

IN THE COURT OF APPEALS OF IOWA

No. 2-650 / 12-0659
Filed August 22, 2012

**IN THE INTEREST OF A.L. and A.L.,
Minor Children,**

J.L., Mother,
Appellant,

E.L., Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Colin J. Witt, District Associate Judge.

A mother and father appeal the termination of parental rights to their children. **AFFIRMED ON BOTH APPEALS.**

Nathan A. Mundy of Bartolomei & Lange, P.L.C., Des Moines, for appellant-mother.

Jesse A. Macro Jr. of Gaudineer, Comito & George, L.L.P., West Des Moines, for appellant-father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, John Sarcone, County Attorney, and Michelle Chenowith, Assistant County Attorney, for appellee.

Kimberly Ayotte of Youth Law Center, Des Moines, attorney and guardian ad litem for minor children.

Considered by Vaitheswaran, P.J., and Potterfield and Bower, JJ.

BOWER, J.

A mother and father appeal the termination of parental rights to their children. They contend termination is not in the children's best interests. The mother also argues the State failed to prove the grounds for termination by clear and convincing evidence and failed to make reasonable efforts to reunite her with the children.

Despite the receipt of nearly two years' worth of services to address parenting deficiencies, the State has demonstrated that neither parent is able to safely care for the children. The children's best interests require termination of both the mother and the father's parental rights, even though the children are in the care of a relative. The record supports the juvenile court's finding that the paternal aunt is not an appropriate placement. We affirm.

I. Background Facts and Proceedings.

Am.L. was removed from the mother's care following an incident in November 2009 where the mother's blood alcohol content registered at .312 on a preliminary breath test. The child was not yet two years old at the time. Am.L. was placed in the care of a paternal aunt.

Both the mother and the father have a history of substance abuse and domestic abuse. As a result, Am.L. was adjudicated to be a child in need of assistance (CINA) in January 2010.

Services were offered to the parents. The mother made a number of attempts, but failed to complete substance abuse treatment. In May 2010, it was

learned the mother was pregnant. The mother continued to abuse alcohol during her pregnancy.

Aa.L. was born in January 2011 and was promptly removed from the mother's care due to the mother's unresolved alcohol abuse and placed with a maternal cousin. Aa.L. was adjudicated to be a CINA in February 2011.

The State filed its petition seeking to terminate both parents' rights on August 1, 2011. That same month, hearings were held on the State's motion to modify placement. It was determined the paternal aunt, with whom Am.L. was placed, was contributing to the chaos in the mother and father's relationship. The court entered its order modifying placement on August 19, 2011. Both children were placed with the paternal grandmother in Mississippi.

The termination hearings were held in October and November 2011. On March 27, 2012, the juvenile court entered its order terminating the parental rights of both the mother and father. The mother and father filed separate appeals.

II. Scope and Standard of Review.

We review termination of parental rights proceedings de novo. *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011). While we are not bound by the juvenile court's fact-findings, we do give them weight, especially when assessing witness credibility. *Id.*

We will uphold a termination order if clear and convincing evidence supports the grounds for termination under section 232.116. *Id.* Evidence is

“clear and convincing” where there lack “serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.” *Id.*

III. Grounds for Termination.

The juvenile court terminated both parents’ rights pursuant to Iowa Code section 232.116(1)(d) (2011) as to both children and section 232.116(1)(h) as to Am.L. The court also terminated the mother’s parental rights to both children under section 232.116(1)(l). We need only find grounds to terminate under one of these sections to affirm. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa 1999).

Termination is appropriate under section 232.116(1)(d) where there has been a CINA adjudication due to abuse or neglect and “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.” The mother does not dispute that at the time of termination, the children could not be safely returned to her care.

We find clear and convincing evidence shows the circumstance that led to the CINA adjudication continues to exist. The children were adjudicated a CINA because the mother’s chronic, untreated alcohol abuse left them at risk of neglect. Despite numerous attempts, the mother was unable to successfully complete substance abuse treatment and failed to demonstrate her sobriety. The juvenile court found the mother’s evidence of sobriety and stability to be “completely lacking in credibility.” We defer to this finding. See *D.S.*, 806 N.W.2d at 465.

IV. Reasonable Efforts.

The mother also contends the juvenile court erred when it issued its November 1, 2011 order waiving the State's requirement to make reasonable efforts to reunite the parents with the children. The order in question held the DHS could end visitation between the parents and the children, who were in the custody of their paternal grandmother in Mississippi.

Iowa Code section 232.102(7) (2011) requires the DHS to "make every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interests of the child." However, the court may waive the reasonable efforts requirement where there is clear and convincing evidence that aggravated circumstances exist. Iowa Code § 232.102(12).

