

IN THE COURT OF APPEALS OF IOWA

No. 3-124 / 12-2311
Filed February 27, 2013

**IN THE INTEREST OF E.P., V.P., AND E.P.,
Minor Children,**

**V.P., Mother,
Appellant.**

Appeal from the Iowa District Court for Crawford County, Charles K. Borth,
District Associate Judge.

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

Laurel L. Boerner of Boerner & Goldsmith Law Firm, P.C., Ida Grove, for
appellant.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant
Attorney General, Michael Mundt, County Attorney, and Julie A. Schumacher,
Assistant County Attorney, for appellee State.

Robert Peterson, Carroll, attorney and guardian ad litem for minor
children.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

The mother of three girls (ages eight, seven, and five at the time of the termination hearing) appeals the termination of her parental rights.¹ We review all termination decisions de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

The children were removed from their mother's care in October 2011 due to domestic violence occurring between the mother and her paramour. Upon the children's removal, it became apparent the mother had a severe drug abuse problem. She continued to use methamphetamine until her incarceration in October 2012. She was offered services, but did not fully participate or follow through with recommendations. The mother is currently in prison, serving a five-year sentence for several criminal convictions.

The juvenile court terminated the mother's parental rights pursuant to Iowa Code section 232.116(1)(e) (2011) (child adjudicated a child in need of assistance (CINA), out of parent's care for at least six months, and parent has failed to maintain significant and meaningful contact) and (f) (child over four years of age, who was previously adjudicated a CINA, has been out of the parent's custody for at least twelve of last eighteen months, and cannot presently be returned). The mother does not challenge that statutory grounds exist under section 232.116(1)(f). See *P.L.*, 778 N.W.2d at 40 (stating that where a parent does not dispute that statutory grounds exist, we need not address this step in the three-step analysis).

The mother argues, however, that she should have been granted additional time to "show her progress in solving her drug problem and being in a

¹ The father's parental rights were also terminated. He does not appeal.

position to take custody of the children.” Even assuming that the mother might attain her release from prison as early as May 2013, she would have to obtain housing and employment, and maintain sobriety for an extended period of time before the possibility of the children’s return would be contemplated. In order to continue placement for an additional six months, Iowa Code section 232.104(2)(b) requires the juvenile court to make a determination the need for removal will no longer exist at the end of the extension. In light of the mother’s failure to address her substance abuse issue until her incarceration, we cannot find a reasonable likelihood exists that removal would no longer be needed within six months. See *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998) (“[I]n considering the impact of a drug addiction, we must consider the treatment history of the parent to gauge the likelihood the parent will be in a position to parent the child in the foreseeable future.”). The mother’s past conduct gives us no reason to believe that she will consistently work toward and maintain sobriety.

The mother also contends that termination need not occur due to factors noted in Iowa Code section 232.116(3)(a) (“A relative has legal custody of the child.”) and (c) (“There is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.”). The factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). 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. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). Under the circumstances before us, it is

not in the children's interests to maintain a parental relationship where there exists only a possibility the mother will become a responsible parent sometime in the unknown future.

When the children were removed from their mother's care, they were placed with their great aunt and uncle. In their current placement, their personal hygiene, school attendance and grades, and behaviors have improved greatly. The children are happy in the placement, and the relatives plan to adopt if parental rights are terminated. Giving primary consideration to the children's "safety, the best placement for furthering the long-term nurturing and growth of the child[ren], and the[ir] physical, mental, and emotional condition and needs," see Iowa Code § 232.116(2), we conclude termination of parental rights to allow for adoption and permanency for these children is in their best interests.

AFFIRMED.