

**IN THE COURT OF APPEALS OF IOWA**

No. 3-318 / 13-0173

Filed April 10, 2013

**IN THE INTEREST OF L.C., D.S., S.S.,  
J.S., and K.S.,  
Minor Children,**

**R.S., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Linn County, Susan Flaherty,  
Associate Juvenile Judge.

A mother appeals the termination of her parental rights to her children.

**AFFIRMED.**

Ellen R. Ramsey-Kacena, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney  
General, Jerry Vander Sanden, County Attorney, and Rebecca Belcher,  
Assistant County Attorney, for appellee.

Michael Lindeman, Cedar Rapids, for father of D.S., S.S., J.S., and K.S.

Jessica Wiebrand, Cedar Rapids, for father of L.C.

Ryan Tang of Law Office of Ryan Tang, P.C., attorney and guardian ad  
litem for D.S., S.S., J.S., and K.S.

Melody Butz, Center Point, attorney and guardian ad litem for L.C.

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

**BOWER, J.**

A mother appeals the termination of her parental rights to her children. She contends the State failed to make reasonable efforts to reunify her with her children. She also contends the State failed to prove the grounds for termination and that termination is not in the children's best interests. Finally, the mother contends the juvenile court abused its discretion in failing to appoint an attorney to represent each of the children in the termination proceedings.

The State proved that, despite the offer and receipt of services to avoid termination, the children cannot be safely returned to the mother's care. Termination is also in the children's best interest. The mother cannot show the juvenile court abused its discretion in failing to appoint an attorney to represent each of the children in the termination proceedings. Accordingly, we affirm.

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

The five children at issue are all over the age of ten. In 2005, it was learned that the mother's husband (also the father of four of the children) had sexually abused four of the children. The children were adjudicated to be in need of assistance (CINA), and the case was closed in August of 2006.

The children next came to the attention of the Department of Human Services (DHS) in August 2007, after the police were called to the mother's house due to a report she was suicidal. Because the mother was willing to cooperate with mental health services and services recommended by the DHS, no CINA proceedings were initiated.

However, in September 2007, the DHS received another report about the mother's mental health and her ability to care for the children. It was alleged that the mother was suicidal and had asked one of the children to bring her a knife so she could kill herself. The mother reported that she had just broken up with her boyfriend, R.A., who she stated drank a lot, was verbally abusive, and took the children's prescription medication. The children reported R.A. was physically abusive to them. Safety and crisis plans were developed.

In October 2007, the DHS received a report from the school regarding the mother's wish to transfer the children to a school in Oxford Junction, where she was planning to move to live with a man she had met on the Internet. She and all five children were planning to live in a one-bedroom trailer with the man and his mother. However, the mother's plan changed when the man's parole officer would not allow them to move in.

A few days after the mother's plan to move fell through, she informed the DHS that she had exaggerated the concerns about her prior relationship with R.A., which she then wished to resume by allowing R.A. to move back into the home. At that time, a CINA petition was filed regarding the five children. The parties agreed the children were CINA in February 2008, but asked the court to suspend judgment pursuant to Iowa Code section 232.100 (2007).

Concerns existed about the mother's supervision of the children. Evidence shows that the children were touching one another inappropriately and the mother failed to follow through with the recommendations that she supervise them while bathing, changing clothes, or playing upstairs.

The mother's involvement with men also continued to be a concern. The mother reported R.A. had a violent temper, and abused drugs and alcohol. The mother began a relationship with K.S., with whom she planned to live with along with her children. K.S. has a criminal history, which includes domestic violence, and was using methamphetamine. The mother again recanted earlier unflattering statements she made about R.A.

In December 2009, the parties stipulated that the suspended CINA judgment should be revoked, and the children were adjudicated CINA pursuant to Iowa Code section 232.2(6)(c)(1), 232.2(6)(c)(2), and 232.2(6)(g). The children were continued in their mother's care with services ordered to address parenting and mental health concerns, as well as drug and alcohol testing for R.A., services for the children, couples counseling, transportation assistance, and financial assistance.

A series of events in 2010 eventually led to the children's removal from the mother's care. In May 2010, police were called to the home after R.A. committed an act of domestic abuse upon the mother. It was also reported that R.A. was using marijuana in the home and had physically abused the children. The mother agreed R.A. would not live at the home or be around the children. In July 2010, the DHS investigated an allegation that one of the children had physically abused the other children while disciplining them at the mother's direction. In August 2010, the mother reported that she had met a man, R.S., online and wanted him to spend a weekend in her home; a records check showed the man presented a risk of sexually abusing the children. The following day, the mother

was admitted to the hospital after making suicidal threats because she was not taking her medication. Finally, there were concerns about the condition of the mother's home, which had greatly deteriorated; a pest-control worker stated the home had the worst cockroach infestation he had ever seen.

The mother relocated to Davenport to live with her boyfriend, R.S. Her contact with the children was severely limited for the month that she lived there. After the mother returned to Cedar Rapids, she had a succession of relationships with men who have histories of substance abuse and domestic violence. In January of 2012, the mother reported she was in a relationship with W.S., who she met on the Internet. The mother met W.S. in person the first week of February and got engaged during the third week of February. She married W.S., who has a history of domestic abuse, on March 3, 2012.

The State filed a petition seeking to terminate the mother's parental rights on July 7, 2011. Hearings on the petition were held in late October and early November 2011, as well as August 2012. The juvenile court entered its order terminating the mother's parental rights on January 16, 2013, and the mother timely appealed.

