

IN THE COURT OF APPEALS OF IOWA

No. 2-757 / 12-1297
Filed September 6, 2012

**IN THE INTEREST OF M.T. AND K.T.,
Minor Children,**

K.T., Mother,
Appellant.

N.T., Father
Appellant.

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

A mother and father separately appeal the order terminating their parental
rights. **AFFIRMED ON BOTH APPEALS.**

Kara L. McFadden, Cedar Rapids, for appellant mother.

Douglas Q. Davis II of State Public Defender's Office, Cedar Rapids, for
appellant father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, and Kelly Kaufman, Trial Counsel, Assistant County Attorney, for
appellee State.

Robin Miller, Marion, attorney and guardian ad litem for minor children.

Considered by Eisenhauer, C.J., and Doyle and Tabor, JJ.

DOYLE, J.

The mother and father separately appeal the district court's order terminating their parental rights to their children. We affirm.

I. Background Facts and Proceedings.

N.T. is the father and K.T. is the mother of M.T., born in October 2009, and K.T., born in December 2010.¹ The parents married in 2008, but have had an on-again, off-again relationship. The mother reported in 211 there was domestic violence in the marriage.

The mother has a history of substance and alcohol abuse, and she first came to the attention of the Iowa Department of Human Services (Department) in 2005, prior to parents' marriage. Following the stillborn birth of her second child, the mother tested positive for cocaine. A hair-stat test on her oldest child, then two years old, also tested positive for cocaine.² The mother attempted substance abuse treatment but left against recommendations. The child was ultimately placed in the permanent care of his father due to the mother's drug addiction.

Before M.T.'s birth, the mother admitted she had relapsed and used crack cocaine during her pregnancy. The mother stated the father did not know about her substance abuse. After M.T.'s birth, N.T. also learned he was not the biological father of the child. The mother voluntarily agreed to have M.T. placed in family foster care, and M.T. was adjudicated a child in need of assistance (CINA).

¹ N.T. is the legal father of M.T. The termination of M.T.'s biological father's parental rights is not at issue in this case.

² This child, K.H., is not N.T.'s child and is not at issue in this case.

From October 2009 to September 2010, the mother entered two different residential treatment programs and one intense outpatient treatment program. Despite her stints in treatment and learning she was again pregnant, the mother relapsed numerous times during that time period, first relapsing on alcohol in January 2010 and crack cocaine thereafter, testing positive for illegal substances in February, April, July, and August 2010. Although her first treatment program allowed M.T. to be placed in her care at the facility, the child was removed from her care in February 2010 and placed back in family foster care because of her relapse. When the mother used cocaine in August 2010, she had her eldest child in her care for a visit.

In the same time period, the father slowly progressed in the case. The father told the Department he did not have a substance abuse problem, but he admitted he occasionally used marijuana. He agreed to stop using any illegal drugs, and, in an effort to support the mother's sobriety, he agreed to stop all drinking. He provided clean drug screens, though there was inconsistency in his submission of samples for testing. He had regular visitation with M.T., which progressed to semi-supervised visitation. Based upon the father's progress, the service provider believed it was reasonably likely M.T. could be returned to the father's care, and the focus was changed to reunification with the father. The father reported he was frustrated with the mother's relapses, though he stated he was not ready to divorce her.

The State filed its petition to terminate the parents' parental rights in May 2010, and a hearing on the petition was held in September 2010. At that time, the parents had separated and planned to divorce. The Department's case

worker and M.T.'s guardian ad litem (GAL) agreed that the parents had made little progress and recommended termination of their parental rights. The case worker's main concern was that the parents might resume their relationship, given their past separations and reconciliations. She believed the mother might attempt to have unauthorized contact with M.T. if the child was living with the father. The service provider recommended against termination of the father's parental rights.

Thereafter, the juvenile court entered its well-reasoned ruling concluding the State failed to prove by clear and convincing evidence that the father's parental rights should be terminated pursuant to any of the legal grounds alleged. Specifically, the court found "clear and convincing evidence that [M.T.] could be returned [the] father without ongoing risk of harm." The court found the State did prove the grounds asserted against the mother, but concluded

if placement with [M.T.'s] father is successful, termination of the mother's parental rights would not be necessary to achieve permanent placement. The evidence is clear that [the mother] is a competent, loving mother so long as she is maintaining sobriety. If [the mother] is able to be successful in her current residential program, transition to a halfway program, and maintain sobriety, she may be able to remain an important part of [M.T.'s] life, even if [M.T.] is in the primary physical care of [the father].

Generally, the urgency of providing permanency for a child of [M.T.'s] age does not allow the court the luxury of additional time for a parent in [the mother's] circumstances. However, because of these unique circumstances, the court can reasonably defer the decision whether termination of the mother's parental rights is in the child's best interest for a relatively short additional period of time Additional time on this issue will also allow further evaluation of [the parents'] follow-through with their stated plan to remain separated and to divorce.

