1)(h) and to R.W. only under sections 232.116(1)(g) and (f). The juvenile court also terminated the father's parental rights to both children under sections 232.116(1)(e) and (h). The parents separately appeal.

II. Standard of Review.

We review termination orders de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We give weight to the juvenile court's factual findings, but are not bound by them. *Id.*

III. Analysis.

A. Statutory Grounds. Both parents argue the State failed to prove the statutory grounds by sufficient evidence. When the juvenile court terminates parental rights on more than one ground, we need only find one ground to be appropriate to affirm. *Id.* at 707. We find the evidence supports terminating parental rights under Iowa Code section 232.116(1)(h). Under this section, the parents only challenge whether the State presented clear and convincing evidence that the children could not be returned to their care at the present time. Iowa Code § 232.116(1)(h)(4).

Both of the children have been removed from their parents' care for a majority of their lives. L.W. was removed shortly after his birth, and by the time of the termination hearing, R.W. had been removed from parental care for over sixteen months. During this time, the parents have been inconsistent with their visitation and have been arrested and charged on numerous occasions for criminal conduct. The mother has not completed substance abuse treatment or mental health counseling. The father has also not adequately addressed the concerns regarding domestic abuse. The parents have not completed couples' counseling. At the time of the termination hearing, the mother was incarcerated and admitted that the children could not be returned to her care. The record

contains sufficient evidence showing the children cannot be returned to parental care at the present time.

B. Best Interests. Both parents also challenged whether termination was in the children's best interests. In determining a child's best interests, we "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." *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010) (quoting Iowa Code § 232.116(2)).

The children have been removed from parental care for nearly their entire lives, and neither parent has made progress or sufficiently addressed their issues regarding domestic abuse, substance abuse, criminal conduct, mental health, and housing. The record shows that neither parent is in a position to provide the children with a safe and stable home. Children should not be forced to endlessly await the maturity of a natural parent. *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000). "We have long recognized that the best interests of a child are often not served by requiring the child to stay in 'parentless limbo.'" *In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990). "At some point, the rights and needs of the child rise above the rights and needs of the parents." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). Upon our review of the record, we agree with the juvenile court that termination was in the children's best interests.

C. Extension of Time. The mother also asserts the juvenile court erred by not granting her an additional six-month period to work towards reunification. See Iowa Code § 232.117(5). However, before making such an order, the

juvenile court must be able to make a determination that “the need for removal of the child from the child’s home will no longer exist at the end of the additional six-month period.” *Id.* § 232.104(2)(b). As our court has noted:

Under some circumstances extensions could be appropriate. “The judge considering them should however constantly bear in mind that, if the plan fails, all extended time must be subtracted from an already shortened life for the child in a better home.”

In re A.A.G., 708 N.W.2d 85, 92 (Iowa Ct. App. 2005) (quoting *In re A.C.*, 415 N.W.2d 609, 613-14 (Iowa 1987), *cert. denied sub nom. In re A.C. v. Iowa*, 485 U.S. 1008, 108 S.Ct. 1474, 99 L.Ed.2d 702 (1988)).

Upon our review, we find a six-month extension would not resolve the issues that necessitated removal. The mother has been very inconsistent in her participation in services and visitation, and has not made sufficient progress in order for the children to be returned to her care now or in the foreseeable future.

IV. Conclusion.

For the foregoing reasons, we affirm the order of the juvenile court terminating the parental rights of the mother and the father to R.W. and L.W.

AFFIRMED ON BOTH APPEALS.