

IN THE COURT OF APPEALS OF IOWA

No. 2-313 / 12-0358
Filed April 25, 2012

**IN THE INTEREST OF D.W. and A.W.,
Minor Children,**

**S.W., Mother,
Appellant.**

Appeal from the Iowa District Court for Washington County, Crystal S. Cronk, District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Katherine E. M. Lujan of Lloyd, McConnell, Davis & Lujan, L.L.P., Washington, for appellant mother.

Leslie D. Lamping, Washington, for father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Larry J. Brock, County Attorney, and Shawn R. Showers, Assistant County Attorney, for appellee State.

Jeffrey Powell, Washington, for intervenor.

Raymond Tinnian, Kalona, for minor children.

Considered by Vaitheswaran, P.J., and Doyle and Danilson, JJ.

DOYLE, J.

A mother appeals the termination of her parental rights to her children. Upon our de novo review, we affirm.

I. Background Facts and Proceedings.

S.W. is the mother and H.W. is the father of D.W., born in June 2008, and A.W., born in August 2010.¹ D.W. first came to the attention of the Iowa Department of Human Services four months after his birth, after it was reported the parents had mental health and financial issues. The parents also did not appear to understand normal child development and had expectations that were above the child's capability. The parents were offered services to remedy the problems. Although the parents initially showed some progress, concerns remained about the parents' ability to safely parent the child and D.W. was adjudicated a child in need of assistance (CINA) in March 2009.

Services continued to be offered to the parents, but concerns regarding D.W.'s safety remained. The mother was unwilling to fully cooperate with mental health services, and the child's guardian ad litem (GAL) noted the mother seemed "as disconnected from reality as she ha[d] since the start of this case." There were also concerns regarding the cleanliness of the parents' home and concerns about various persons staying at their home, including a registered sex offender living in their garage. The GAL observed that although the parents had "done a lot of work to become compliant with the [Department's] recommendations, . . . every time one problem abate[d] a new one [arose]."

¹ The termination of the father's parental rights is not at issue in this appeal.

D.W. was removed from the parents' care in January 2010 and placed with paternal relatives.

The parents again began progressing in the case; their house was kept clean and their service provider as well as the Department's caseworker and GAL reported no major concerns. A.W. was born in August 2010 and was subsequently adjudicated CINA. The parents' visitation with D.W. progressed to overnight visits, and D.W. was formally returned to their care in January 2011.

Shortly thereafter, things deteriorated. The children were removed from the parents care in March 2011, after the parents lost their water service, were evicted from their home, and ended their relationship. The GAL observed that "[a]s a team, [the parents] were always tenuous, but separately, neither is able to meet the needs of [their children]. . . . The case is a mess, the family is broken, [and] the future status of the children is uncertain." The children have not returned to the mother's care since their 2011 removal.

After the children's removal, the mother's mental health declined. She was twice admitted to the hospital for suicidal thoughts, and she admitted she was using alcohol and substances to self-medicate. She did not participate in counseling as recommended by her therapists and as directed by the juvenile court. Additionally, the mother was unable to maintain housing, moving nine different times between the months of April 2011 and September 2011. She then moved to Indiana to live with her mother and stepfather. The mother reported she was pregnant with her third child, and it was the Department's understanding that she moved to Indiana to avoid any Department involvement with that child. Although the service provider continued to make efforts to schedule visitation

between the mother and the children, the mother made little effort to visit the children. She visited with the children on November 29, 2011, the date of a hearing. Previously she had not seen the children since her last visit of May, 24, 2011.

The State filed its petition to terminate the parents' parental rights in November 2011. At the hearing on the petition in January 2012, the mother testified that she gave birth to her third child six days before the hearing. She testified she had gained employment while in Indiana, but she was on maternity leave. She testified she continuously lived with her family and that she had been participating in parenting classes. She also reported that her mental health was stable; she testified she had been attending counseling and had had six sessions at that time. She also testified she had a new psychiatric evaluation just prior to the hearing, and therapy for six months was recommended and no medication was prescribed. However, the mother acknowledged the evaluator had not had her prior mental health records and that the evaluator reported that the mother may have minimized her symptoms.

The mother testified that she had not seen the children since November 2011. She stated she had called the children's foster home numerous times, but admitted she had only spoken with D.W., then three-years-old, on a few occasions, and he at times did not talk. She testified she spoke to A.W., but acknowledged A.W. was too young to talk. She believed she and D.W. had a bond, but she was not sure if there was a bond between her and A.W. She admitted she had lied to the Department at the beginning of the case when she reported that her parents' home was chaotic and that her stepfather was

emotionally and mentally abusive. The mother requested additional time for reunification and placement of the children with her and her parents in Indiana.

