

**IN THE COURT OF APPEALS OF IOWA**

No. 3-1033 / 13-1454  
Filed November 20, 2013

**IN THE INTEREST OF D.W., M.W.-A., AND M.W.,  
Minor Children,**

**S.W., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Webster County, Angela L. Doyle,  
District Associate Judge.

The mother appeals from the termination of her parental rights pursuant to  
Iowa Code section 232.116(1)(e) and (f) (2011). **AFFIRMED.**

Marcy Lundberg, Fort Dodge, for appellant mother.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney  
General, Ricki Osborn, County Attorney, and Cori Coleman, Assistant County  
Attorney, for appellee State.

Derek Johnson, Fort Dodge, attorney and guardian ad litem for minor  
children.

Considered by Vogel, P.J., and Mullins and McDonald, JJ.

**VOGEL, P.J.**

The mother appeals from the termination of her parental rights, pursuant to Iowa Code section 232.116(1)(e) and (f) (2011), to her children, D.W., M.W.-A, and M.W. She asserts the State failed to prove she did not maintain significant and meaningful contact with the children and also failed to prove she did not make reasonable efforts to resume care of the children, despite being given the opportunity to do so. She further claims the evidence does not show the children cannot be returned to her care, and argues that termination is not in their best interest due to the family bond. Because we find the State proved by clear and convincing evidence termination is appropriate under Iowa Code section 232.116(1)(f), and that termination is in the children's best interest, we affirm.

**I. Factual and Procedural Background**

D.W. was born in July 2004. M.W.-A. was born in September 2007, and M.W. was born in October 2008. D.W. and M.W.-A were first adjudicated children in need of assistance (CINA) on July 22, 2008, pursuant to Iowa Code sections 232.2(6)(a) and (c)(2), and M.W. was adjudicated a CINA on April 23, 2009, pursuant to Iowa Code section 232.2(6)(c)(2).<sup>1</sup> All three CINA cases were due to reports of child abuse, domestic violence between the mother and M.W.-A and M.W.'s father (Jody), as well as substance abuse. At the time of the CINA adjudications, all three children were living with the mother.

On January 15, 2009, another child abuse assessment was completed due to the mother allowing D.W. and M.W.-A to have contact with Jody's brother,

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<sup>1</sup> D.W.'s biological father is Anthony. M.W.-A and M.W. have the same father, Jody. Both fathers' parental rights were terminated in the juvenile court's order, though neither appeal.

who is a registered sex offender.<sup>2</sup> The Iowa Department of Human Services (DHS) informed the mother this contact was unacceptable and that the uncle should not be alone with the children. However, the mother allowed the uncle and an underage babysitter to supervise the children without her being present. When confronted about this conduct, the mother insisted that because he is the children's uncle, "their blood," he is not a danger to them. The DHS report noted the mother's "continued lack of understanding and insight into this situation is a concern that could potentially put her children into dangerous situations in the future."

In February 2009, the mother exposed the children to her then-paramour, Anthony, who is also on the sex offender registry. When questioned about this interaction, the mother informed the DHS worker that "her sex life has nothing to do with her kids." The DHS report stated the mother "is willing to jeopardize the safety of her children and lie to DHS in order to keep her boyfriend protected." Due to these events, M.W. was adjudicated CINA in April 2009.

In November 2009, the mother completed a mental health and parenting assessment. She was diagnosed with polysubstance dependence and two personality disorders—antisocial and borderline. The assessment indicated the mother's prognosis is poor and that her ability to parent the children is questionable, particularly due to her lack of ability to screen for potential risks to the children as well as her overall ability to parent.

On February 19, 2010, the children were removed from the mother's care due to her refusal to submit to a drug test after DHS received reports she was

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<sup>2</sup> He is a registered sex offender due to the sexual abuse he perpetrated on his siblings.

parenting the children while under the influence of illegal substances. Following the removal the mother tested positive for methamphetamine. In March 2010 she was dating Nick, who was charged and then later pled guilty to assault with intent to commit sexual abuse. Before his incarceration he and the mother discussed marriage to “get around the sex offender registry issue.” The mother believes Nick is neither guilty nor a threat to the children.

The mother obtained a substance abuse evaluation on March 8, 2010, and tested positive for methamphetamine and amphetamine on May 11. Due to non-attendance she was unsuccessfully discharged from her treatment program on May 27. On October 21, 2010, she entered treatment at the House of Mercy, and the children joined her in December for a trial visit. However, staff indicated the mother was resistant to change and would not benefit from further treatment, so in April 2011 the mother left the House of Mercy with the understanding the children would not accompany her. D.W. went into family foster care and M.W.-A and M.W. went to their father.

