

**IN THE COURT OF APPEALS OF IOWA**

No. 3-282 / 13-0214  
Filed April 24, 2013

**IN THE INTEREST OF V.B., G.S., and B.S.,  
Minor Children,**

**J.S., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Polk County, Rachael E. Seymour,  
District Associate Judge.

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

Unes J. Booth of Booth Law Firm, Osceola, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, John Sarcone, County Attorney, and Christina Gonzalez,  
Assistant County Attorney, for appellee.

Jared C. Harmon of Carr & Wright Law Firm, P.L.C., Des Moines, for  
appellee father of G.S. and B.S.

Jamie J. Hagemeyer, Des Moines, for father of V.B.

Erin E. Mayfield of Youth Law Center, Des Moines, attorney and guardian  
ad litem for minor children.

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

**DANILSON, J.**

J.S. is the mother of three children: V.B., born in 2005; G.S., born in 2006; and B.S., born in 2008. The father of V.B. consented to the termination of his parental rights and he is not involved in this appeal. All three children are currently placed with A.S.—the father of G.S. and B.S., and V.B.’s former stepfather—who wishes to offer a permanent home to all three children. J.S. appeals the termination of her parental rights. Statutory grounds for termination exist, termination is in the children’s best interests, and no exception precludes termination. We therefore affirm.

**I. Background Facts.**

The children came to the attention of the department of human services (DHS) in June 2011, after the police found them residing in a “meth house,” where J.S. was temporarily residing with the children and V.B.’s biological father, Troy. John B., the occupant of the residence, acknowledged using and manufacturing methamphetamine. He also reported J.S. and Troy left the children in his care on more than one occasion over the time period they were staying with him, and that Troy used methamphetamine while there. The mother acknowledged to police she suspected that methamphetamine was being made at the residence. All three children tested positive for methamphetamine. The children were removed from J.S. and placed with the maternal grandmother.

The children were adjudicated children in need of assistance (CINA) in September 2011. The mother stipulated the children were CINA pursuant to Iowa Code section 232.2(c)(2) (2011) (child who has suffered or is imminently

likely to suffer harmful effects as a result of the failure of the parent to exercise reasonable care in supervising child). The court found the children had “significant delays and health concerns” and the mother “has a history of instability and clearly has left these children on multiple occasions with persons who are inappropriate and unsafe.” The court further found the children had been exposed to drug use, drug manufacturing, and domestic violence. The children remained in the home of their maternal grandmother.

A dispositional order was entered on November 3, 2011. The court found the mother had not started individual therapy as recommended, and was not taking advantage of additional visitation offered to her.

A review hearing was held on March 8, 2012, and a review order was filed on May 25. The court confirmed the children remained CINA. A.S. had requested the children be placed with him. However, he was then living in Wyoming and the court found placement with him was not in the children’s best interest because it would hinder the stated goal of reunification with the mother. A.S. continued to cooperate with services and expressed plans to relocate to Iowa after completing his schooling. The court found the mother “has struggled to consistently participate in recommended services including drug treatment and contact with the children’s therapist.” The court noted the mother’s unresolved substance abuse and domestic violence issues.

Notes from an April 27, 2012 family team meeting indicate J.S. was diagnosed with adjustment disorder with depressed mood and prescribed medications. It was also noted that J.S. “admits she is addicted to alcohol” and

“is taking responsibility for her addiction and realizes she wasn’t able to be the parent she wants to be and is now working hard to get her children back.” A.S. was talking to the children weekly via video service and attending unsupervised visits monthly. He had found housing in the area and planned to move with his fiancée as soon as he graduated in June. It was the stated goal that all three children would be placed with A.S. and his fiancée by June.

On May 1, 2012, A.S. filed a motion for concurrent jurisdiction.

On May 18, 2012, DHS submitted an addendum report in which the social worker Marie Muench reported:

Since the last Court hearing [J.S.] has lost her job and regained employment. [J.S.] has had in the past year numerous jobs. [J.S.] shows the ability to gain employment, however, she has not shown the ability to maintain this employment.