The record was left open in the matter to allow the completion and receipt by the juvenile court of a home study of the mother's parents' home in Indiana. The home study was completed, and no concerns about the residence were found. Nonetheless, in its February 2012 order, the juvenile court found the mother's parental rights should be terminated.

The mother now appeals.

II. Scope and Standards of Review.

We review the juvenile court's decision to terminate parental rights de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). The State must prove grounds for termination by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

III. Discussion.

On appeal, the mother contends the State failed to prove the grounds for termination by clear and convincing evidence. She also argues termination was not in the children's best interests and that she should have been granted additional time for reunification.

A. Grounds for Termination.

The mother's parental rights were terminated pursuant to Iowa Code section 232.116(1)(h) (2011). Termination is appropriate under section 232.116(1)(h) where:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

Here, the mother does not dispute the first three elements of section 232.116(1)(h). Rather, she contends the State failed to prove by clear and convincing evidence that the children could not be returned to her custody. We disagree.

The legislature incorporated a six-month limitation for children in need of assistance aged three and below. Iowa Code § 232.116(1)(h)(3). Our supreme court has stated that "the legislature, in cases meeting the conditions of [the Iowa Code], has made a categorical determination that the needs of a child are promoted by termination of parental rights." *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990) (discussing Iowa Code § 232.116(1)(e)). The public policy of the State having been legislatively set, we are obligated to heed the statutory time periods for reunification. D.W. has been involved with the Department since shortly after his birth in 2008. Services were offered to the mother from the beginning of the case. While she made progress in addressing her mental health, housing, and employment issues in 2010, she was unable to maintain that progress, necessitating the removal of the children from her care in early 2011. They have had minimal contact with the mother since. Although we commend the mother for seeking out her parents for support and attempting to again address her life issues, such efforts are simply too little, too late. See *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) ("A parent cannot wait until the eve of

termination, after the statutory time periods for reunification have passed, to begin to express an interest in parenting.”). The statutory six-month period expired with little evidence that the mother could provide the children the necessary stability and care. Under the circumstances presented, we find the State has proved by clear and convincing evidence the children cannot not be safely returned to the mother’s care. Accordingly, we agree with the juvenile court that termination of the mother’s parental rights was proper under Iowa Code section 232.116(1)(h).

B. Best Interests.

If a statutory ground for termination is determined to exist, the court may terminate a parent’s parental rights. *P.L.*, 788 N.W.2d at 37. In considering whether to terminate, the court must then apply the best-interest framework established in section 232.116(2). *Id.* The legislature highlighted as primary considerations: the children’s safety, the best placement for furthering the long-term nurturing and growth of the children, and the physical, mental, and emotional condition and needs of the children. *Id.*; see also Iowa Code § 232.116(2).

Taking these factors into account, we agree with the juvenile court that the children’s best interests require termination of the mother’s parental rights. While we do not question the mother’s love for her children,

[i]t 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. The record reveals that the children cannot be returned to the mother's care at this time, despite the mother's receipt of services for over three years. The children are now three and one and have had minimal contact with their mother in the last year. Both children have spent most of their lives outside the mother's custody. The mother acknowledged that she likely did not have any bond with A.W. These children should not be forced to wait for permanency. Children are not equipped with pause buttons. "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). "At some point, the rights and needs of the child[ren] rise above the rights and needs of the parents." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997); *P.L.*, 778 N.W.2d at 39–40. The children should not be forced to endlessly suffer the parentless limbo of foster care. *In re J.P.*, 499 N.W.2d 334, 339 (Iowa Ct. App. 1993). Given the mother's late attempt to address her numerous issues after having minimal contact with the children and their need for permanency, we agree with the juvenile court that termination of the mother's parental rights was in the children's best interests.

C. Additional Time.

The mother also argues the juvenile court abused its discretion in not granting the mother additional time in which to reunify with her children. A juvenile court has the discretion to continue a child's placement out of the home for an additional six months if it determines the need for removal will no longer exist at the end of the additional period. See Iowa Code § 232.104(2)(b).

However, the evidence in this record does not allow such a determination. We find no abuse of discretion under the circumstances of this case.

Accordingly, we affirm the ruling of the juvenile court terminating the mother's parental rights.

IV. Conclusion.

Because we find clear and convincing evidence supporting termination of the mother's parental rights, termination is in the children's best interests, and because we find the juvenile court did not abuse its discretion in denying the mother's request for additional time for reunification, we affirm the court's decision terminating the mother's parental rights.

AFFIRMED.