

IN THE COURT OF APPEALS OF IOWA

No. 2-620 / 12-0946

Filed July 25, 2012

**IN THE INTEREST OF L.N., K.N., and M.N.,
Minor Children,**

J.G., Mother,
Appellant,

J.N., Father,
Appellant.

Appeal from the Iowa District Court for Iowa County, Russell G. Keast,
District Associate Judge.

A mother and a father separately appeal from the termination of their
parental rights to their three children. **AFFIRMED.**

Robert W. Davison, Cedar Rapids, for appellant-mother.

Fred Stiefel, Victor, for appellant-father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Timothy McMeen, County Attorney, and Nathan L. Repp,
Assistant County Attorney, for appellee.

Dennis Mathahs, Marengo, attorney and guardian ad litem for minor
children.

Considered by Vogel, P.J., and Danilson and Mullins, JJ.

DANILSON, J.

Jessica is the mother and Joe is the father of three children, L.N., K.N., and M.N. The parents each appeal from the termination of their parental rights. During the juvenile court proceedings, the mother never made progress with her substance abuse issues, and the father never made a serious attempt in participating in services. Because statutory grounds for termination exist, termination is in the children's best interest, and no consequential factor weighs against termination, we affirm.

I. Background Facts and Proceedings.

A prior child in need of assistance (CINA) proceeding was initiated in 2007 involving the two older children—L.N., born in May 2005, and K.N., born in March 2006—on founded abuse reports against both parents asserting denial of critical care. The children were removed from the home upon concerns of domestic violence and substance abuse by both parents. A hair stat test on the children found the presence of methamphetamine in both. After court intervention and services were offered, the CINA case was closed.

M.K. was born in May 2008. Joe moved to Missouri in November 2010. In December 2010, the Department of Human Services (DHS) conducted an abuse investigation after L.N. missed eleven days of school and had multiple days of tardy arrivals. L.N. reported he was late for school one time because his mother was "passed out." A home visit on December 21 found the children unsupervised for at least fifteen minutes while Jessica was in her bedroom with a paramour. Animal feces and exposed electrical cords were present and

accessible to the unsupervised children. Jessica admitted at that time that if she were to be tested for marijuana, she would test positive. The children were removed from the home and placed with relatives. The children were adjudicated CINA in respect to their mother on December 28, 2010. As to the father's rights, the children were adjudicated CINA on March 9, 2011.

Jessica was granted supervised visitation, which she exercised regularly at first, but became more sporadic as time went on. From June to August 2011, Jessica did not visit the children at all. In November 2011, Jessica provided a urine sample that tested positive for methamphetamine, and has since refused to comply with substance abuse testing. Jessica did complete a substance abuse evaluation and a mental health evaluation, but has not followed through with recommendations.

Joe returned to Iowa in March 2011, but despite knowing of the CINA proceedings and that he was authorized for supervised visitation should he contact appropriate service providers, he did not contact the DHS case worker until May 2011. For the rest of 2011, Joe appeared at the foster home on four occasions without notifying service providers as requested, did not comply with the service provider's requests for a pattern of consistent contact with his children, refused to comply with permanency plan expectations, did not participate in services, and did not ask to be considered as a possible placement for his children. Moreover, he has not offered to provide any financial assistance for the care of his children.

There has been no trial home placement with either parent. At the time of the termination hearing on February 27, 2012, the children had been out of their parents' custody and care for more than twelve consecutive months. The court terminated the parental rights of both parents pursuant to Iowa Code section 232.116(1)(f) (2011) as to the older two children, and section 232.116(1)(h) as to M.K.

On appeal, the mother argues there have been no noted concerns as to her parenting skills, and she has obtained housing and employment. She contends the trial court should have allowed her an additional six months to work on reunification. She argues there is a bond between mother and children, as well as grandmother and children, that will be lost if the termination occurs.

The father argues on appeal that he was not offered reasonable services and requests an additional six months to "show [his] intentions and abilities with regard to his three children."

II. Scope and Standard of Review.

We conduct a *de novo* review of termination of parental rights proceedings. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). Although we are not bound by the juvenile court's findings of fact, we do give them weight, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under section 232.116. *Id.* Evidence is considered "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. Analysis.