The court ordered the Department implement a plan to transition M.T. to the care of the father. The court further ordered that "to assist in the transition period, [the

parents] shall have no contact except for contact authorized in a written safety plan.” M.T. was placed in the father’s care on December 3, 2010, for a trial home placement and then was returned to his care.

K.T. was born in December 2010 and remained with the mother, who was residing at that time in a residential treatment facility. The mother completed the facility’s program and transitioned into a halfway house with K.T. K.T. was later adjudicated a CINA.

Things went downhill from there. By early January 2011, the parents had reconciled and requested they be allowed to live together. Although the Department was willing to develop a plan to allow that to occur, the juvenile court denied their request and refused to fully rescind the no contact order between the parents. The Department then learned the mother had relapsed again since moving to the halfway house, using alcohol and cocaine while living there and at times when K.T. was in her care. K.T. was placed in foster care.

Despite the court’s order, the Department discovered the parents had not been truthful concerning the extent of their contact. Although the parents had admitted to a few phone calls, telephone records showed they had multiple daily phone calls. The parents were seen kissing at the courthouse and shopping together, and other incidents of violations of the safety plan were discovered. M.T. was removed from the father’s care on February 25, 2011, due to the parents’ dishonesty and the fact the father had contact with the mother when he knew she was actively using cocaine. M.T. tested positive for cocaine at the time of her removal, evidencing she was exposed to cocaine during the time the father had custody. The father then tested positive for cocaine on March 9, 2011.

The mother began an inpatient-treatment program in Des Moines, and she completed the program on April 20, 2011. The same day, the day before she was to transition to the program's halfway house in Iowa City to begin aftercare treatment, she relapsed. Both parents admitted to having continued contact despite the no contact order, and they were found in contempt and sentenced to jail time. The father again was not consistently providing drug screens. The State then filed its second petition for the termination of the parents' parental rights.

The mother relapsed on alcohol in May, and she left the halfway house to work on her relationship with the father. The mother relapsed on alcohol again in July, and she neglected her case management appointments. The parents then moved into the treatment facility's transitional living program but were inconsistent with the providing the drug screens requested by the Department.

Hearing on the State's petition was held in September 2011 and January 2012. The mother testified that her treatment was different this time, and she had not used cocaine since March 2011 and alcohol since July 2011. She admitted the longest she'd been sober was 122 days. The mother's case manager at the treatment facility testified the mother had provided negative drug screens, but admitted only some samples were sent to a lab for determinative testing. She testified she believed the mother could be successful in the program, and she had no concerns about placement of the children with the parents in the transitional home.

The Department's case worker and the services providers all testified that the parents and children are bonded and that the parents provide adequate

parenting to the children in their visits. They testified the parents generally never missed their visits. Nevertheless, all recommended termination of both parents' parental rights, since the mother had continued to relapse throughout the case and the father's continued relationship with the mother resulted in a safety risk to the children if they were to be placed in his care. One of the service providers described the mother as a functioning addict.

In June 2012, the district court entered its order terminating both parents' parental rights under Iowa Code section 232.116(1)(h) (2011). The court also terminated the mother's parental rights under section 232.116(1)(l) (child CINA, parent has substance abuse problem, child cannot be returned within a reasonable time).

The parents now appeal separately.

II. Scope and Standards of Review.

We review the juvenile court's decision to terminate parental rights de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). The State must prove grounds for termination by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

III. Grounds for Termination.

Both the mother and father argue the State failed to prove grounds for terminating their parental rights. Although the mother's rights were terminated pursuant to section 232.116(1)(h) and (l), 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)(h). Under that section, parental rights may be terminated if the court finds by clear

and convincing evidence that the child is three years of age or younger, has been adjudicated a CINA, has been removed from the physical custody of his 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, and there is clear and convincing evidence that the child cannot be returned to the custody of the child's parents at the present time. Iowa Code § 232.116(1)(h).

Neither parent disputes the first three elements of this ground were proved. Rather, they both assert the children could have been returned to their care at the time of the second termination trial. While the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," this patience has been built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). The legislature incorporated a six-month limitation for children adjudicated a CINA aged three and younger. Iowa Code § 232.116(1)(h)(3). Our supreme court has stated that "the legislature, in cases meeting the conditions of [the Iowa Code], has made a categorical determination that the needs of a child are promoted by termination of parental rights." *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990) (discussing Iowa Code § 232.116(1)(e)). The public policy of the state having been legislatively set, we are obligated to heed the statutory time periods for reunification.

A. Mother.

By the time of the termination hearing, M.T. had been out of the mother's care for over a year and a half of her young life. K.T. too has only been in the mother's care for a very short time period. The statutory six-month period expired with little evidence that she could provide the necessary stability to safely

parent her children. She was even given additional time in this case to achieve continued sobriety so she could be reunited with M.T., but she could not remain sober.

