

IN THE COURT OF APPEALS OF IOWA

No. 3-1127 / 13-1646
Filed December 5, 2013

**IN THE INTEREST OF E.G., Z.H., M.H.,
and L.S.,
Minor Children,**

**C.G., Mother,
Appellant.**

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

A mother appeals a juvenile court order terminating her parental rights to
four children. **AFFIRMED.**

Marcy Lundberg, Fort Dodge, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Ricki Osborn, County Attorney, and Joseph Tofilon, Assistant
County Attorney, for appellee.

Christopher O'Brien, Fort Dodge, Sarah Smith of Bennett, Crimmins &
Smith, Fort Dodge, and Douglas Cook, Jewell, for father.

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

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

MULLINS, J.

The mother of four children, E.G. (born July 2011), Z.H. (born January 2010), M.H. (born December 2007), and L.S. (born April 2004), appeals from a juvenile court order terminating her parental rights. The mother argues the State failed to prove the statutory grounds and termination is not in the children's best interest. We affirm.

I. Background Facts and Proceedings.

The family has a lengthy history with the Department of Human Services (DHS), starting in 2006, with regard to the mother's fifth child, A.H., born December 2005. The juvenile court terminated the mother's parental rights to A.H. in October 2008. DHS intervened in that case due to the mother's mental health issues, poor parenting skills, and substance abuse issues. The mother began receiving services to address her mental health issues and gain employment, including nutritional education; anger management; parenting skill development; family safety, risk, and permanency services; budgeting assistance; behavioral management training for the children; visitation; mental health and substance abuse treatment. Although the mother attended substance abuse treatment and education services, she did not follow through with substance abuse counseling and did not take her mental health medications as prescribed.

Between 2008 and 2011, the mother's housing changed frequently. The mother and her paramour, L.S.'s father, were involved in a number of domestic incidents involving violence, some with the children present. DHS intervened in

the family again in September 2011 after L.S.'s father physically abused L.S. DHS provided protective daycare while the mother addressed her mental health issues. DHS had concerns about the mother's ability to care for and supervise the children. In December 2011, L.S., who was seven years old, drank a household cleaner. The mother told him to go to the cabinet and take some Tums antacids. He was taken to the hospital where medical personnel surmised L.S. had not taken Tums, but adult Tylenol with codeine instead. He tested positive for opiates and acetaminophen.

In January 2012, the mother requested that the State remove the children from her care. DHS continued to be concerned with the mother's mental health and substance abuse issues, and her ability to supervise the children. She admitted continuing to use illegal drugs, failed to address her mental health needs, stated she could not handle the children, and threatened to flee the state with the children.

The juvenile court removed the children from the mother on January 24, 2012, and adjudicated them children in need of assistance on April 16, 2012. After the removal, the mother began to participate more fully in services and maintained frequent visitation. The court placed the children in the mother's home for a trial home visit on April 4, 2012. However, after the children were placed back in the mother's home, the mother quickly returned to past behaviors. She missed mental health treatment appointments and appointments for the children. She began using K2 and marijuana on a daily basis. DHS expected the mother to prevent her brother, a person they did not approve to be around

the children, from having contact with the children yet the mother frequently allowed contact between them.

On November 19, 2012, the mother voluntarily placed the children in DHS's care and attended an inpatient substance abuse treatment program. L.S. and M.H. joined her there on November 27, 2012. The mother had a number of behavioral problems at the treatment center and demonstrated little commitment to treatment. On December 2, 2012, the mother assaulted another patient and a member of the staff, left with the children, was arrested, and was discharged from the center. The next day, December 3, 2012, the court removed the children from her care. The mother reported using drugs regularly, including marijuana, Valium, Loritab, tramadol, and methamphetamine. She missed numerous visitations with the children. She continued to miss appointments and did little to address her substance abuse and mental health issues. The center providing her mental health treatment discharged her for failing to attend consistently; she had attended seventeen appointments, failed to appear for eleven, and cancelled nine.

On January 15, 2013, the State filed a petition to terminate parental rights. On January 16, 2013, the State also filed an application to waive reasonable efforts, which the juvenile court granted. In May 2013, five weeks before the first termination hearing, the mother began inpatient substance abuse treatment at the YWCA. The first termination hearing was June 4, 2013. The second termination hearing was July 23, 2013. In between the termination hearings, on June 17, 2013, the mother was discharged from the YWCA inpatient substance

abuse treatment program because she brought methamphetamine into the facility and consumed it there.

The juvenile court issued its order terminating parental rights on September 18, 2013. The court terminated the mother's parental rights under Iowa Code sections 232.116(1)(g) and (l) (2013).¹ The mother appeals.

