

IN THE COURT OF APPEALS OF IOWA

No. 2-921 / 12-1534
Filed October 31, 2012

**IN THE INTEREST OF A.S. and E.H.,
Minor Children,**

C.H., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Rachel Seymour,
District Associate Judge.

A mother appeals the termination of her parental rights. **AFFIRMED.**

Steven E. Clarke of Pargulski, Hauser & Clarke, Des Moines, for
appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John Sarcone, County Attorney, and Christina M. Gonzalez,
Assistant County Attorney, for appellee.

Jonah Dyer of JHD Law, Des Moines, for father of A.S.

Jeremy Evans of Sporer & Flanagan Law Firm, Des Moines, for father of
E.H.

Erin Mayfield of Youth Law Center, Des Moines, attorney and guardian ad
litem for minor child.

Considered by Doyle, P.J., and Mullins and Bower, JJ.

MULLINS, J.

A mother appeals the termination of her parental rights under Iowa Code section 232.116(1)(d), (e), and (f) (2011), contending the State failed to present clear and convincing evidence to support grounds for termination and termination was not in the children's best interest. We affirm.

I. Background Facts & Proceedings

The mother has two children at issue in the present appeal: A.S. (born October 2007) and E.H. (born April 2000). A.S. and E.H.'s respective fathers do not appeal the concurrent termination of their parental rights.

This case first came to the attention of the Department of Human Services (DHS) in February 2011, when the mother was hospitalized for chronic health problems and tested positive for methamphetamine use. The mother's health issues include type I diabetes, fibromyalgia, hyperthyroidism, asthma, gastroparesis, and chronic migraines. She admitted to using methamphetamine and left the hospital against medical advice. At the time of her hospitalization, the mother was suffering from other treated and untreated mental health issues, and was homeless.

The State filed a petition for temporary removal on February 23, 2011. On February 25, 2011, the juvenile court transferred custody of the children to DHS for purposes of relative or family foster care placement. On March 2, 2011, the juvenile court held a contested removal hearing. The court found both the mother and A.S.'s father were living at a homeless shelter. A.S.'s father was arrested after the hearing under an outstanding warrant for domestic abuse

against the mother. The juvenile court confirmed the removal and ordered the mother to obtain substance abuse and mental health counseling.

On April 22, 2011, the parties stipulated the children were in need of assistance (CINA) under section 232.2(6)(c)(2) and (n). During the adjudication proceeding, the mother recanted her previous admission of methamphetamine use. The court ordered the mother to pursue housing assistance and undergo a psychological evaluation, individual therapy, medication management program, and substance abuse evaluation.

On June 1, 2011, the court held an uncontested dispositional hearing. The mother agreed to the case permanency plan. On September 29, 2011, the court held an uncontested review hearing. The court found the mother was inconsistent in participating in court ordered services including individual therapy.

On February 7, 2012, the juvenile court held a contested permanency hearing. The mother was not present at the hearing because she had been hospitalized for failure to monitor diabetes-related health concerns. The court found the mother had made little progress toward reunification and continued to struggle to correct the concerns leading to removal. The court found continued placement with DHS was necessary because of the mother's "unresolved substance abuse issues, [m]other's unresolved mental health issues and parents' inability to provide a safe and stable living environment." The court then ordered the State to initiate termination proceedings.

The State filed a petition for termination of parental rights on March 29, 2012. The juvenile court held termination hearings on April 26 and April 27,

2012. The mother was hospitalized on April 26, 2012, and did not personally appear. Although she was discharged before the next day's hearing, the mother failed to appear on her own behalf. The State, the children's guardian ad litem, and the DHS worker all recommended terminating the mother's parental rights. The State provided many services to the mother to assist in reuniting her with her children including, but not limited to: parenting classes; drug screens; child protective assessment services; relative placement; foster care; individual therapy; visitation; family safety, risk, and permanency services; post-removal conferences; bus tokens; visiting nurse services; family team meetings; substance abuse evaluations; psychological evaluations; and protective daycare.