Since the last Court hearing [J.S.] has moved from one family member’s home to another. [J.S.] still struggles with maintaining suitable housing for her and the children. It would appear that since [J.S.]’s return to Iowa over the past year and a half to two years she is unable to maintain suitable housing and it is a pattern for her to move numerous times.

. . . .  
 . . . [A.S.] has made plans to move back to the State of Iowa to gain care and custody of not only his children [G.S.] and [B.S.], but [V.B.]

ICPC home study was completed for [A.S.] This home study was approved. This worker has notified parties that this has been approved.

. . . .  
 This worker believes that the children desire permanency in their lives and should not have to continue to live in disarray. Even though they are being well cared for in the home of their maternal grandmother . . . they have a willing and able parent available soon in the State of Iowa.

This worker does not believe it necessary to terminate [J.S.’s] parental rights if the children are allowed to gain permanency at the home of their father.

This worker would follow the Courts recommendation regarding filing a request for termination of parental rights regarding [V.B. and her biological father] if the Court feels necessary.

Muench recommended that all three children move to A.S.'s home and A.S. be allowed to seek custody in the district court.

A permanency hearing was started on May 25, 2012, and the mother's testimony apparently raised concerns about accountability and her insights into her substance abuse. The hearing was continued and the court ordered the guardian ad litem (GAL) to speak with the children's therapist "regarding TPR [termination of parental rights] recommendations."

On May 31, the permanency hearing resumed and the mother's attorney made an oral motion asking the court to recuse asserting the court had an "agenda." The State, GAL, and attorney for A.S. all resisted the motion. Written memoranda were filed in support and opposition to the motion to recuse, which was denied by the court .

The mother also moved to have a second GAL appointed to represent the interests of A.S.'s children, alleging they were in conflict with the interests of V.B. The GAL resisted, asserting that in light of the mother's May 25 testimony and new information from the children's therapist, the GAL "felt that termination of the Mother's parental rights was in the best interests of the three children." The GAL stated the children were "identically situated" with regards to the mother, there was no factual basis for the mother's claim of conflict of interests, and the appointment of a second GAL would unnecessarily delay the proceedings, which was not in the children's best interests.

On August 7, 2012, a termination or parental rights petition was filed. That same date the court modified the children's placement, moving them to A.S.'s care.

On September 18, 2012, a pretrial hearing was held to address numerous motions filed on behalf of the mother, including the motion for a second GAL. The court denied the motion to appoint another GAL.

The termination hearing was held over three days, on October 22, November 2, and November 9, 2012. J.S. testified she was not currently ready to resume care of her children, and she acknowledged she had not been consistent in attending individual therapy sessions or her dual diagnostic group. She testified on November 2 that if the court did not return the children to her, all three children should be placed with A.S., and further, that "[i]t's in the best interest for the kids to be there right now. I do believe at some point I would like to be involved."

On January 13, 2013, the juvenile court terminated the mother's parental rights pursuant to Iowa Code section 232.116(1)(d), (e), and (f). The court found termination and adoption were the preferred methods of obtaining permanency for the children, and consequently, termination of parental rights was in the children's best interest. The court further ruled that no statutory exceptions existed to allow the court not to terminate.

J.S. appeals, contending (1) the court erred in concluding her rights must be terminated in order to place V.B. with a non-relative; (2) the court violated her due process rights by "improperly directing the case and marshaling the evidence

against her”; (3) the court erred in not appointing a second GAL; (4) there is not clear and convincing evidence to support termination under any of the statutory grounds listed; and (5) the court erred in terminating her parental rights due to the closeness of the parent-child relationship.

## **II. Scope and Standard of Review.**

We conduct a de novo review of termination of parental rights proceedings. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). Although we are not bound by the juvenile court’s findings of fact, we do give them weight, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under section 232.116. *Id.* Evidence is considered “clear and convincing” when there are no “serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.” *Id.*

## **III. Discussion.**

### **A. Impartial Judge.**

We will begin with the mother’s claim that the juvenile court improperly directed the evidence and assumed the role of an advocate. Her complaint stems from the court’s order to the GAL to speak with the children’s therapist concerning termination recommendations following the May 25, 2012 hearing. She complains the court “effectively directed the State and the GAL to change their recommendations.” We do not find her claims supported by the record. See *In re K.C.*, 660 N.W.2d 34, 35 (Iowa 2003) (noting the juvenile court has

obligation to act in the best interests of the child and the authority to order filing of petition to terminate parental rights).