The State filed its application to waive reasonable efforts in July 2011, alleging the aggravated circumstances as set forth in section 232.102(12)(b) existed, i.e., that: (1) the children were adjudicated to be CINA based on a finding of abuse or neglect; (2) clear and convincing evidence that the abuse or neglect posed a significant risk to the child's life or constituted imminent danger to the children; and (3) the offer or receipt of services would not correct the conditions that led to the abuse or neglect within a reasonable time. See Iowa Code § 232.116(1)(i).

The order waiving reasonable efforts came at the close of the termination of parental rights hearing. The court noted in its order, "Reports indicate that the children's current placement is being jeopardized by both parents' conduct" and referenced State's exhibit 40. This falls short of the "written findings of fact

based upon evidence in the record” that is required by section 232.102(12) when reasonable efforts are waived. However, the reasonable efforts requirement is not a strict substantive requirement of termination but instead impacts the burden of proving those elements of termination that require reunification efforts. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000).

The State must show reasonable efforts as part of its ultimate proof that the child cannot be safely returned to the parent’s care. *Id.* As outlined above, the circumstance that led to the children’s CINA adjudications—the mother’s alcohol abuse—continues to exist. Despite numerous attempts at treatment, the mother continues to use alcohol and her use is exacerbated by her chaotic relationship with the father, a relationship that continued to exist at the time of the termination hearing and which the parents had no interest in ending. The State met its burden of showing the children could not be safely returned to the parents’ care. Additional visits between the parents and the children would not have changed the outcome of this case.

V. Best Interests.

The mother and father contend termination is not in the children’s best interests. They also argue the juvenile court erred in terminating their parental rights when the children were in the custody of a relative. The father argues the juvenile court erred in placing the children in the care of the paternal grandmother rather than the paternal aunt.

The best-interests determination requires us to “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.” *P.L.*, 778 N.W.2d 33, 40 (Iowa 2010) (citing Iowa Code § 232.116(2)). Taking these factors into consideration, we conclude termination is in the children’s best interests. The evidence shows the mother is unable to remain sober given her failure to complete treatment and her ongoing relationship with the father, which contributes to her alcohol abuse. See *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997) (holding that when considering what the future holds if the child is returned to the parent, we must look to the parents’ past behavior because it is indicative of the quality of care the parent is capable of providing in the future). The juvenile court found:

These parents are together. It is clear they are going to stay together. This case opened because the mother was so intoxicated as a result of romantic problems she had with the father that she committed egregious and criminal child endangerment through neglecting the older child [Am.L.] These parents are simply not able to meet the physical and emotional and mental needs of these children. The mother cannot complete a substance abuse treatment program. The mother puts her relationship with the father and his family above doing what it takes to be a sober and safe mother to her children. The mother would continue to do so, really without end, because of the level of her addiction to alcohol and the type of unhealthy relationship she has with the father.

The record supports this finding and we adopt it as our own. Given the chaotic and volatile nature of the parents’ relationship, the domestic violence issues that remain unaddressed, the mother’s severe alcohol abuse, and the father’s limited abilities, we conclude termination is in the children’s best interests.

A termination, otherwise warranted, may be avoided under section 232.116(3). *In re D.E.D.*, 476 N.W.2d 737, 738 (Iowa Ct. App. 1991), *overruled on other grounds by P.L.*, 778 N.W.2d at 39). Iowa Code section 232.116(3)(a)

provides, “The court need not terminate the relationship between the parent and child if the court finds . . . [a] relative has legal custody of the child.” Section 232.116(3)(c) provides the court need not terminate parental rights where termination would be detrimental to the child due to the closeness of the parent-child relationship. The factors under section 232.116(3) have been interpreted by the courts as being permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993), *overruled on other grounds by P.L.*, 778 N.W.2d at 39. The words “need not terminate” are clearly permissive. *Id.* 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. *Id.*

It is important to fix child custody quickly as children should not be made to suffer indefinitely in parentless limbo. *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). We cannot gamble with the children’s future. *In re D.W.*, 385 N.W.2d 570, 578 (Iowa 1986). Children should not be forced to suffer in parentless limbo based on the hope the parents will finally face up to their problems. *Id.* The juvenile court found, and we agree, that the children desperately need permanency and stability. We find termination should not be delayed because the children are in the care of a relative. We also do not find the parents have established a sufficient parent-child bond, such that the children will suffer if parental rights are terminated.

Finally, the father contends the juvenile court erred in placing the children in the care of their paternal grandmother, rather than their paternal aunt. The

juvenile court made extensive findings in its order modifying Am.L.'s custody and again in the termination order, which state that the paternal aunt contributed to or exacerbated the chaos in the parents' relationship. On this record, we find the paternal aunt is an inappropriate placement for the children.

Because the grounds for termination were proved by clear and convincing evidence and termination is in the children's best interests, we affirm.

AFFIRMED ON BOTH APPEALS.