

IN THE COURT OF APPEALS OF IOWA

No. 2-985 / 12-1604
Filed December 12, 2012

**IN THE INTEREST OF A.M.A., M.A.A. III,
J.M.K, AND J.F.M,
Minor Children,**

G.K., Mother,
Appellant.

Appeal from the Iowa District Court for Plymouth County, Robert J. Dull,
District Associate Judge.

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

David A. Dawson, Sioux City, for appellant mother.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, Darin J. Raymond, County Attorney, and Amy K. Oetken, Assistant
County Attorney, for appellee State.

Robert B. Brock II, Le Mars, for appellee father.

John Polifka of Juvenile Law Center, Sioux City, for minor children.

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

DOYLE, P.J.

A mother appeals the termination of her parental rights to four of her children. Upon our de novo review, see *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010), we affirm.

I. Background Facts and Proceedings.

The mother has a long history with the Iowa Department of Human Services (Department), including her own childhood involvement as a victim of abuse. At issue in this case are the mother's four eldest children, born in 2004, 2005, 2007, and 2009.¹ In 2004, it was reported the mother had failed to provide her baby adequate food and shelter. That child abuse report was not confirmed; however, the Department has pretty much been in and out of the lives of the mother and her children since.

In April 2005, it was reported the mother was using methamphetamine in front of her child. Although the mother's drug tests were negative, the child tested positive for cocaine and benzoylecgonine after being left in the care of a drug user. The Department determined the child abuse report was founded, and the mother was offered services. She agreed not to leave her son with irresponsible persons. The Department's case worker noted in the report at that time:

It was strongly recommended that [the mother] consider seeking counseling or therapy to help her deal with her issues of abusive relationships and to help her with parenting skills. According to [the mother] she has repeatedly been in abusive relationships. She was dating [the child's] father when their relationship became abusive. She then left him and married

¹ The children have different fathers, and those fathers' parental rights are not at issue in this appeal.

another man who also abused her. After leaving this man, she [moved to another community and became] involved in another abusive relationship. This man is currently the father of her unborn child. Yet today, [the mother] is currently living with another gentleman. . . . [The mother] has continued to make very poor decisions in regards to the safety of herself and that of her child. She continues to make excuses as to why she cannot find employment due to not being released [from] her doctor and continues to place the blame for her current situation on [the Department] not helping her when she lived with abusive parents many years ago. [The mother] more or less refuses to take responsibility for her poor choices.

[The mother] and her son . . . are very bonded to one another. She interacts appropriately with [the child] and demonstrates adequate discipline techniques when necessary.

Despite numerous other reports of child abuse over the years involving domestic violence in the home and lack of supervision of the children, and despite the offers and/or receipt of various services from her communities and the Department, the worker's above-stated assessment is essentially where the case stands today, approximately seven years later. The mother now has five children, all of whom she loves and with whom she shares a close bond. Nevertheless, the mother's case only minimally progressed over the years. As a Department's case worker explained in December 2009:

[T]he case in general . . . seems to be moving in the right direction. But, there continues to be crisis and upheaval in this case as well. It seems that the family can function OK for a few months and then a crisis occurs (or is created), which is handled, and then the family is fine for the next month or so again. The family continues to have financial concerns, [the mother's husband] is not employed at this time and needs to complete [the Batterers Education Program] classes as well. There is also a concern that [the mother] might be pregnant again, which is a concern as the family is struggling with four children right now and adding a fifth child would be hard on the family. At the last family team meeting, [the mother and her husband] were asking if this worker would make the recommendation for Court that another review be held in three months and have it set for a possible dismissal. This worker does not feel that three months would be an appropriate time frame

for this family based upon the history of this case. As stated earlier, the family can maintain for a few months, but then a crisis comes forth causing disruption and confusion for the children.

Domestic violence continued in her home. By February 2010, the children were acting out more, being more aggressive, and using bad language. In May 2010, the family experienced another crisis; while in the care of a babysitter, one of the children, playing with the babysitter's lighter, set a pillow on fire causing the apartment to be severely damaged and destroying the children's belongings.

