

IN THE COURT OF APPEALS OF IOWA

No. 2-221 / 12-0265
Filed March 28, 2012

**IN THE INTEREST OF M.B. and R.B.,
Minor Children,**

T.B., Mother,
Appellant.

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

A mother appeals the termination of her parental rights to her children.

AFFIRMED.

Jeff Wright of Carr & Wright, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Faye Jenkins, Assistant County Attorney, for appellee.

Joanne Picray, Des Moines, for father.

Kim Ayotte of Youth Law Center, Des Moines, attorney and guardian ad
litem for minor children.

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

BOWER, J.

A mother appeals the termination of her parental rights to her children, six-year-old M.B. and four-year-old R.B.¹ The mother has been unable to overcome difficulties and instability stemming from her longstanding history of substance abuse, mental health issues, and criminal activity. Because there is clear and convincing evidence that grounds for termination exist under Iowa Code sections 232.116(1)(f) and (h) (2011), 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.

I. Background Facts and Proceedings.

This family came to the attention of the Iowa Department of Human Services in December 2010, when M.B. suffered physical abuse at the hands of his father, Melvin, who was caring for M.B. and R.B.² in the mother's absence. The mother allowed Melvin to live with and care for the children, despite having a no contact order in place against him and being aware he was a violent person. The mother had pending charges for possession of crack cocaine, as well as a lengthy history of prostitution and drug charges. The mother admitted she actively used drugs. She had been diagnosed with bi-polar disorder. The children were removed from the home and placed in separate foster care

¹ The parental rights of the fathers of the children were also terminated. The fathers have not appealed.

² The mother's parental rights to her two older children were terminated in 1997.

families.³ On January 26, 2011, they were adjudicated to be in need of assistance.

The mother began receiving an array of rehabilitative services. Initially, the mother began out-patient treatment at the House of Mercy. However, in March 2011, after providing a cocaine positive drug screen, the mother was admitted to House of Mercy for in-patient treatment. Her in-patient treatment was short-lived, as she reportedly stole money from House of Mercy and left the facility after being confronted about the situation. Thereafter, she was hospitalized due to suicidal attempts and ideation.

Upon her release from the hospital, the mother began out-patient treatment at the Powell Chemical Dependency Center. She was placed in jail from May 16 through May 25, 2011, for violation of her probation. In July 2011, the mother indicated she had completed her out-patient treatment at Powell. In August 2011, she provided a cocaine positive drug screen. She completed another substance abuse evaluation, which recommended she attend relapse prevention classes. The mother attended one class in September 2011, but was discharged from the class after failing to attend classes for 30 days. She then missed a family team meeting scheduled for October 3, 2011, due to her arrest for operating while intoxicated and driving without a license. She was released and arrested again on October 6, 2011, for public intoxication (alcohol or drugs), possession of drug paraphernalia, and probation violation. As a result the mother is now incarcerated but may be released in May 2012.

³ As the DHS caseworker noted, "The children are not placed in the same foster homes. . . . M.B. is over powering and often picks on R.B. to the point of injury."

The State filed a petition to terminate the mother's parental rights on November 11, 2011. The termination hearing was held on January 12, 2012. The record before the district court indicated the mother's continued instability and lack of progress toward reunification with the children. Visitation had not progressed beyond fully supervised, and caseworkers reported the mother had "not made any positive changes in her parenting and choices." The mother was incarcerated, but participated telephonically. She admitted she had "an active addiction with crack cocaine," but stated she was going to begin therapy to address her addiction. She stated she was thirty-seven years old and had been a crack cocaine user since she was twenty-one years old. The mother stated she had completed treatment and relapsed before, and she had been to prison before, but "this time" was different because she had "something to work towards"—the children.

Following the termination hearing, the district court entered its order terminating the mother's parental rights pursuant to Iowa Code sections 232.116(1)(b), (d), (e), (f) as to M.B., (h) as to R.B., and (i). The mother appeals.