II. Standard of Review

We review a juvenile court order terminating parental rights de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We give weight to the factual determinations of the juvenile court but are not bound by them. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Our primary concern is the best interests of the child. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

III. Analysis

A. Statutory Grounds

The mother contends there was insufficient evidence to support termination of parental rights under the statutory grounds. When the juvenile court terminates parental rights on more than one ground, we need find only one ground to affirm. *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010). We find the evidence supports terminating parental rights under Iowa Code section 232.116(1)(g). Under this section, the State must prove (1) the child has been adjudicated a child in need of assistance, (2) the court has terminated parental rights with respect to another child who is a member of the same family, (3) there

¹ The juvenile court also heard and ruled on termination petitions for the children's fathers. It dismissed the petitions to terminate parental rights of the fathers of L.S. and M.H.. It granted the petitions to terminate parental rights of the fathers of E.G. and Z.H.

is clear and convincing evidence the parent continues to lack the ability or willingness to respond to services which would correct the situation, and (4) there is clear and convincing evidence an additional period of rehabilitation would not correct the situation. Iowa Code § 232.116(1)(g).

The mother argues the State did not prove the third and fourth elements. The mother has been involved with services since 2006. The concerns with the mother then were the same as they were at the termination hearing in summer 2013: substance abuse, mental health issues, and inadequate parenting skills. Since then, the mother has received extensive services but has failed to utilize them consistently and effectively. She continues to use illegal substances. The district court found it particularly telling, as do we, that the mother consumed methamphetamine in between the termination hearings and while she was in inpatient substance abuse treatment, one of several such treatment programs she has tried but failed to complete.

The evidence is clear and convincing that the mother lacks the ability or willingness to respond, despite years and extensive offers of services. Nothing about the recent past gives any indication an additional period of rehabilitation would lead to the mother correcting the situation. A parent's past performance is the best evidence of what the future holds for the child. *In re A.Y.H.*, 508 N.W.2d 92, 94 (Iowa Ct. App. 1993). The mother has been unable or unwilling to correct her substance abuse and mental health issues since 2006. The evidence is clear and convincing that an additional period of rehabilitation and services would not correct the situation.

B. Statutory Exceptions

Termination of parental rights is a three-step process. *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011). If a court finds grounds are sufficient to support termination, the court must apply the best-interest framework set out in Iowa Code section 232.116(2) and consider whether any statutory exceptions set out in section 232.116(3) weigh against termination of parental rights. The statutory exception factors are “permissive, not mandatory.” *Id.* at 474-75. “The court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply the factors in this section to save the parent-child relationship.” *Id.* at 475.

The mother contends the juvenile court erred in failing to apply the statutory exceptions under Iowa Code sections 232.116(3)(a) (legal custody with a relative) and (c) (closeness of the parent-child relationship.) The State responds the issue was not preserved for appeal because the termination order does not mention the parent-child relationship. The juvenile court made explicit findings that termination was appropriate despite the statutory exception under section 232.116(3)(a). Therefore, we will address the mother’s statutory exception arguments.

Under section 232.116(3)(c), the court “need not terminate the relationship between the parent and child if the court finds . . . [t]here is clear and convincing evidence that termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.” The mother contends it would be detrimental to the children to terminate parental rights because of their bond with

her. The mother testified the children were bonded to her. However, the children had been out of the mother's care for over six months prior to the termination. They have been removed to different foster homes on numerous occasions. The mother has attended visitation only inconsistently. The mother's parenting deficiencies have, on at least one occasion, resulted in serious harm to the children. The mother's substance abuse and mental health issues are unresolved and create an unstable situation for the children. There is nothing in the record that indicates terminating would be more detrimental than not terminating based on the bond with the mother.

Under section 232.116(3)(a), the court also may decline to terminate if "[a] relative has legal custody of the child." Iowa Code § 232.116(3)(a). The mother states only, "[T]he Court should have declined to terminate based on the provisions of Iowa Code Section 232.116(3)(a)." Because only L.S. and M.H. are placed with relatives, their fathers, we assume the mother's argument is limited to them. The juvenile court specifically considered section 232.116(3)(a) and concluded that M.H.'s father had been providing appropriate care, nurture and guidance for M.H. and is willing to continue to do so. Based on those conclusions, the court declined to grant that statutory exception. With respect to M.H., we agree with the juvenile court's conclusion. With respect to L.S., without further argument or authority to support the mother's contention, we find nothing to support application of the statutory exception under section 232.116(3)(a). See Iowa R. App. P. 6.201 and 6.1401(8). Therefore, upon our review, we find there is no applicable statutory exception to termination.

IV. Conclusion

The juvenile court correctly found clear and convincing evidence supported termination of the mother's parental rights under Iowa Code section 232.116(1)(g). It also correctly found there was no applicable statutory exception under Iowa Code section 232.116(3) to overcome the termination finding. Accordingly, we affirm.

AFFIRMED.