

IN THE COURT OF APPEALS OF IOWA

No. 2-316 / 12-0360
Filed May 9, 2012

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

K.D., Mother,
Appellant.

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

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Natalie H. Cronk, Iowa City, for appellant mother.

W. Eric Nelson of the Public Defender's Office, Cedar Rapids, for father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, Jerry Vander Sanden, County Attorney, and William Croghan, Assistant
County Attorney, for appellee State.

Julie Trachta of Linn County Advocates, Inc., Cedar Rapids, for minor
children.

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

DANILSON, J.

Kara appeals the termination of her parental rights to her three sons, R.E., B.E., and L.E. She contends there is not clear and convincing evidence the children cannot be returned to her at the present time and termination is not in their best interests. Despite the mother's efforts over a three-year period, there is clear and convincing evidence she is unable to provide adequate supervision and the children cannot be returned to the mother at present. The children's need for permanency, security, safety, as well as physical and intellectual health would be best served by termination of parental rights. We therefore affirm.

I. Background Facts and Proceedings.

These juvenile court proceedings involve the mother, Kara; the father, Bobby; and their three boys: R.E. (born in December 2005), B.E. (born in September 2007), and L.E. (born in October 2009).¹ The mother and father are not married but have been together for seven years and continue to live together. Several child abuse assessments concerning this family have been conducted by the Iowa Department of Human Services (DHS) dating back to 2006.

Kara has been diagnosed with anxiety, depressive disorder, attention deficit hyperactivity disorder (ADHD), and anti-social personality disorder. She also has a history of grand mal seizures. She is prescribed mental health medications and is participating in counseling; her counselor stated Kara will "probably always benefit from ongoing counseling." She is defensive and very suspicious. She can be physically intimidating, confrontational, and verbally

¹ The father's rights were also terminated. He does not appeal.

aggressive. When upset, Kara is not able to focus on her children and does not supervise them properly.

Bobby has a history of drug abuse and domestic violence. He works in the construction field. He has participated in services as allowed by his work schedule.

Jessica Parker, a direct care worker with a home health agency, began offering the family voluntary services in 2008 after DHS investigated a report of inadequate supervision. A child abuse assessment was conducted; abuse was not founded, but Kara continued with services voluntarily.

In October 2009, the family again came to the attention of DHS, and a child abuse assessment was initiated because there were illegal drugs in the home (Bobby stated they were his), which were accessible to the children. At the time of this assessment, in addition to finding hydrocodone and marijuana, investigators found the home was infested with mice, and mouse droppings, dirty dishes, and garbage littered the floor. Three pitbulls were in the home. Both Kara and Bobby were found to have denied critical care in failing to provide proper supervision. The family agreed to participate in services, which included home health and early access services for the children, Family Safety, Risk, and Permanency (FSRP) services, and the father's agreement not to use or possess illegal substances when in the home.

On February 19, 2010, DHS was notified that police officers had removed the younger two children (B.E. and L.E.) from the home after investigating a report Bobby had assaulted a thirteen-year-old neighbor boy. Police deemed the condition of the home to be unsafe for children (four pitbulls were present in the

home, and dog feces and roaches were evident throughout the home); the mother was not present; and other adults who were present were not suitable caregivers for the children. A DHS social worker made arrangements for the children to be placed with their paternal grandparents; R.E. was located and also taken to the grandparents' home. A temporary removal order was obtained.

A review hearing was held March 11, 2010, at which the children were adjudicated children in need of assistance (CINA). The parties stipulated the children could be returned to Kara's home under certain conditions, including that service providers were to have in-home contact at least four times per week, and the children would attend protective day care or Head Start all day.

Just days after an April 21, 2010 dispositional hearing, six-month-old L.E. suffered a skull fracture, which the parents were unable to explain. A child abuse assessment was conducted, and the parents were found to have provided inadequate supervision resulting in the denial of critical care. The mother's mental health remained an issue, as did the condition of the home. The children were removed from Kara's custody. R.E. and B.E. were placed in a foster home. L.E. was placed with the paternal grandparents.

Since the children's April 2010 removal, visits have twice transitioned from fully supervised, to semi-supervised, and then unsupervised. In February 2011, when the children were present in the home for an overnight visit, Kara was arrested for assaulting her sister. Visits returned to fully supervised. On May 5, 2011, visits again transitioned to unsupervised. But that night Kara was arrested for shoplifting. On May 10, May 25, and July 1, 2011, the father's drug screens tested positive for cocaine. Visits again returned to fully supervised.

A termination petition was filed, and a termination hearing was held on August 19 and September 12, 2011.

Service providers testified Kara is outspoken about her displeasure with their presence and, at times, verbally intimidating. FRSP worker Stephanie Harris testified Kara's behavior is "a direct safety concern for the kids," because she loses focus and is not able to supervise the children. Patterson stated she continued to have concerns about Kara's ability to supervise the children properly, as well as Kara's lack of control over her emotions. Social worker Steven Harford testified the children "absolutely" could not be returned to the parents at the present time. His opinion was based on two considerations: the mother's mental health and lack of adequate supervision that prevails even when a supervising worker is present. The record includes notes taken by service providers during visits indicating a recent instance in which R.E. was found carrying two knives; another where he had a lighter when he returned to the foster home and threatened to burn the house down; another where B.E. was walking around with a gallon can of gasoline and then with hedge clippers.

