

**IN THE COURT OF APPEALS OF IOWA**

No. 3-1159 / 13-1584  
Filed December 18, 2013

**IN THE INTEREST OF J.W. AND M.S.,  
Minor Children,**

**A.S., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Romonda D. Belcher,  
District Associate Judge.

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

Marla McCoid, Bondurant, for appellant mother.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney  
General, John P. Sarcone, County Attorney, and Kevin Brownell, Assistant  
County Attorney, for appellee state.

Jami Hagemeyer of the Polk County Juvenile Public Defender Office, Des  
Moines, attorney and guardian ad litem for minor children.

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

**DOYLE, P.J.**

A mother appeals the termination of her parental rights. She contends the State failed to prove the grounds for termination, and she asserts Iowa Code section 232.116(3)(a) and (c) (2013) applied to avoid termination of her parental rights. Upon our de novo review, we affirm.

***I. Background Facts and Proceedings.***

Alexis is the mother of J.W., born in 2009, and M.S., born in 2011. Alexis's biological family has a history of substance and alcohol abuse, domestic violence, and chronic child abuse assessments. She and her siblings were removed from their biological mother's care in 2002 after the Iowa Department of Human Services (Department) learned of alcohol and child abuse by their biological mother. Alexis's biological parents' parental rights were terminated, and Alexis lived with and was later adopted by her maternal grandmother, Janice.

Alexis gave birth to J.W. at age fifteen. She continued living with Janice, along with Janice's ex-husband and Alexis's siblings. In April 2010, Alexis and J.W. came to the Department's attention when it learned from Alexis that Janice had kicked her out of her home while Janice was caring for J.W., and Janice would not return J.W. to her. The Department also learned that Janice's ex-husband had obtained a no-contact order against Alexis because she was smoking marijuana, was not attending school, and was not following his and Janice's house rules. The no-contact order meant that Alexis, then a minor and Janice's responsibility, could not return to the home. Thereafter, Alexis was adjudicated a child in need of assistance.

Alexis initially stayed with her sister, and J.W. remained in Janice's care for a few days until Alexis was placed in her paternal aunt's care, and J.W. was placed with Alexis. Alexis admitted she smoked marijuana and was skipping school, and she agreed to follow her aunt's rules that she attend school and then come immediately home to care for J.W. That worked temporarily, but Alexis stopped following those rules, and she attempted to run away with J.W. However, the police picked both her and J.W. up. Alexis was taken to a youth shelter, and J.W. was placed back in the aunt's home.

Alexis was offered housing and placement at the House of Mercy in its Teen Parenting Program, where J.W. could have been placed with her, but she declined. Alexis was placed back in Janice's care after Janice's ex-husband was arrested and placed in jail. J.W. remained in the aunt's care until approximately June 2010, when J.W. was placed in the care of his paternal grandmother, Pamela.

Alexis began participating in services and made much progress in the case. In approximately October 2010, J.W. was placed back in Alexis's care and was living with Alexis and Janice. Around January 2011, Alexis and J.W. began living with Pamela. The court approved this arrangement and J.W.'s placement with Alexis so long as Alexis continued to live with Pamela. Alexis gave birth to M.S. in August, and she continued to make progress. By October 2011, Alexis had progressed so far the court noted in its review order that although it had set a review hearing in another six months, the "[c]ase may close earlier by agreement of the parties."

However, by January 2012, Alexis had stopped providing consistent care of J.W. and M.S., leaving the primary duties to Pamela. Alexis stopped consistently living with Pamela too. J.W. was removed from Alexis's care and placed in Pamela's care, where the child has since remained. M.S. was removed from Alexis's care and placed with her paternal grandmother, and later with her paternal grandfather Tyrone, where she has since remained. At the June 2012 review/permanency hearing, the juvenile court directed the State to file a petition for the termination of Alexis's and the children's fathers' parental rights.

Following the State's filing of the petition, a hearing on the petition was held in September 2012. In November 2012, the juvenile court entered its order terminating the fathers' parental rights, but granting Alexis an additional six months for reunification with her children. The court found the grounds for termination alleged by the State were established as to Alexis, but it ultimately determined termination of her parental rights was not in the children's best interests at that time, explaining:

Given [Alexis's] young age, bond with her children, especially [J.W.], her background and own involvement in juvenile court, this court finds that with the proper guidance, commitment to services to address her own needs, she could, with the assistance of services, provide an appropriate nurturing and supportive environment that meet the children's physical, mental and emotional needs. This court does not find that the children's best interests dictate termination of [the mother's] parental rights. The State has not established by clear and convincing evidence that termination of [the mother's] parental rights would be less detrimental to [the children] than the harm that would be caused to them by continuing the parent-child relationship.

The court also found exceptions to termination under Iowa Code section 232.116(3) (2011) applied, finding there was evidence that termination of the

mother's parental rights with respect to J.W. would be detrimental to that child due to the closeness of their relationship, and the court noted that both children were in the custody of relatives. The court directed Alexis to continue with services at the resource center and individual therapy, along with completing an attachment assessment regarding M.S., participating in parenting classes, cooperating with services, and maintaining a regular visitation schedule.

