

IN THE COURT OF APPEALS OF IOWA

No. 3-1076 / 13-1533
Filed December 18, 2013

**IN THE INTEREST OF T.L.,
Minor Child,**

**H.A., Mother,
Appellant.**

Appeal from the Iowa District Court for Linn County, Barbara H. Liesveld,
District Associate Judge.

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

Michael Lindeman of Lindeman Law, Cedar Rapids, for appellant mother.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, Jerry Vander Sanden, County Attorney, and Rebecca Belcher,
Assistant County Attorney, for appellee State.

Kimberly Opatz of Linn County Advocate, Cedar Rapids, attorney and
guardian ad litem for minor child.

Considered by Danilson, C.J., and Vaitheswaran and Potterfield, JJ.

POTTERFIELD, J.

A mother appeals from the termination of her parental rights. She argues termination was not supported by clear and convincing evidence and the court should have used its discretion to deny the petition for termination as it was not in the best interests of the child. We affirm, finding clear and convincing evidence supports termination and the juvenile court correctly found termination was in the child's best interests.

I. Facts and proceedings.

T.L. came to the attention of the department of human services (DHS) on October 1, 2012, after the mother left her older child with relatives and was reported to be abusing drugs.¹ T.L. was removed from the mother's care December 5, 2012, due to the mother's long history of drug abuse and because her whereabouts were unknown. Also of concern was the mother's uncertain living situation. The mother reported to service providers she was taking part in methadone treatment for her drug addiction but appeared to be on other drugs in addition to the methadone. A hearing was held regarding the removal and whether to adjudicate T.L. as a child in need of assistance (CINA) on December 13, 2012. The mother agreed with the State to continue the removal and stipulated to the CINA adjudication; however, T.L. was not adjudicated CINA at this time because his father could not be located. T.L. was placed in family foster care. The mother was ordered to submit to drug testing and obtain a psychological evaluation. The mother completed a substance abuse evaluation

¹ The mother has a long history of DHS involvement in the lives of her older children. A confirmed abuse report was made against her in 2004.

and continued participating in methadone treatment. The mother was unemployed and homeless at this time.

On January 14, 2013, the court entered a dispositional order, continuing T.L.'s out-of-home placement. The court ordered further services for the mother, including methadone treatment and detox plan along with family safety, risk, and permanency services. T.L. was adjudicated CINA March 7, 2013, after his father stipulated to the adjudication; the court continued its prior orders. A review and permanency order was entered May 16, 2013; the court continued its prior orders and set a hearing for a full in-court review of the case on July 10, 2013. During this period, DHS noted the mother's minimal progress in meeting case plan expectations. She did not consistently attend substance abuse treatment sessions, and her methadone doses had increased in amount instead of decreasing. The mother failed to comply with separate drug testing through DHS during this period. She also failed to complete a psychological evaluation. She continued to struggle with obtaining stable housing, ultimately renting an apartment in March. In April she secured employment. The mother also was the subject of several legal problems during this time period.

The mother reported in June 2013 another man was likely T.L.'s biological father; that individual was served with notice by publication after attempts to reach him were unsuccessful. On June 11, 2013, the mother tested positive for amphetamines and methadone. She reported her landlord attempted to evict her twice during this time period. Investigation by DHS showed she had not paid June rent. The landlord had the mother's car towed and impounded. She was again unemployed at this time. On June 25, 2013, DHS submitted a report to the

court recommending termination. Throughout that month, the mother had several problems with her drug tests, testing positive twice for amphetamines (Adderall—for which she lacked an active prescription) and producing a positive test for methadone but without methadone metabolites, indicating a tampered specimen. The clinic worker reported being increasingly concerned with the mother's behavior and specimens. She failed to attend a psychological assessment again by the end of July 2013.