Iowa Code chapter 232 termination of parental rights follows a three-step analysis. See *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). The court must initially determine whether a ground for termination under section 232.116(1) is established. *Id.* If a ground for termination is established, the court must next apply the best-interest framework set out in section 232.116(2) to decide if the grounds for termination should result in a termination of parental rights. *Id.* If the statutory best-interest 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. *Id.*

A. Grounds for Termination.

The juvenile court terminated parental rights pursuant to Iowa Code section 232.116(1)(f) and (h). Section 232.116(1)(f) provides that termination may be ordered when there is clear and convincing evidence a child over the age of four who has been adjudicated a CINA and removed from the parents’ care for the last twelve consecutive months cannot be returned to the parents’ custody at the time of the termination hearing. Section 232.116(1)(h) provides that termination may be ordered when there is clear and convincing evidence a child three years or younger who has been adjudicated a CINA and removed from the parents’ care for the last six consecutive months cannot be returned to the parents’ custody at the time of the termination hearing.

1. *Father's appeal.* The father does not contest that the statutory factors have been met, so we need not address this step with respect to the father. See *P.L.*, 778 N.W.2d at 40.

We reject his contention that the State has failed to make reasonable efforts for reunification. Joe contends he requested additional services, i.e. visitation, on May 31, 2011; the juvenile court ordered DHS to provide a written visitation plan on June 27, 2011; but DHS failed to do.

The State responds that the June 27, 2011 order reads as follows:

The father's application for visitation has been resolved by the Department of Human Services and the father developing a visit plan. The court grants discretion to the [DHS] regarding visitation between the children and their father as far as frequency, duration, and level of supervision.

The [DHS] shall file an amended case plan within 30 days with a written visit plan for the father.

A review hearing was then held on August 12, but the father did not appear and his attorney took no position due to lack of contact with his client. An August 2011 progress report was submitted and based upon the record, the court found that reasonable efforts had been made. The father was directed to provide DHS with a current address, comply with drug testing, and comply with services—none of which occurred. The father did not appear at the permanency hearing on November 16, nor did his attorney. Even if we assume the father requested additional services by requesting a visitation plan, he subsequently failed to involve himself in services as he failed to contact DHS, or appear at court hearings to express his dissatisfaction.

Under these circumstances, we cannot conclude that reasonable efforts have not been made *by the State*. Rather, the father has failed to take advantage of the services that might have been provided to him. See *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000) (discussing reasonable efforts and noting that “our focus is on the services provided by the state and the response by [the parent], not on services [the parent] now claims the DHS failed to provide”).

2. *Mother’s appeal*. The mother argues the State failed to prove the children could not be returned to her at the present time. She argues the children have never been at risk of physical abuse in her care and that there was no risk of harm should the children be returned to her. We disagree. As aptly noted by the juvenile court,

It is clear to the court that when presented with a choice of being a mother to her children or continuing her use of illegal substances, [Jessica] has overwhelmingly chosen the latter. Historically, [Jessica’s] choices have left the children at great safety risk due to lack of supervision by their mother. Furthermore, the children, being left to their own devices does not provide them with the developmental and emotion support that they so desperately need and deserve. Over the course of the child in need of assistance proceedings, regardless of the numerous services provided by the State, [Jessica] has not progressed either in the level of visitation with her children or in recognizing and addressing her parenting deficits. The safety concerns present at the time of the initial removal have not been resolved or even addressed by the mother. To return any of the children to the mother’s care at this juncture would indeed place them at peril.

We concur with the trial court’s finding that the mother’s unresolved and long-standing substance abuse and mental health concerns would subject the children to the risk of harm. See *In re A.B.*, ___ N.W.2d ___, 2012 WL 2361730, at *11-

12 (Iowa 2012) (noting we have “long recognized that an unresolved, severe, and chronic drug addiction can render a parent unfit to raise 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.*

Neither parent is able to provide for the children’s long-term nurturing and growth: the mother has not placed the children’s welfare in the forefront and has failed to address her mental health needs and substance abuse; the father has chosen to be involved in the lives of his children only on occasion and has provided no financial or continuing emotional assistance to them. As observed by the juvenile court, the children are “bright, young, and without special needs” and have “thrived in the environment of caring structure provided by foster placement.” They are adoptable. We agree with the juvenile court that it is in the children’s best interests to terminate the parent-child relationships. “Such a [promising] future can only be obtained in a structured, safe, and secure environment. That result can only be achieved through termination of the biological parents’ parental rights.”

C. Exceptions or Factors against Termination.

Finally, we give consideration to whether any exception or factor in section 232.116(3) applies to make termination unnecessary. 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). In this case, the mother relies upon the exception found in Iowa Code section 232.116(3)(c): “There is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.”

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). We do not find such evidence exists here. We, like the juvenile court, find that although the children “have an emotional bond with their mother, the mother has chosen not to reciprocate.” We do not find that termination would be detrimental to these children based solely on the parent-child relationship and we therefore 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) and (h), 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 termination of each of the parent’s parental rights.

AFFIRMED.