

IN THE COURT OF APPEALS OF IOWA

No. 2-384 / 12-0527
Filed May 23, 2012

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

**S.D., Mother,
Appellant.**

Appeal from the Iowa District Court for Scott County, Christine Dalton,
District Associate Judge.

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

AFFIRMED.

Timothy J. Tupper of Tupper Law Firm, Davenport, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Michael J. Walton, County Attorney, and Julie A. Walton,
Assistant County Attorney, for appellee.

Patricia Zamora of Zamora, Taylor, Woods & Frederick, Davenport,
attorney and guardian ad litem for minor children.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

TABOR, J.

A mother appeals the termination of her parental rights to her son and daughter. She does not dispute the State proved the grounds for termination under Iowa Code section 232.116(1) (2011). Instead, she argues termination is not in the children's best interests because of her close bond with them.

Because the evidence shows the mother's drug addiction prevents her from safely and effectively meeting her young children's needs now or any time soon, their interests in a stable and secure future are best served by termination of her parental rights.

I. Background Facts and Proceedings.

Samantha has three children. The juvenile court terminated her parental rights to the oldest child in May 2009, based on her substance abuse. The two younger children, N.D. and A.D., are the subject of this termination appeal. At the time of the termination hearing, N.D. was two years old and A.D. was almost ten months old. From the time of their respective removals from Samantha's custody, both children have lived in a foster home with their older sibling.

The juvenile court adjudicated N.D. as a child in need of assistance (CINA) in September 2010 after he tested positive for cocaine and alcohol at birth. Samantha entered Scott County's family drug court that same month. Despite intensive supervision and the support of the "drug court team," Samantha could stay clean and sober no longer than four months.

When she resumed using illicit drugs during her next pregnancy, the court found her in contempt and placed her in jail for six weeks pending delivery of

A.D. While there, she participated in the jail-based treatment program. A.D. was born in May 2011. Less than three months after giving birth to A.D., Samantha relapsed. She started using a new drug known by the street name “bath salts,” which caused her to suffer “paranoia, mania, confusion, memory loss, rapid speech, frequent mood changes, and a loss of control of her body movements.” The court adjudicated A.D. as a CINA in August 2011.

In September 2011, the drug court team pursued a substance abuse commitment for Samantha. She was released into intensive outpatient treatment, without success. She refused in-patient treatment and was unsuccessfully discharged from drug court.

The county attorney filed a termination petition in November 2011 and the court heard evidence on February 22, 2012. On March 5, 2012, the juvenile court entered its order terminating the mother’s parental rights pursuant to Iowa Code sections 232.116(1)(g), (h), and (l).¹ The record showed the children were doing well in their foster care placement and were bonded with their foster family, who had adopted their older sibling and wished to adopt them as well. The juvenile court directed the Department of Human Services (DHS) to take custody of the children for placement in a pre-adoptive foster home and approved their current placement.

¹ The children’s fathers have not been identified. The juvenile court order terminated the parental rights of any unnamed putative fathers; that part of the order is not being appealed.

The mother now challenges the termination ruling, asking for the children to be returned to her care or, in the alternative, for additional time “to demonstrate continued growth and the ability to regain custody.”

II. Scope and Standard of Review.

We review termination orders de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We are not bound by the juvenile court’s findings of fact, but accord them weight, especially on the issue of witness credibility. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We will uphold a termination order if the State presented clear and convincing evidence in support of the grounds from Iowa Code section 232.116. *Id.* Evidence is “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. Best Interests.

Samantha does not dispute the State proved the grounds for termination under sections 232.116(1)(g), (h), and (l) by clear and convincing evidence. Her only claim on appeal is that the children’s best interests do not support termination of her parental rights.

In considering whether to terminate parental rights, “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); *In re P.L.*, 778 N.W.2d at 39. The court need not terminate if it finds clear and convincing

evidence that termination would be detrimental to the child due to the closeness of the parent-child relationship. Iowa Code § 232.116(3).

Upon our de novo review, we conclude termination is in the best interests of N.D. and A.D. The mother has a severe, chronic substance-abuse problem. She has been receiving services through the DHS since 2009. Despite attending both in-patient and out-patient treatment on numerous occasions, the mother has been unable to stay clean and sober for any significant length of time. She tested positive for cocaine on December 20, 2011, and reported that she still smoked marijuana. Nothing in this record reassures us that Samantha will be able to turn from substance abuse to effective parenting. See *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997) (looking to a parent's past behavior as indicative of the quality of care the parent is capable of providing in the future).

As the guardian ad litem expressed, Samantha is an excellent parent when she is not using drugs. Samantha argues in this appeal that she "has the ability to maintain employment and if she can remain clean and sober, the children will be appropriately cared for her in her custody."

We find the "if" in that sentence to be too telling. We are sympathetic to the mother's position and do not doubt that she truly cares for her children. But after years trying, Samantha has been unable to escape the tenacious grip of drug dependence. "We have repeatedly followed the principle that the statutory time line must be followed and [children] should not be forced to wait for the parent to overcome [his or her] addiction." *In re J.A.D.-F.*, 776 N.W.2d 879, 885 (Iowa Ct. App. 2009). We agree with the juvenile court's determination that

the best future for N.D. and A.D. is to remain with their older sibling in the pre-adoptive home where they are already well integrated. *Id.* (describing children's safety and "the need for a permanent home" as the "primary concerns" when best interests).

AFFIRMED.