Another petition for termination of Alexis's parental rights was filed in May 2013, after the juvenile court found at a review hearing Alexis had made little progress. Following a hearing on the State's petition in August 2013, the court entered its order terminating Alexis's parental rights to both children pursuant to Iowa Code section 232.116(1) paragraphs (d), (f), and (h) (2013). The court explained:

Initially, after the first petition was filed, the mother appeared to have been recommitted to services by accessing therapy and the Young Women Resources services; complying with the terms and conditions of her criminal probation for an [OWI] charge; and providing clean urinalyses. Complying with the visitation schedule on a consistent basis continued to be a challenge.

The mother did not pay her fines to satisfy her probation. In May 2013, when the mother failed to appear for a hearing to show compliance with a payment plan, a warrant was issued for her arrest. The mother, upon learning a warrant was active, chose to elude authorities instead of turning herself in because she was afraid of going to jail. The warrant was active for three months. During the three months, the mother did not participate in services or attend any scheduled visits with the children. Despite being welcomed by the custodians to visit her children, the mother still did not visit with her children. The mother only saw J.W. once in July for the child's birthday and has not seen M.S. since April.

The mother has not complied with the court's order to complete an attachment assessment, participate in parenting classes, continue with individual therapy, cooperate with FSRP services, or maintain a regular visitation schedule with the children. The mother has not demonstrated an ability to provide for the children's needs or care for them on a daily basis.

Alexis now appeals, challenging the grounds for termination and the juvenile court's declination to invoke a statutory exception to save the parent-child relationship. We review her claims de novo. *In re A.B.*, 815 N.W.2d 764, 773 (Iowa 2012).

## ***II. Discussion.***

### ***A. Grounds for Termination.***

Alexis first contends the State failed to prove the grounds for termination by clear and convincing evidence. We need only find termination proper under one ground to affirm. See *id.* at 774. We choose to focus upon paragraph (f) for J.W., and (h) for M.S. 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 . . . at the present time.” See *id.* § 232.116(1)(f)(4), (h)(4). It is the latter 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.

Here, despite being provided numerous services for almost two years, and being granted an additional six months to achieve reunification, Alexis chose to disappear for several months during which she stopped visiting her children altogether so that she would not have to spend a few nights in jail. She did not consistently participate in the services directed by the juvenile court, nor did she have consistent employment or housing. She had only just begun a nursing course before the September hearing. We recognize the mother is young; nevertheless, the mother’s up and down progress throughout the long duration of the case only shows she is not consistently able to provide her children the safety and stability they need and deserve. In fact, the evidence presented at the second hearing overwhelmingly established the mother’s three-month absence negatively affected her children and their relationship with her. Alexis’s recommitment to services just prior to the termination hearing, while commendable, is unfortunately too little, too late at this point. Children are not equipped with pause buttons. Their crucial days of childhood cannot be suspended while waiting for a parent to remedy a lack of parenting skills. See *In re C.H.*, 652 N.W.2d 144, 151 (Iowa 2002). We cannot “gamble with the children’s future’ by asking them to continuously wait for a stable biological parent,” balancing instead the parent’s efforts and the children’s long-term best

interests. *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010); see also *C.B.*, 611 N.W.2d at 495 (recognizing a parent's efforts "in the two or three months before termination hearing, in light of preceding eighteen months, are insufficient"). "We must reasonably limit the time for parents to be in a position to assume care of their children because patience with parents can soon translate into intolerable hardship for the children." *In re E.K.*, 568 N.W.2d 829, 831 (Iowa Ct. App. 1997).

Although it appears Alexis loves her children very much, there are serious concerns over her ability to provide safety and stability for her children. Under the circumstances presented, we find the State proved by clear and convincing evidence the children could not be safely returned to the mother's care at the time of the termination hearing. We therefore agree with the juvenile court that termination of the mother's parental rights was proper under Iowa Code section 232.116(1) paragraphs (f) and (h).

***B. Section 232.116(3) Considerations.***

We also consider the mother's assertion that statutory exceptions to termination, including placement with a relative or the closeness of the parent-child relationship, should serve to preclude termination of her parental rights. See Iowa Code § 232.116(3)(a), (c). We have discretion, based on the unique circumstances of each case and the best interests of the children, whether to apply the factors in this section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993), *overruled on other grounds by In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010).

Because the children reside with grandparents and are close with their mother, the record leaves hope the mother will be able to remain part of the



children's lives. But neither their placement with relatives nor their bond with the mother weighs heavily enough to reverse the termination. Under the facts of this case, we cannot maintain the mother-child relationship where there exists only a remote possibility the mother will become a responsible and consistent parent sometime in the unknown future. See *In re Z.H.*, 740 N.W.2d 648, 652 (Iowa Ct. App. 2007) (describing strong bond between parent and child as militating factor, but not overriding consideration). These children deserve permanency now and should not have to wait any longer for the mother to put their needs first. *D.W.*, 791 N.W.2d at 707-08. Termination will provide the children with the safety, security, and permanency they deserve. See *In re P.L.*, 778 N.W.2d 33, 41 (Iowa 2010). We believe the children's best interests are served by severing their legal tie with the mother, see *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, and we therefore find no abuse of discretion in the court's declination to invoke section 232.116(3). Accordingly, we affirm the juvenile court's termination of the mother's parental rights.

### ***III. Conclusion.***

For the foregoing reasons, we affirm the juvenile court's termination of the mother's parental rights.

**AFFIRMED.**