

IN THE COURT OF APPEALS OF IOWA

No. 2-525 / 12-0849
Filed July 11, 2012

**IN THE INTEREST OF D.V. and G.D.,
Minor Children,**

M.L., Mother,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Zachary S. Hindman and Randy S. Hisey of Bikakis, Mayne, Arneson, Hindman & Hisey, Sioux City, for appellant mother.

Tobias Cosgrove, Sioux City, for father of D.V.

John Moeller, Sioux City, for father of G.D.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, Patrick Jennings, County Attorney, and Dewey P. Sloan, Assistant County Attorney, for appellee State.

John C. Polifka, Sioux City, attorney and guardian ad litem for minor children.

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

DOYLE, J.

A mother appeals from the order terminating her parental rights to her two children. She claims (1) the State failed to prove the grounds for termination by clear and convincing evidence and (2) termination was not in the children's best interests. We review these claims de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

I. Background Facts and Proceedings.

This mother of six children with several different fathers has a long history with the Iowa Department of Human Services. She first began receiving services from the Department in June 2001 when her two oldest children were removed from her care due to her drug and alcohol use. The mother entered an inpatient treatment program, which she successfully completed, only to relapse upon her release. After at least two other unsuccessful attempts at treatment, her parental rights to those two children were eventually terminated. The mother again became involved with the Department in 2005 with respect to her two middle children. She attempted substance abuse treatment once more but soon relapsed. Her parental rights to those two children were also terminated.

The two children who are the subject of this current proceeding were removed from the mother's care in October 2011. Police were called to the family's residence after the father of the youngest child assaulted the mother. Both the father and the mother were intoxicated.

The children were adjudicated as children in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(b), (c)(2), and (n) (2011). The older child was placed with her father and a woman who is now his wife, while the

younger child was placed with a paternal aunt and her husband. The children have since remained in their respective placements.

The mother began an intensive outpatient treatment program in November 2011. She reported that she was abusing only alcohol at the time; her last use of methamphetamine and marijuana was in 2007. Though the mother's attendance at treatment was good at first, by December 2011 she was abusing alcohol again. She and the father of the youngest child were arrested at the end of that month for violating a no-contact order. The mother was intoxicated.

The mother continued to abuse alcohol throughout January and February 2012. Police intervention between her and the youngest child's father was required on several more occasions. Neither followed recommendations for domestic violence counseling. The mother was scheduled to enter inpatient treatment at the beginning of February. She delayed doing so because of her persistent alcohol use. At an appointment with her probation officer at the end of that month, the mother took a breathalyzer test, which registered a blood alcohol level of .046. Later that day, she attended a visit with her children.

The mother finally entered inpatient treatment on March 7, 2012. She reported her last drink was the day before. The mother made good progress during treatment, successfully completing the program in April. She began residing in a halfway house, where she anticipated remaining for another two to four months.

The State filed a petition to terminate the parental rights of the mother and the father of the youngest child. The juvenile court entered an order granting the petition in April 2012. The mother's rights to both children were terminated under

Iowa Code sections 232.116(1)(d), (e), (g), and (l). Her rights as to the youngest child were also terminated under section 232.116(1)(h). The mother appeals.

II. Discussion.

We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). In this case, we choose to focus our attention on section 232.116(1)(d). The mother argues termination was not proper under this section because there was not clear and convincing evidence that the circumstances leading to the children's adjudication as CINA continued to exist despite the offer of services. See Iowa Code § 232.116(1)(d)(2). We disagree.

The children were adjudicated because of the mother's alcohol abuse and turbulent relationship with the father of the youngest child. With respect to the first circumstance, the mother argues the record shows that she "has been addressing her substance abuse problems since before the instant action was filed." The mother has indeed attempted substance abuse treatment on twelve different occasions since 2001. Five of those attempts were with inpatient treatment programs. None have been successful.

At the termination hearing in April 2012, the mother testified she had her last drink of alcohol on March 6—the day before entering her sixth and most recent inpatient treatment program. The mother completed that program at the beginning of April and was residing at a halfway house at the time of the hearing. She acknowledged the children could not presently be returned to her care, as she anticipated remaining at the halfway house for several more months,

following which she would be required to complete three to five additional months of continuing care.