Thereafter, the mother relocated the family to a new city, and, because of their move, new caseworkers and service providers became involved in the case. The Department's new case worker noted concerns right away in the case, and by November 2010, sought removal of the children from the mother's care. The Court Appointed Special Advocate (CASA)/guardian ad litem, who had continued her services with the family, agreed with the Department, explaining the ongoing issues at that time as follows:

This [CASA] does feel [the Department] has put a significant amount of time and resources into this family in an attempt to help [the mother] provide a safe, nurturing home for the children. CASA has been assigned to the case for two years and feels the situation has rapidly deteriorated since the June [2010] Court Hearing. A child falling from an open upstairs window is an extremely serious event and should prompt immediate action by the mother to prevent it from happening again. [The youngest child's] unexplained and untreated burn on her arm, her falling from the highchair (which would not happen if she were properly secured and supervised), the children coming to school without breakfast, children not being immediately treated for a head lice problem are all threats to their physical safety. In addition, the children have not received the Court ordered therapy to address their emotional and behavioral issues. [The mother] has allowed a person with a significant criminal history, one who by her admittance is not allowed contact with his own children, to live in the home. [The mother] herself is not receiving therapy. She has allowed [her former abusive husband] contact with the children. Her attitude has changed over

the past six months and she has been rude, defiant, resistant to suggestions in meetings, and uncooperative in allowing access to the home and children. CASA feels there is grave risk to the children in the home at this time. Hopefully, without the burden of caring for four small children while expecting a fifth, [the mother] can take this time to fully enter into therapy, realize nurturing and protecting her children is her most important priority and take advantage of the help which is being provided to her.

The juvenile court granted the State's modification request in December 2010.

The court found the mother was not putting the children's interests before her own, and the children were placed with their maternal grandparents, where they have remained since.

Despite removal, the mother did not cooperate with the new workers and service providers. Providers found the mother and her new paramour argumentative and at times threatening. Ultimately, the State at the court's direction, filed a petition for termination of the mother's parental rights in January 2012.

At the hearing on the petition, the Department's current case worker testified that despite the receipt of numerous services, she still had concerns for the family:

Home stability continues to be a concern. They struggle with [their] financial situation, ability to meet the needs of the family, both because of financial [reasons] and because of [their lack of a] driver's license. Employment is unstable, which helps provide financial resources to the family.

Supervision is an issue and has been up to very recently. The children have not been injured during visits because they have been supervised visits. Some of the situations documented could have resulted in serious injury.

Parenting is a concern. When these children entered placement the three older kids had very chronic, serious behavioral problems, which have improved greatly. These kids have made significant progress in placement.

We have been working with [the mother] to try to meet the individual needs of her children emotionally and physically and also provide consistent structured parenting, rules and consequences, and also nurturing, love, validation, so that when the kids were to be returned to the home they would be able to maintain the progress they had already made.

Another barrier to the kids being returned to the home is that [the mother] and [her paramour's] argumentativeness goes beyond questioning and arguing. In my job as a child welfare worker I am accustomed to parents arguing and not liking me, but it is important for them to recognize that were working at assisting them and to follow our recommendations so that they can move forward. That's been a barrier.

The worker testified the children could not be returned to the mother's custody at that time, and she further testified that if the mother were able to change her acceptance and follow through with the Department's recommendations, the children could possibly be returned to her care in a year or two. She testified the children needed stability and permanency, and the children were adoptable.

Thereafter, the juvenile court entered its order terminating the mother's parental rights pursuant to Iowa Code section 232.116(1)(f) and (g) (2011). The mother now appeals.

II. Discussion.

On appeal, the mother contends the juvenile court erred in finding (1) the State proved by clear and convincing evidence the grounds for termination; (2) termination was in the children's best interests; and (3) exceptions to termination were not applicable. Additionally, the mother argues the juvenile court erred in (4) denying her various motions. We address her arguments in turn.