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 eight years during which the mother has struggled to overcome her drug and alcohol addiction. See *C.B.*, 611 N.W.2d at 494. 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. "A parent cannot wait until the eve of termination, after the statutory time periods for reunification have expired, to begin to express an interest in parenting." *Id.* at 494. Under the circumstances presented, we find the State proved by clear and convincing evidence the children could not be safely returned to the mother's care at the time of the termination hearing. Accordingly, we agree with the juvenile court that termination of the mother's parental rights was proper under Iowa Code section 232.116(1)(h).

B. Father.

Our supreme court has "long recognized that an unresolved, severe, and chronic drug addiction can render a parent unfit to raise children. No parent should leave his small children in the care of [an] . . . addict—the hazards are too great." *In re A.B.*, 815 N.W.2d 764, 776 (Iowa 2012) (internal citations and quotation marks omitted). While we recognize the bond between the father and the children, the facts in this case evidence that the father is unwilling to put his children and their safety first before his relationship with the mother. He now

asserts it was not his fault that M.T. tested positive for cocaine while in his care, citing the mother's testimony that she exposed M.T. to cocaine use at her treatment facility. However, after M.T. tested positive, the father told the Department's case worker a different story, stating it was from the mother's visit to his home the week prior, while a no contact order existed between the parents. This is exactly the kind of harm recognized in *A.B.* to which he exposes the children by remaining with an addict who has not demonstrated any long-term success at sobriety and has regularly compromised her children's safety by her illicit drug use. See *id.* The fact that he and the mother are now living in a treatment facility program does not establish the children could be returned to his care at that time, given the mother's numerous relapses when living at a residential treatment facility. Her very presence, due to her lack of continued sobriety, puts the children at risk. The State is certainly not required to wait for new harm to occur to these children, who have tested positive for cocaine in their short lives, before acting to prevent probable harm to them. See, e.g., *In re In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). Under the circumstances presented, we find the State proved by clear and convincing evidence the children could not be safely returned to the father's care at the time of the second termination hearing. Accordingly, we agree with the juvenile court that termination of the father's parental rights was proper under Iowa Code section 232.116(1)(h).

IV. Best Interests.

Both the mother and father argue termination of their parental rights was not in the children's best interests. If a statutory ground for termination is

determined to exist, the court may terminate a parent's parental rights. *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010). In considering whether to terminate, the court must then apply the best-interests framework established in section 232.116(2). *Id.* The legislature highlighted as primary considerations: the children's safety, the best placement for furthering the long-term nurturing and growth of the children, and the physical, mental, and emotional condition and needs of the children. *Id.*; see also Iowa Code § 232.116(2). "A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests." *J.E.*, 723 N.W.2d at 801 (Cady, J., concurring specially). Those best interests are to be determined by looking at the children's long-range as well as immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). We are to consider what the future likely holds for the children if the children are returned to their parents. *In re J.K.*, 495 N.W.2d 108, 110 (Iowa 1993). Insight for that determination is to be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493–94 (Iowa 1990).

Under the facts and circumstances in this case and considering the children's long-term and immediate best interests, we agree with the juvenile court that termination of both parents' parental rights is in the children's best interests. We recognize and commend the recent efforts the mother has made in attempting to address her addictions, yet concerns still remain. While we do not doubt the mother's and father's love for their children, "[i]t is well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be

a parent and be able to provide a stable home for the child.” *P.L.*, 778 N.W.2d at 41. Children are not equipped with pause buttons. “The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.” *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). “At some point, the rights and needs of the child rise above the rights and needs of the parents.” *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997), *overruled on other grounds by P.L.*, 778 N.W.2d at 39; *see also P.L.*, 778 N.W.2d at 39–40. The children should not be forced to endlessly suffer the parentless limbo of foster care. *In re J.P.*, 499 N.W.2d 334, 339 (Iowa Ct. App. 1993). The mother has not demonstrated an ability to continue her sobriety beyond a few months, and the father’s relationship and the living situation with the mother continues to put these children at risk of harm if they were to be placed in his care. These children are in need of permanency. We note the children are doing well in foster care, and the foster parents are willing to adopt the children. Relative placements may also be an option for these children. We therefore affirm on this issue.

V. Father’s Reasonable Efforts Claim.

Finally, the father argues the State failed to provide him reasonable services for reunification with the children. While the State has an obligation to provide reasonable reunification services, the parent has an equal obligation to demand other, different, or additional services *prior to the termination hearing.*” *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999) (emphasis added). When a parent alleging inadequate services fails to demand services other than those provided, the issue of whether services were adequate is not preserved for

appellate review. *Id.*; *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994).

Here, there is no evidence in the record the father ever demanded any other, different, or additional services prior to the termination hearing. We conclude he failed to preserve error on this claim, and we therefore do not address it.

AFFIRMED ON BOTH APPEALS.