On January 18, 2011, a permanency order was issued, granting the parents six additional months to reunify with the children. The order was modified on October 28, 2011, to place D.W. with her maternal aunt, where she has remained. The order also granted custody of M.W.-A and M.W. to their father, but following founded reports of child abuse, on June 5, 2012, M.W.-A and M.W. were placed with a foster family, with whom they currently reside. Both the aunt and the foster family indicated they are willing to adopt the children once parental rights are terminated.

On December 26, 2012, during a supervised visit with D.W. at the mother's home, a male came out of the bedroom. The DHS worker did not know of the man's presence, and the mother indicated she did not know his last name. The mother then left the supervised visit to drive the man to Ames.

After leaving the House of Mercy the mother resided with her father. Following his unexpected death she moved in with Jody's brother, the registered sex offender, and continues to live there with him, his girlfriend, and his girlfriend's children. She informed DHS she will continue to live there if she regains custody of the children.

The mother currently visits the children once each week in a community setting. Though she has unlimited access to D.W. in her sister's home, she has only visited D.W. once for a school event.

Over the course of this proceeding, the following services were offered to the mother: mental health services; parenting assessment; inpatient substance abuse treatment at the House of Mercy; outpatient substance abuse treatment; family safety, risk, and permanency services; crisis intervention services; family team meetings; promise jobs; and supervised visitation.

The State filed a petition for termination of parental rights on September 7, 2012.<sup>3</sup> A hearing was held on June 26, 2013, in which the mother testified. She contested the termination and asserted she and the children shared a bond, and therefore termination was not in their best interest. The DHS worker testified that, though there is a bond among the family members, the children view the

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<sup>3</sup> The petition was later amended on January 15, 2013, to request Jody's parental rights be terminated.

mother more as a playmate than a parent, and are very much bonded with the families in their current placement. On August 26, 2013, the court issued an order terminating the mother's parental rights pursuant to Iowa Code section 232.116(1)(e) and (f). The mother now appeals.

## **II. Standard of Review**

We review termination proceedings *de novo*. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The grounds for termination must be proven by clear and convincing evidence. *Id.* Our primary concern is the child's best interest. *Id.* When the juvenile court terminates parental rights on more than one statutory ground, we only need find grounds to terminate under one of the sections cited by the juvenile court to affirm. *Id.*

## **III. Merits**

The mother's rights were terminated pursuant to Iowa Code section 232.116(1)(e) and (f). Grounds for termination under Iowa Code section 232.116(1)(f) exist when:

- (1) The child is four years of age or older.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

Iowa Code § 232.116(1)(f)(1)–(4).

We find the State proved by clear and convincing evidence grounds for termination exist under this section. All children are over four years old, have

been adjudicated children in need of assistance, and have been removed from the mother's physical custody since April 2011. Furthermore, it is evident the children cannot be returned to the mother's care. She continues to demonstrate a lack of understanding regarding dangerous situations for the children, and her willingness to allow the children to interact with registered sex offenders is concerning. She has also been unable to address her mental health and substance abuse issues. In determining the future actions of the parent, her past conduct is instructive. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Given DHS's involvement since 2007, and the fact the mother is still unable to safely parent her children, the State has proved by clear and convincing evidence the children cannot be returned to her care.

Moreover, termination is in the children's best interest. They have been removed from the mother's care since April 2011 and are currently in pre-adoptive placements. The mother has made little progress since receiving services. "We have repeatedly followed the principle that the statutory time line must be followed and children should not be forced to wait for their parent to grow up." *In re N.F.*, 579, N.W.2d 338, 341 (Iowa Ct. App. 1998); see also Iowa Code § 232.116(2). Thus, despite the bond the children share with the mother, it is in their best interest to terminate her parental rights.

The mother's final argument asserts her parental rights should not have been terminated to D.W. because the aunt currently has guardianship, and the two other children are in a separate home. It is true the court "need not terminate . . . if the court finds . . . a relative has legal custody of the child." Iowa Code § 232.116(3)(a). However, the factors in this section are permissive, not

mandatory. *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). Given the reasons previously discussed, the juvenile court was correct in finding termination of the mother's parental rights was more appropriate for the children's stability and welfare. We therefore affirm the termination of the mother's parental rights to the three children.

**AFFIRMED.**