II. Scope and Standard of Review.

Our review of termination decisions is de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We give weight to the district court's findings of fact even though we are not bound by them. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We especially give weight to the district court's findings when assessing witness credibility. *Id.* We will uphold an order terminating parental rights where there is clear and convincing evidence the grounds for termination under section 232.116

have been proved. *Id.* Evidence is clear and convincing where there are no serious doubts as to the correctness or conclusions of law drawn from the evidence. *Id.*

III. Analysis.

A. Grounds for Termination. The court must initially determine whether a ground for termination under section 232.116(1) is established. See *P.L.*, 778 N.W.2d at 39. Here, the mother contends statutory grounds under sections 232.116(1)(b), (d), (e), (f), (h) and (l) have not been proved by clear and convincing evidence. “We only need to find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm its ruling.” *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2000).

We focus our analysis on section 232.116(1)(f) as to M.B., and section 232.116(1)(h) as to R.B. These sections provide that termination may be ordered when there is clear and convincing evidence a child age four or older, or age three or younger, who has been adjudicated CINA and removed from the parents’ care for the last twelve or six consecutive months, respectively, cannot be returned to the parents’ custody at the time of the termination hearing. Iowa Code §§ 232.116(1)(f), (h).

Clearly, these statutory grounds have been met. At the time of termination, M.B. was over four years of age and R.B. was under three years of age. They were adjudicated CINA in January 2011 and have been out of the mother’s custody for more than twelve consecutive months. The mother was offered numerous services, including the opportunity to participate in several

substance abuse treatment programs. She continued to relapse using crack cocaine. She failed to comply with the terms of her probation, and incurred new criminal charges. At the time of the termination hearing, the mother was incarcerated and testified she had an active addiction to crack cocaine. She agreed her substance abuse problem was so significant that it caused her to be incarcerated, engage in unhealthy relationships, have suicidal thoughts, and be unable to provide stability for the children. The mother also acknowledged that her “pretty significant” criminal history had caused problems in her life. She recognized her actions put her children at risk, and that she continued to struggle with her ability to properly supervise the children.

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.*

We agree with the district court’s finding that termination of the mother’s parental rights would best provide for the children’s long-term nurturing and growth. As the court observed:

The children’s safety is the Court’s primary consideration. There are ongoing concerns about the safety of the children if returned to the care and custody of any parent. The children need a long-term commitment by adults who can be appropriately nurturing, supportive of their growth and development, and who appropriately meet their physical, mental, and emotional needs. The children are currently placed with families that meet such criteria and such

families are willing to make a long-term commitment to the children by adoption.

See *id.* at 38-39 (discussing the importance of “providing a stable, loving home life for a child as soon as possible”). Since their removal, the children struggled with out-of-home placements, due to their “maladaptive behaviors.” However, as the DHS caseworker reported, the children “finally found the homes that will keep them, love them, and provide for their every need forever.” As the caseworker further noted, “[a]llowing these children to be adopted by their current foster parents is the best placement to further their long-term nurturing and growth.”

It is well-settled law 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; see also *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997) (holding that when considering what the future holds if the child is returned to the parent, we must look to the parents’ past behavior because it is indicative of the quality of care the parent is capable of providing in the future).

C. Exceptions or Factors Against Termination. If the statutory best-interests 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. *P.L.*, 778 N.W.2d at 39. 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).

The mother contends termination of her parental rights would be detrimental to the children at this time due to the closeness of the parent-child bond. See Iowa Code § 232.116(3)(c). Although we acknowledge there is a bond between mother and children, we cannot maintain these relationships where there exists only a possibility the mother will become a responsible parent sometime in the unknown future. We conclude no exception or factor in section 232.116(3) applies to make termination unnecessary.

IV. Conclusion.

There is clear and convincing evidence that grounds for termination exist under section 232.116(1)(f) as to M.B. and section 232.116(1)(h) as to R.B.; 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. Accordingly, we affirm termination of the mother's parental rights.

AFFIRMED.