The juvenile court found the mother

had not remedied the problems that led to removal. In fact, in many ways [the mother was] in a worse position than at the beginning of the case. For example, [the mother] had recently been hospitalized several times due to her chronic health issues; . . . [the mother] had continued to maintain her position that she had not used methamphetamine despite the positive test and initial[] admissions, had not participated in any treatment and had missed several drug screens; and according to the child's therapist, [the mother] still did not [meet] her children's needs or [her] own mental health needs. Evidence showed [the mother] was resistive to almost all services and had a difficult time accepting any feedback offered to improve herself or her parenting skills.

The juvenile court terminated the mother's parental rights under section 232.116(1)(d), (e), and (f). The mother appeals the juvenile court order.

II. Standard of Review

We review termination of parental rights *de novo*. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). Although we give deference to the juvenile court's factual findings, especially when determining the credibility of witnesses, we are not

bound by them. *Id.* Of paramount concern in our review is the children's best interest. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

III. Analysis

A. Statutory Grounds

The mother challenges all three statutory grounds for termination. When the juvenile court terminates parental rights on more than one statutory ground, we need only find one ground proper to affirm. *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010).

To terminate parental rights under section 232.116(1)(f), the State must show the child is older than four years old, has been adjudicated in need of assistance, has been removed from the home for a requisite period of time, and the juvenile court could not return the child to the parent's custody pursuant to section 232.102. See Iowa Code § 232.116(1)(f) (setting forth the statutory requirements for termination). Although A.S. was three years old at the time of removal, both A.S. and E.H. were four years old or older at the time of the juvenile court ordered termination. See *id.* § 232.116(1)(f)(1); *In re D.M.J.*, 780 N.W.2d 243, 245 (Iowa Ct. App. 2010) (finding the relevant time for measuring statutory requirements is at time of termination). The mother stipulated to adjudication under section 232.2(6)(c)(2) and (n). See Iowa Code § 232.116(1)(f)(2). The children have been out of the mother's home for the last twelve consecutive months with no trial periods at home. See *id.* § 232.116(1)(f)(3).

At issue is whether the State presented clear and convincing evidence the children could not be returned to the mother's care pursuant to section 232.102. *See id.* § 232.116(1)(f)(4). The State meets its burden to prove this element if it presents clear and convincing evidence the children have suffered or are imminently likely to suffer an adjudicatory harm upon their return. *See id.* §§ 232.116(1)(f)(4), .102(5)(a)(2), and .2(6)(c); *In re A.M.S.*, 419 N.W.2d 723, 725 (Iowa 1988).

This case first came to DHS's attention when the mother was hospitalized for chronic health problems and tested positive for, and admitted to using, methamphetamine. Since that time, the mother has recanted her admission of methamphetamine use, failed to provide drug screens, and refused substance abuse treatment. We agree with the juvenile court's credibility determination in finding the positive test result more credible than the mother's denial. *D.W.*, 791 N.W.2d at 706. The mother's failure or refusal to address her physical health, mental health, and substance abuse issues places the children at imminent risk of suffering an adjudicatory harm under their mother's care. We find the State met its burden to show the children could not be returned to their mother's care, and termination of the mother's parental rights was proper under section 232.116(1)(f). Thus, we do not reach the question of whether termination was proper under section 232.116(1)(d) or (e). *See id.*

B. Best Interests of the Child

The mother argues it is not in the children's best interest to terminate parental rights. In determining whether termination is in the children's best

interest, we “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.” Iowa Code § 232.116(2); *In re P.L.*, 778 N.W.2d 33, 39–40 (Iowa 2010).

At the time of the termination hearings, the children had been removed from their mother’s care for over a year. During this time, the mother failed to make adequate progress towards reunification and demonstrated an inability to provide a safe and stable home for the children. The children must not be made to await their mother’s maturity any longer. See *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) (“The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.”); *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997) (“At some point, the rights and needs of the child[ren] rise above the rights and needs of the parents.”). We agree with the juvenile court that termination was in the children’s best interests.

IV. Conclusion

For the foregoing reasons, we affirm the juvenile court’s order terminating the mother’s parental rights.

AFFIRMED.