Kara testified the "biggest thing with my boys" is they "don't know how to express when they're angry except for throwing things and stomping and yelling and hitting." Kara succinctly described her parenting style, "I don't believe in time-outs. I don't believe in any of that, but I do do them if I have to. I prefer to sit down and talk to my child and explain to him what's right and what's wrong." Unfortunately, Kara's hands-off approach to parenting allows the children to be placed in harm's way.

Testimony was presented that both R.E. and B.E. have been diagnosed with NF1, a genetic tumor disorder, which has caused some learning delays. The boys are otherwise healthy and active. The boys have difficulties in controlling their behaviors and frustrations. R.E. will hit, yell, push, and bite if he is not getting what he wants. If B.E. is getting hit, then he will hit or push L.E. When supervision of visits lessened, the boys' behavior became more physically and verbally aggressive. R.E. is in parent/child interaction therapy (PCIT) with Kara; B.E. is participating in play therapy.

The district court terminated both parents' parental rights.² Kara now appeals, contending (1) there is insufficient evidence that the circumstances that

² In relevant part, Iowa Code section 232.116(1) (2011) provides the court may terminate parental rights if:

d. The court finds that both of the following have occurred:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

.....

f. The court finds that all of the following have occurred:

(1) The child is four years of age or older.

(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 twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.

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

.....

h. The court finds that all of the following have occurred:

(1) The child is three years of age or younger.

led to the CINA adjudication continue to exist; (2) there is insufficient evidence the children could not be returned to her presently; and (3) considering the bond between mother and children, and the low probability the children will be adopted, termination is not in the children's best interest.

II. Scope and Standard of Review.

Our review is de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We give weight to the juvenile 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).

III. Discussion.

A. *Grounds for termination exist.* 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.* "When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm." *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999)

The court may terminate parental rights pursuant to Iowa Code section 232.116(1)(f) where a child over four years of age, previously adjudicated a

(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.

CINA, has been removed from a parent's custody for at least twelve of the last eighteen months, and cannot presently be returned to the parent. When a child is three years or younger, subparagraph 'h' governs, and the court may terminate parental rights when a previously adjudicated child has been removed from the parent's custody for six of the last twelve months and cannot presently be returned. With respect to all three children, Kara concedes evidence supports all but one factor. She disagrees with the court's finding that the children cannot be returned to her care presently.

Kara was involved in juvenile court as a minor. She resents DHS involvement in her life, which appears to have hindered her ability to make the most of the services provided. Kara testified the reasons the children were adjudicated—the condition of the house, the presence of drugs and too many animals in the house, and supervision issues—had been corrected. With respect to supervision, Kara testified, "I don't let them out of my sight or hearing."

Even though Kara has made progress toward goals set in these proceedings, we cannot conclude the children would be safe if returned to the mother's custody. As the trial court found:

There have been instances where the children have been placed in dangerous situations when Kara is supposed to supervise them but she is not, e.g. [R.E.] having [a] cigarette lighter in his possession, knives in his possession, incidents where the children are allowed to cross the street without proper supervision, [L.E.] climbing on objects that place him in an unsafe situation.

When upset—and Kara herself testified it does not "take much to agitate me"—Kara is not able to focus on her children and does not supervise them properly. For example, Kara was on the telephone having an "escalated

conversation,” and B.E. “got a gallon container of gasoline and carried that over to Kara. And after that he got a large pair of hedge clippers and was carrying that around” while Kara continued her phone conversation. Kara lacks insight into the risk posed to her children by her lack of supervision.

“The future can be gleaned from evidence of the parent[s] past performance and motivations.” *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000). If returned to their mother’s care, these children would be at risk of inadequate supervision. Even if the cleanliness of the family home has been improved as Kara contends, our concern is that such an improvement is only temporary. She has been afforded many opportunities in the past, and her past is indicative of her inability to make any permanent changes. Moreover, one child has already suffered a skull fracture under her supervision. Accordingly, we conclude there is clear and convincing evidence to support termination of Kara’s parental rights with respect to R.E. pursuant to section 232.116(1)(f), and with respect to B.E. and L.E. pursuant to section 232.116(1)(h).

B. Termination is in children’s best interests. In considering whether to terminate, “the court shall 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.” Iowa Code § 232.116(2); *P.L.*, 778 N.W.2d at 39.

We agree with the district court that the children’s need for permanency, security, safety, as well as physical and intellectual health would be served best by termination of parental rights. While we acknowledge there is a bond between the mother and children, this record does not support a finding that the bond is

such that termination would be detrimental to the children. See Iowa Code section 232.116(1)(3)(c). Kara has received services for more than three years and visits continue to be supervised. We must concern ourselves with what the future likely holds for the children if they are returned to their mother. "The best evidence for this determination is the mother's past performance because that performance may indicate the quality of future care she is capable of giving." *In re J.K.*, 495 N.W.2d 108, 110 (Iowa 1993). The children need and deserve permanency. The paternal grandmother testified the grandparents were interested in adopting all three children.

Because grounds for termination exist, and termination is in the children's best interests, we affirm the termination of the mother's parental rights.

AFFIRMED.