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

We review termination of parental rights proceedings de novo. *In re A.B.*, 815 N.W.2d 764, 773 (Iowa 2012). While we are not bound by the juvenile court's fact-findings, we do give them weight, especially when assessing witness credibility. *Id.*

We will uphold termination order if clear and convincing evidence supports the grounds for termination under section 232.116. *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011). Evidence is “clear and convincing” where there are no “serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.” *Id.*

### ***III. Analysis.***

The mother first challenges the services offered to reunify her with the children. The State is required to make reasonable efforts “to preserve and unify a family prior to the out-of-home placement of a child in foster care or to eliminate the need for removal of the child or make it possible for the child to safely return to the family’s home.” Iowa Code § 232.102(10). This reasonable efforts requirement is not viewed as a strict substantive requirement of termination. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). Rather, the scope of the efforts made by the DHS to reunify the parent and child impacts the State’s burden of proving those elements of termination that require reasonable efforts be made. *Id.* The State must show reasonable efforts as part of its ultimate proof the child cannot be safely returned to the care of the parent. With these principles in mind, we turn to the question of whether the State proved the grounds for termination by clear and convincing evidence.

The juvenile court terminated the mother’s parental rights pursuant to section 232.116(1)(f). Termination is appropriate under this section where the State proves:

- (1) The child is four years of age or older.

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

There is no question the first three elements have been proved. The mother argues instead that the State failed to show the children cannot be returned to her care.

The evidence presented to the juvenile court shows the children cannot be safely returned to the mother's care. The mother had been receiving services to help her with her parenting deficiencies and mental health issues since the children's first CINA adjudication in 2005. In spite of receiving these services, the mother was unable to progress to the level of unsupervised visitation. There were concerns about the level of supervision the mother could provide, leading to confirmed child abuse assessments in the past.

The mother continued to have relationships with men who presented a danger to the children. Although the mother argues this should not be considered because she did not have visitation with the children in the home, the fact that the mother continued to pursue these relationships despite their impact on her ability to regain custody of her children is noteworthy. The mother married W.S., who has a history of domestic abuse, one month after meeting him.

Concerns also remain regarding the mother's mental health. She frequently failed to take her prescribed medications, leading to mental health

breakdowns and—on multiple occasions—the mother threatened suicide in front of the children. It is likely these concerns would continue in the future. See *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993) (noting that insight into what the future holds if the child is returned to a parent’s care can be gained from evidence of the parent’s past performance, as such evidence may be indicative of the quality of future care the parent is capable of providing).

Because concerns for the children’s safety continue to exist, we find the State proved the children cannot be safely returned to the mother’s care. The State proved the ground for termination under section 232.116(1)(f).

Even though we find the grounds for termination have been proved, we must also find termination is in the children’s best interests in order to affirm. See *D.S.*, 806 N.W.2d at 474. In determining best interests, our 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 mother contends termination is not in the children’s best interests.

In making the best interests determination, the juvenile court noted disagreement among the professionals who worked with this family as to whether termination is in the children’s best interests. It is clear the children are bonded with their mother and, as the juvenile court found, would benefit on some level from maintaining that bond with her. However, the best interests determination requires that we consider the children’s safety, as well as their physical, mental,

and emotional needs. It is clear that the children cannot be safely placed with their mother.

The juvenile court considered the possibility of placing the children in long-term foster care, but rejected this option because the history of this case

has made it abundantly clear that such an arrangement is likely to continue to create turmoil for the children, as the adults struggle to work together to assure that the children's needs are met. Past behavior clearly establishes that a plan for permanency for these children, which necessitates cooperative co-parenting between [the mother], foster parents, and the Department of Human services, is destined to fail.

The evidence supports this finding and we adopt it as our own. Furthermore, our courts have on many occasions affirmed that long-term foster care is not preferred to termination of parental rights. *In re R.L.*, 541 N.W.2d 900, 903 (Iowa Ct. App. 1995). These children have been involved in the juvenile court system for over six years now and have been in foster care for two-and-a-half years. They have adapted well to their foster placements and bonded with their foster parents. It is in these placements, unfettered by the mother's interference, the children are most likely to have their needs met. We agree that termination is in the children's best interests.

Finally, the mother contends the juvenile court abused its discretion in refusing to appoint an attorney for each of the children. The mother made this request to the juvenile court, which the court granted with respect to the oldest child; the guardian ad litem continued to act as both guardian ad litem and the attorney for the other four children. See Iowa Code § 232.113(2) (providing [t]he same person may serve both as the child's counsel and as guardian ad litem").

The mother alleges a conflict of interest exists because the evidence presented at the termination hearing “showed that the children did not want termination of their parental rights, yet their interests were represented only by a Guardian ad Litem whose recommendation was termination of parental rights, ignoring the statements made by the children to the CASA worker and their [Behavioral Health and Intervention Services] providers.” We disagree. The evidence shows the children were conflicted about reunification.

Furthermore, even if a conflict did exist, the mother has failed to show this conflict resulted in actual prejudice. *In re T.P.*, 757 N.W.2d 267, 274 (Iowa Ct. App. 2008) (noting that “it must be proved that an actual conflict existed and actual prejudice resulted”). She cannot show that the result of the proceeding would have been different had a separate attorney been appointed to represent the children. Accordingly, we affirm.

**AFFIRMED.**