

IN THE COURT OF APPEALS OF IOWA

No. 2-855 / 12-0938
Filed October 17, 2012

**IN RE K.S., T.B., and J.J.S.,
Minor Children,**

**K.D.B., Mother,
Appellant.**

Appeal from the Iowa District Court for Shelby County, Charles D. Fagan,
District Associate Judge.

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

AFFIRMED.

William T. Early, Harlan, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Marcus Gross Jr., County Attorney, and Todd Argotsinger,
Assistant County Attorney, for appellee.

Michael Murphy, Council Bluffs, for father.

Karen Mailander, Anita, attorney and guardian ad litem for minor children.

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

BOWER, J.

A mother appeals the termination of her parental rights to her children. She contends the State failed to prove the grounds for termination by clear and convincing evidence. Because we find clear and convincing evidence supports termination under Iowa Code section 232.116(1)(e) (2011), we affirm.

I. Background Facts and Proceedings.

Three children are the subject of these proceedings: K.S., born in January 2007, T.B., born in August 2004, and K.S., born in January 2003. The mother has two older children who are not at issue. The children at issue were adjudicated in need of assistance (CINA) in November 2009, following a finding their father had sexually abused T.B. and the mother's older children. Although the father had a founded sex abuse assessment in 2003 for perpetrating sexual abuse on his six-year-old niece, the mother left her three youngest children in his care for approximately eighteen months when she left for Wyoming with her older children. As a result of the sexual abuse, the father was charged with and convicted of five counts of second-degree sexual abuse.

This is not the first time the mother's children have been the subject of juvenile court proceedings. The mother has had extensive involvement with the Department of Human Services (DHS) and juvenile court, going back ten years. The mother has a history of denying her children critical care and, when confronted by the DHS, abandoning the children and fleeing to Wyoming. The mother has untreated mental health and substance abuse issues.

Following the most recent CINA adjudication, the mother initially participated in the services offered and made improvements. The children were returned to her care in August 2010. The mother married that fall. She and her husband lived with the maternal grandfather and his wife. The family was doing well. However, by June 2011, the mother had separated from her husband and was living alone with her children. She placed one of her oldest children with the maternal grandparent.

The mother failed to appear at the June 2011 permanency review hearing, and due to concerns about the mother's ability to care for her children, the children were removed from her care. She left the state one week later. The three youngest children were placed with their paternal aunt and were doing well.

The State filed a petition to terminate parental rights on December 30, 2011. At the termination hearing—held in February and May 2012—the mother testified she had won \$70,000 in the lottery in November 2011 and had purchased a trailer. She traveled to Wyoming and Utah and spent the remainder of her winnings before returning to the state. She claimed she was ready to be a parent to her children. The mother had only visited with the children three times since their removal in June 2011.

On May 15, 2012, the juvenile court entered its order terminating the mother's parental rights pursuant to sections 232.116(1)(d) and (e). The court found termination was in the children's best interests. The children's placement continued in the care of their paternal aunt.

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.*

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.

The mother contends the State failed to prove the grounds for termination by clear and convincing evidence. The juvenile court terminated the mother's parental rights under both section 232.116(1)(d) and (e). 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)(e) where the State proves:

- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (2) The child has been removed from the physical custody of the child's parents for a period of at least six consecutive months.
- (3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so. For the purposes of this subparagraph, "significant and meaningful contact" includes but is not limited to the

affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child's life.

The mother does not dispute the first two elements have been proved. Instead she argues she was never afforded an opportunity to resume care of her children.

Our review of the record shows the grounds for termination under section 232.116(1)(e) have been proved by clear and convincing evidence. Although the mother claims the paternal aunt and the DHS thwarted her attempts to see the children, the mother never made contact with DHS to visit the children. Nor does the record reveal that she sought additional visitation from the court. Between the children's removal in June 2011 and the February 2012 termination hearing, the mother had only three visits with the children. During a portion of that time, she chose to travel to Utah and Wyoming and spend her lottery winnings rather than attempt to reunite or even visit with her children. This is in keeping with the mother's history of fleeing the state after DHS involvement.

The mother failed to maintain significant and meaningful contact with her children in the six months leading up to termination, and she failed to make reasonable efforts to resume their care. Although she bought a trailer, there is no evidence that the mother could provide the level of care necessary to parent the children safely. Actually, the mother's actions over the last ten years show she cannot parent these children. See *In re C.K.*, 558 N.W.2d 170, 172 (Iowa

1997) (holding a parent's past performance is indicative of the quality of care a parent is capable of providing in the future). Accordingly, we affirm.

AFFIRMED.