

IN THE COURT OF APPEALS OF IOWA

No. 3-120 / 12-2261
Filed February 13, 2013

**IN THE INTEREST OF K.D., M.D., and J.D.-D.,
Minor Children,**

J.D., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Douglas F. Staskal,
Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Jeremy M. Evans of Sporer & Flanagan P.L.L.C., Des Moines, for
appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Annette Taylor,
Assistant County Attorney, for appellee State.

Michael Sorci of the Youth Law Center, Des Moines, guardian ad litem for
minor children.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

EISENHAUER, C.J.

A mother appeals from the order terminating her parental rights to three children. She contends the State did not prove the statutory grounds for termination and termination is not in the children's best interests. We affirm.

The children came to the attention of the department of human services in October 2011 when the oldest child told a department worker the mother and maternal grandmother smoked marijuana in the children's presence. The mother admitted using marijuana three times a day. Before the children could be removed, the mother was arrested for delivery of a controlled substance.

The children were adjudicated children in need of assistance in December. The oldest child was placed with a paternal aunt. The middle child was placed in foster care, then soon moved to the care of a maternal great aunt. The youngest child was placed with people believed to be the paternal grandparents.¹

In February 2012 the mother took the middle child from the great aunt without permission. The mother was charged with violation of a custodial order and entered a guilty plea to the lesser charge of false imprisonment. In July she was convicted of delivery of a controlled substance. In October the mother was sentenced to a term of incarceration not exceeding ten years on the drug charge. The State petitioned to terminate all parents' parental rights in October.

The petition came on for hearing in late November. The mother and the father of the oldest child both testified by telephone from prison. In December

¹ Paternity testing excluded the man the mother named as the father of the two youngest children.

the court terminated the parental rights of the mother, the oldest child's father, and all unknown fathers. The court found clear and convincing evidence to terminate the mother's parental rights under Iowa Code section 232.116(1)(d), (e), (f) (concerning the two oldest children), (h) (concerning the youngest child), and (l) (2011). The court ordered that the children remain in their current placements pending adoption. Concerning best interests, the court concluded:

It is clear that it is in the best interests of all the children that both parents' parental rights be terminated. The children finally have stable, healthy living environments. They can grow and learn without the stress and worry of where and with whom they will be living from week to week or month to month. Forcing them to endure a lengthy future of that kind of uncertainty, while their parents serve prison sentences and then try to rehabilitate their (the parents') lives, would be cruel. Nothing that is cruel to children could possibly be in their best interests.

We review terminations de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We examine both the facts and law, and adjudicate anew those issues properly preserved and presented. *In re L.G.*, 532 N.W.2d 478, 480-81 (Iowa Ct. App. 1995). We accord considerable weight to the findings of the juvenile court, especially concerning the credibility of witnesses, but are not bound by them. *Id.* at 481.

The mother contends the statutory grounds for termination are not supported by clear and convincing evidence. When the juvenile court terminates a parent's rights on more than one statutory ground, we may affirm if any one of the grounds cited by the juvenile court is supported by clear and convincing evidence. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). The children had all been adjudicated in need of assistance and removed from the mother's care for over a year at the time of the termination hearing. Because the mother was

incarcerated, they could not be returned to her custody at the time of the hearing. We affirm the termination of the mother's parental rights under section 232.116(1)(f), as to the older two children, and 232.116(1)(h), as to the youngest child.

The mother also contends termination was not in the best interests of the children. She argues the court erred in not placing the children with the maternal aunt or other maternal relatives.

The mother raised the issue of placement with the maternal aunt in her testimony at the termination hearing. The maternal aunt also testified she had taken steps to qualify as an *adoptive* parent for *one* child. (Emphasis added.) She expressed an interest only in the middle child. The termination order does not address placing any of the children in long-term relative care or establishing the maternal aunt as guardian.² The mother did not file a motion to amend or enlarge the court's termination order. This issue is not preserved for our review. *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003) (noting issues "must be presented to *and ruled upon* by the district court in order to preserve error for appeal" (emphasis added)). We have reviewed the entire record and find termination is in the best interests of the children for the same reasons stated by the trial judge and quoted above.

AFFIRMED.

² The termination order also does not specify who should be the adoptive parent or parents of any of the children. That decision is left to the children's guardian, the department of human services. See *In re E.G.*, 745 N.W.2d 741, 744 (Iowa Ct. App. 2007).