A termination hearing was held August 19, 2013. The mother, her mother, the mother's neighbor, the mother's friend, and two DHS workers testified at the hearing. The court issued an order on September 17, 2013, terminating the mother's parental rights to T.L. The court specifically noted the mother's long history of drug abuse and ongoing struggle to comply with drug treatment. The court also cited the mother's failure to complete a mental health evaluation, in spite of numerous reminders by the court to do so. It stated, "[the mother] knows her failure to obtain a mental health evaluation and meet her mental health needs has been a significant barrier to moving forward in this case." The court pointed out that though during visits she appeared to be able to take care of T.L., the child had been removed from his mother's care for almost one year with no trial home placements, and the mother's housing and employment situation were still uncertain. The court terminated the mother's parental rights to T.L. under Iowa Code section 232.116(1) (2013) paragraphs (h) and (i). The mother appeals.

II. Analysis.

We review the termination of parental rights *de novo*. *In re P.L.*, 778 N.W.2d 33, 34 (Iowa 2010).

A. *Clear and convincing evidence.*²

The court found clear and convincing evidence supported termination of the mother's rights under Iowa Code section 232.116(1) subsections (h) and (l), which allows termination where:

- h. The court finds that all of the following have occurred:
- (1) The child is three years of age or younger.
 - (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 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.
 - (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

- ...
 l. The court finds that all of the following have occurred:
- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.
 - (2) The parent has a severe substance-related disorder and presents a danger to self or others as evidenced by prior acts.
 - (3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

Upon our de novo review of the record, we agree with the juvenile court that clear and convincing evidence exists to support termination under these sections, but consider in detail only section 232.116(1)(h). See *In re S.R.*, 600 N.W.2d 63, 64

² The mother argues both that clear and convincing evidence does not support termination and that the State "failed to meet its burden of proof concerning the necessity of termination." Because the burden of proof is clear and convincing evidence (see *In re A.B.*, 815N.W.2d 764, 775 (Iowa 2012)), we consider these two arguments together.

We also note that the mother mentions she should have been provided additional services. However, nothing in the record indicates any additional services were requested, nor does she provide us with evidence of any such request. By failing to request additional services during the CINA proceedings, the mother has waived this issue on appeal. *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999).

(Iowa Ct. App. 1999) (“When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm.”).

T.L. is under the age of three, was adjudicated CINA in March 2013, was removed from the mother’s care in December 2012, and was not returned at any time during the subsequent eight months before termination. See Iowa Code § 232.116(1)(h)(1)–(3). Thus, we are left with the question of whether clear and convincing evidence exists that T.L. cannot be returned to the mother at this time. See *id.* § 232.116(1)(h)(4). The mother’s long-standing and pervasive drug problems have worsened, her living and employment situation remained unstable, and she has proved unwilling to complete a court-ordered mental health evaluation. From the time of removal to the time of the termination hearing, the mother’s problems causing removal continued. See *A.B.*, 815 N.W.2d at 776 (“We have long recognized that an unresolved, severe, and chronic drug addiction can render a parent unfit to raise children.”). We agree with the district court that clear and convincing evidence supports termination of the mother’s parental rights to T.L.

B. Best interests.

Even after we have determined that statutory grounds for termination exist, we must still determine whether termination is in the children’s best interests. Iowa Code § 232.116(2); see also *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). In evaluating this issue, 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.” *P.L.*, 778 N.W.2d at 39 (quoting Iowa Code § 232.116(2)); see also *In re Interest of J.E.*, 723 N.W.2d 793, 802 (Iowa 2006) (Cady, J., concurring specially) (stating that a child’s

safety and the child's need for a permanent home are the "defining elements" in determining a child's best interests).

A.B., 815 N.W.2d at 776. T.L. is very young. He has bonded with his foster parents and thrives under their care. The mother continues to have a host of problems that prevent her from providing a safe and stable home. These include her inability to provide a clean drug sample, maintain employment, maintain stable housing, and stay out of legal trouble. We therefore find termination is in T.L.'s best interests.

AFFIRMED.