In *In re R.P.*, 606 N.W.2d 15 (Iowa 2000), the supreme court rejected a claim that the juvenile referee had not acted impartially. In *R.P.*, the applicant was not represented by counsel and the trier of fact examined the witnesses on the applicant's behalf. 606 N.W.2d at 15-16. The respondent appealed the referee's civil commitment finding, claiming he was denied due process because the referee took on an adversarial role by questioning the witnesses. *Id.* at 16. The supreme court found the respondent was not denied due process because "the referee did not display any evidence of becoming an advocate by such actions as extensive questioning, leading of the witness, or cross-examination of the respondent." *Id.* at 17.

In *In re S.P.*, 719 N.W.2d 535, 539 (Iowa 2006), however, the court concluded the record did not display the "cold neutrality of an impartial judge," but rather "a district court judge trying to elicit testimony that will support the applicants' burden of proof."

The record before us does not show that the juvenile court improperly "assumed an adversarial role in the process by picking and choosing which evidence would come in on behalf of the applicants," *S.P.*, 719 N.W.2d at 539, as had the court in *R.P.* See 606 N.W.2d at 15-16. The mother argues, "the court intended to terminate [J.S.'s] parental rights as to [V.B.] and that the Court wanted additional evidence to support termination as to all three children." However, here the juvenile court did not require the therapist to testify and the



therapist only submitted a report. Moreover, the juvenile court clearly could not predict the opinion or position the therapist would reach. Although the better practice may have been to leave such an inquiry to the GAL's discretion, the juvenile court did not assume an adversarial role. Accordingly, we find no violation of the mother's due process rights, nor did the court need to recuse itself.

#### **B. No conflict for GAL.**

The mother also argues that the interests of the children were sufficiently at odds to require the appointment of a second GAL. We do not find a conflict of interest in the GAL advocating for all three children in this instance as it was the opinion of all involved, including the mother, that the children should remain together. While the juvenile court could have appointed a second GAL, the court did not abuse its discretion in failing to do so.

#### **C. Termination analysis.**

Iowa Code chapter 232 termination of parental rights follows a three-step analysis. *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). The court must initially determine whether a ground for termination under section 232.116(1) (2011) is established. *Id.* If a ground for termination is established, the court must next apply the best-interest framework set out in section 232.116(2) to decide if the grounds for termination should result in a termination of parental rights. *Id.* If the statutory best-interest framework supports termination of parental rights, the court must finally consider if any statutory exceptions or factors set out in section 232.116(3) weigh against termination of parental rights. *Id.*

**1. Grounds for Termination.** When the juvenile court terminates parental rights on more than one statutory ground, we may affirm the juvenile court's order on any ground we find supported by the record. *D.W.*, 791 N.W.2d at 707. Section 232.116(1)(f) provides that termination may be ordered when there is clear and convincing evidence a child over the age of four who has been adjudicated a CINA and removed from the parents' care for the last twelve consecutive months cannot be returned to the parent's custody at the time of the termination hearing. Iowa Code § 232.116(1)(f). While J.S. complains that the court erred in finding the children could not be returned to her, her own testimony provides a clear basis for the finding. We do not address this claim further.

**2. Statutory Best Interests.** Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of section 232.116(2). *P.L.*, 778 N.W.2d at 37. In determining the best interests, this court's primary considerations are "the child's safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child." *Id.*

The juvenile court found—and we agree—

Unfortunately, the safety concerns that led to removal continue today. Further, the children need a long-term commitment from a parent to be appropriately nurturing, supportive of their growth and development, and who can meet their physical, mental, emotional, and safety needs. Neither the Mother or [Troy<sup>1</sup>] has demonstrated they are willing or able to fulfill this parental role. Their lack of participation and lack of progress in services shows an

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<sup>1</sup> As noted previously, V.B.'s father, Troy, also had his parental rights terminated.

unwillingness or inability to make necessary changes to have the children placed in their care.