A. Grounds for Termination.

The mother's parental rights were terminated pursuant to Iowa Code section 232.116(1) paragraphs (f) and (h). These two grounds for termination are essentially the same but for the applicable age of the child and the amount of time the child has been out of the home. See Iowa Code § 232.116(1)(f) ("The child is four years of age or older" and "has been removed . . . for at least twelve of the last eighteen months"), (h) ("The child is three years of age or younger" and "has been removed . . . for at least six months of the last twelve months"). Both paragraphs (f) and (h) require the State to prove, by clear and convincing evidence, "the child cannot be returned to the custody of the child's parents as provided . . . at the present time." See *id.* § 232.116(1)(f)(4), (h)(4). It is the later element of those paragraphs that the mother challenges here. Upon our *de novo* review, we find the State has met its burden.

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). 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 section 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.

We agree with the juvenile court's conclusion that the State proved the children still could not be returned to the mother's care at the time of the

termination hearing. The mother continues to minimize her responsibility in the Department's involvement in her life, and she points the blame at others or makes excuses for her shortcomings. It is indeed tragic that she was a victim of child abuse, but as a victim, she should be able to recognize, seven years later, the need to put her children first in her life, especially given her bond with and love of her children. Although she made some efforts in 2011 at therapy and employment, and we commend those efforts, we concur with the juvenile court's assessment:

A complete review of the evidence . . . fully supports the conclusion that little has changed since the removal hearing held in December 2010. [The mother] continues to be intolerant of service providers, volunteer helpers, caretakers of her children, caseworkers, and almost anyone who does not see things her way. She considers the attacking of virtually all individuals concerned with this matter to be appropriate. She has lost two residences and based on the evidence is likely to lose the current one

The in-home worker, his supervisor, the CASA, her former pastor, the foster mother/grandmother of the children, and the [Department] are all misinformed, incorrect, or unable to perform their duties, according to [the mother]. [The mother] obviously feels that a total lack of stable income, past and likely future instability in residences, lack of transportation, and a revolving door of volunteers/acquaintances to supply transportation and money is an acceptable situation. It is not, and four years of services have been unable to assist [the mother] in obtaining and maintaining the stability needed by her children.

We accordingly affirm upon this issue.

B. Best Interests.

For the reasons stated above in finding the children could not be returned to the mother's care at the time of the termination hearing, we find the best-interests framework in Iowa Code section 232.116(2) supports termination of the mother's parental rights. In that section, 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. *P.L.*, 778 N.W.2d 37; *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 the mother's parental rights is in the children's best interests. While we do not doubt the mother's love for her 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. "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. Despite the Department's involvement in her and her children's lives over the last seven years, the mother has not demonstrated an ability to put her children first in her life, and they could not be returned to her care at the time of the hearing. These children are in need of permanency. We note the children are doing well in foster care, and the children are adoptable. We therefore affirm on this issue.

C. Section 232.116(3)(c).

We next consider the mother's argument that the statutory exception to termination in section 232.116(3)(c) should serve to preclude termination of her parental rights. That section states termination is not necessary if the court finds there is clear and convincing evidence the termination would be detrimental to the child due to the closeness of the parent-child relationship. Iowa Code § 232.116(3)(c). The juvenile court declined to invoke the exception though the evidence established the mother and her children were bonded. See *J.L.W.*, 570 N.W.2d at 781 (stating section 232.116(3) is "permissive, not mandatory"). We agree with the court's decision; the mother's bond with the children does not outweigh their need for permanency. The children have been out of her care for over a year, and they have made many improvements with the stability provided in living with their maternal grandparents. Termination will accordingly provide the children with the safety, security, and permanency they deserve. See *P.L.*, 778 N.W.2d at 41.

D. Various Motions.

The mother also contends the juvenile court erred in denying her motions to modify disposition and permanency and to increase visitation as part of the

reunification efforts provided to her. Because we agree with the juvenile court's order terminating the mother's parental rights, we find no error in the court's denial of these motions. We affirm on this issue.

III. Conclusion.

For the foregoing reasons, we affirm the juvenile court order terminating the parental rights of the mother to her four children.

AFFIRMED.