“We have long recognized that an unresolved, severe, and chronic drug addiction can render a parent unfit to raise children.” *In re A.B.*, ____ N.W.2d ____, ____ (Iowa 2012). While the mother took positive steps to turn her life around in the month before the termination hearing, those steps do not eliminate the past eleven years during which the mother has struggled to overcome her drug and alcohol addiction. See *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). Given the mother’s long history of substance abuse, and repeated relapses, her most recent effort at sobriety has simply come too late. See *id.* at 495; see also *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981) (stating evidence of a parent’s past performance may be indicative of the quality of future care the parent is able to provide).

The second circumstance that led to the children’s adjudication—domestic violence between the mother and the father of the youngest child—has also remained unresolved. The children were removed in October 2011 after the father assaulted the mother in their presence. Both parents were intoxicated. The children were only three years old and four months old at the time. A protective order was entered, which did little to deter the parents from having contact with one another. Arguments between the mother and father prompted police involvement on four different occasions between the end of December 2011 and mid-February 2012. Both were jailed for violations of the no-contact order.

Despite their clearly dysfunctional relationship, the mother stated she planned on continuing her romance with the father of her youngest child. This circumstance also provides a strong basis for termination. See *In re L.B.*, 530 N.W.2d 465, 468 (Iowa Ct. App. 1995) (finding mother's choice to remain with abusive husband prevented her from providing a safe, nurturing environment for the child). "It is essential in meeting a child's needs that parents recognize and acknowledge abuse. Meaningful change cannot occur without this recognition." *Id.* (internal citation omitted). When, as here, a parent is not capable of changing to allow a child to return home, termination is necessary.¹ *In re T.T.*, 541 N.W.2d 552, 557 (Iowa Ct. App. 1995).

We further find the best-interests framework in Iowa Code section 232.116(2) supports termination of the mother's parental rights. The children have been in the care of relatives, who wish to adopt them, since October 2011. See Iowa Code § 232.116(2)(b)(1) (stating the court should review the "length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining that environment and continuity for the child"). By all accounts, the children are doing very well in their respective foster homes. Termination will provide them with the safety, security, and permanency they deserve. See *P.L.*, 778 N.W.2d at 41.

¹ In reaching this conclusion, we have also considered the mother's argument that the "conclusions of the Iowa DHS in this case are suspect" because of a factual discrepancy in two child protective assessments and because of the number of different caseworkers assigned to the family. These circumstances, and what little bearing they have on the issues before us, have not affected our decision, which was based in large part on the mother's prior, and extensive, history with the Department, the police reports documenting her troubled relationship with the father of the youngest child, and her own testimony at the termination hearing.

While we credit the mother for her latest effort at sobriety, we cannot deprive these children of permanency after the State has proved a ground for termination under section 232.116(1) by hoping that she will someday learn to be a parent and be able to provide a stable home for the children. See *id.* “It is simply not in the best interests of children to continue to keep them in temporary foster homes while the natural parents get their lives together.”² *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). Children are not equipped with pause buttons.

We accordingly affirm the juvenile court order terminating the parental rights of the mother to her two children.

AFFIRMED.

² Under the three-step process set forth in the statute, once a ground for termination has been proved under section 232.116(1), and the factors under section 232.116(2) favor termination, the court should then decide whether termination is unnecessary for any of the reasons set forth in section 232.116(3). See *P.L.*, 778 N.W.2d at 40–41. One of those reasons is the closeness of the parent-child relationship. See Iowa Code § 232.116(3)(c). Although the mother argues “the record shows that there is a powerful bond between [her] and each of the children,” she did not reference section 232.116(3) in her brief on appeal. Assuming without deciding that the mother’s reference is sufficient to raise the issue, see *A.B.*, ____ N.W.2d at ____, we conclude there was no evidence that termination of the mother’s parental rights would be detrimental to these two young children. See *In re D.W.*, 791 N.W.2d 703, 709 (Iowa 2010) (stating our consideration of this exception “must center on whether the child will be disadvantaged by termination, and whether the disadvantage overcomes [the parent’s] inability to provide for [the child’s] developing needs”).