The court wrote further,

Regarding Mother, the Court recognizes that [B.S.] and [G.S.] are placed with a relative; therefore the Court need not terminate her parental rights regarding those two children. However, [V.B.] is not placed with a relative,<sup>[2]</sup> and there are no statutory exceptions which would allow the Court to not terminate. Additionally, the history of this case shows Mother and [A.S.] have had a tumultuous relationship. While they were still married, Mother left the state where they resided and moved the children to Florida without telling [A.S.] where she was living. Due to this, [A.S.] was denied contact with his children for an extended period of time. Further, during this case Mother had difficulties maintain[ing] appropriate boundaries with the relative placement, her own mother. The Court does not have any doubt that if Mother's parental rights remained intact, she would eventually seek to disrupt the stability these children have found with [A.S.] These children deserve true permanency, one that could be needlessly disrupted in the future.

Giving primary consideration to the children's safety and physical, mental, and emotional long-term nurturing and growth, we agree with the court's finding that termination is in the children's best interests. The mother is not able to provide for the children's long-term nurturing and growth. All three children are placed with A.S., G.S. and B.S.'s father, who wishes to provide permanency for V.B. as well. We find it would be in the children's best interests to terminate the mother-children relationship so that the children will have the opportunity to grow and mature in a safe and healthy environment. See *In re T.J.O.*, 527 N.W.2d

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<sup>2</sup> While it is clear that A.S. was V.B.'s stepfather during the marriage of A.S. and J.S., we presume there has been a dissolution of that marriage in light of A.S.'s plan to remarry. In any event, a relative for purposes of chapter 232 is a person "within the fourth degree of consanguinity to a child." See Iowa Code § 232.2(11) (defining custodian as "a stepparent of a relative within the fourth degree of consanguinity to a child who has assumed responsibility for that child"). Consanguinity means "[r]elationship by blood or by a common ancestor." The American Heritage College Dictionary 304 (4th ed. 2004)

417, 420 (Iowa Ct. App. 1994) (noting that “whenever possible” siblings should be kept together).

**3. Exceptions.** We next give consideration to whether any exception or factor in section 232.116(3) applies to make termination unnecessary. J.S. argued at trial that termination of her parental rights was not required because the children were placed with a relative. On appeal, she argues the juvenile court concluded termination of her parental rights was required to place V.B. with A.S. However, this mischaracterizes the court’s ruling.

Iowa Code section 232.116(3) provides, in part:

The court need not terminate the relationship between the parent and child if the court finds any of the following:

a. A relative has legal custody of the child.

...

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).

Here, the juvenile court rejected the mother’s contention that subparagraph (a) provided an exception for termination. The court correctly ruled that while that provision might apply to the mother’s rights with respect to

G.S. and B.S., it did not apply with respect to V.B. We find no error because V.B. was not in the legal custody of a relative.

And we reject the mother's characterization that the court terminated her rights because it thought it must terminate to place V.B. with A.S.—the court fully explained its reasoning that it was terminating the mother's parental rights to provide the children the permanency they deserved.

The mother on appeal argues termination need not occur due to the closeness of the parent-child relationship, invoking subparagraph (c) of section 233.116(3).<sup>3</sup> While there was some testimony by the family safety, risk, and permanency worker that there was a strong bond between the mother and children during supervised visits, we do not find that bond serves to preclude termination here.

The juvenile court found

no statutory exceptions or factors set out in Section 232.116(3) weigh against termination of parental rights given the children's ages, need for permanency, and likelihood Mother would attempt to disrupt the children's placement. Since termination and adoption are the preferred methods of obtaining permanency for children who cannot be returned home, the court finds termination is in the children's best interest.

We agree and therefore affirm..

#### **IV. Conclusion.**

There is clear and convincing evidence that grounds for termination exist under section 232.116(1)(f), termination of parental rights is in the children's best

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<sup>3</sup> The State argues the issue is not properly before us because it was not addressed by the juvenile court. The court found "no statutory exceptions or factors set out in Section 232.116(3) weigh agstin ttermination

interests pursuant to section 232.116(2), and no consequential factor weighing against termination in section 232.116(3) requires a different conclusion. We affirm termination of the mother's parental rights.

**AFFIRMED.**