

IN THE COURT OF APPEALS OF IOWA

No. 3-326 / 12-2162

Filed April 24, 2013

**IN THE INTEREST OF D.K. JR. and R.K.,
Minor Children,**

B.K. Mother,
Appellant.

Appeal from the Iowa District Court for Carroll County, James A. McGlynn,
Associate Juvenile Judge.

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

Robert E. Peterson, Carroll, for appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John Werden, County Attorney, and Tina Farrington, Assistant
County Attorney.

Mark Rasmussen, Jefferson, for father.

Martha A. Sibbel, Carroll, attorney and guardian ad litem for minor
children.

Considered by Doyle, P.J., and Danilson and Mullins, JJ.

MULLINS, J.

A mother appeals from a juvenile court order terminating her parental rights. The mother contends the State failed to present clear and convincing evidence of statutory grounds for termination, and terminating her parental rights is not in the children's best interest. We affirm the juvenile court's order.

I. Background Facts & Prior Proceedings

This appeal concerns the mother's parental rights to R.K. (born September 2007) and D.K. (born July 2004). The mother and the father are separated. Throughout these proceedings, the mother maintained an unstable and physically abusive relationship with her boyfriend, Shane.

In June 2009, this case came to the attention of the Department of Human Services (DHS) following reports that Shane physically abused D.K. causing bruising on the child's nose and forehead. According to the reports, Shane was upset with D.K. because the child was sitting in a chair on his knees. Shane pulled the chair out from under D.K. causing the child to hit his face on a table and fall to the floor. D.K. was just four years old at the time. R.K. has a unique medical condition known as Craniosyntosis, a congenital abnormality causing the child's growth plates to fuse together. As a result of R.K.'s medical condition, doctors removed a portion of her skull to allow her brain to grow and develop. DHS expressed concerns that if R.K. suffered injuries similar to D.K.'s injuries the consequences could prove fatal.

After the incident of physical abuse, the mother agreed to place the children in foster family care pursuant to a voluntary placement agreement. The

agreement restricted Shane from having any contact with children, but did not restrict the mother's access to the children. Although the social worker providing services to the family strongly encouraged the mother to take advantage of visitation opportunities, the mother called the children only two times in the month following voluntary removal. During this time, the mother maintained her relationship with Shane and, on at least one occasion, allowed him to contact the children.

The social worker reported that the children were at "very high risk of further abuse" from Shane under the voluntary placement agreement. The State petitioned the juvenile court for a temporary removal order to replace the voluntary placement agreement. The juvenile court ordered temporary removal and, in a subsequent hearing, confirmed removal.

In July 2009, the juvenile court held an uncontested adjudication hearing. The parents stipulated that the children were children in need of assistance pursuant to Iowa Code section 232.2(6)(b) and (c)(2) (2009).

In November 2009, the juvenile court held an uncontested dispositional hearing. The parents agreed that the children continued to be children in need of assistance and should remain in family foster care. The mother acknowledged that she was unable to assume custody of the children and continued her relationship with Shane. DHS's primary goal had been reunification with the father. Unfortunately, prior to the dispositional hearing, the father was arrested for a third offense operating while intoxicated (OWI)—his fifth lifetime OWI charge—and was subsequently sentenced to prison.

In February 2010, the parties waived the scheduled dispositional review hearing and stipulated to a dispositional order. The parents agreed the children continued to be children in need of assistance. As the father was in prison and in no position to care for the children at that time, DHS changed the permanency goal to reunification with the mother. As the order explained, "The permanency goal is reunification with the mother, but it is clear that the mother must make substantial progress toward reunification and [be in] consistent contact with the children in order for that to happen."

The juvenile court continued the permanency hearing scheduled for June 2010 to allow the State to file a petition to terminate parental rights. In September 2010, the juvenile court held a combined permanency hearing and termination of parental rights proceedings. After all parties rested, the court found "that it would be in the best interest of the children to adjourn the hearing, to keep the record open, and to reschedule a final date for the hearing in about six months." Toward that end, the juvenile court entered a permanency order allowing the parents an additional six months to work toward reunification.

In May 2011, the juvenile court reconvened on the combined permanency hearing and termination of parental rights proceedings. The court found, "[I]t is clear that the children cannot be returned to the custody of the mother. The mother squandered the opportunity to work toward reunification while the hearing was adjourned. She has not visited with the children now for several months." Notwithstanding the mother's failure to visit the children, the court found terminating her parental rights would not be in the children's best interest at that

time. The court then ordered placement of the children with the father under DHS supervision.

Unfortunately, the father soon relapsed. The father's girlfriend, Gina, reported "the father was drinking heavily and frequently, that he was no longer safe to be around the children, that he had been arrested several times in the past few weeks on alcohol-related charges, [and] that he was now on the run from law enforcement." As a result, the juvenile court entered an emergency order to remove the children from the father's care.

After removing the children from the father's care, DHS initially placed the children with Gina. The State filed a petition to terminate parental rights soon thereafter. In February 2012, the juvenile court held a combined permanency review hearing and termination of parental rights proceedings. The juvenile court determined that the petition to terminate parental rights was premature.

In October 2012, the court again held termination of parental rights proceedings. The State and the children's guardian ad litem recommended terminating parental rights. The district court found that, "The mother did not claim that she was able to assume custody of the children now or at any time in the foreseeable future, but resisted termination of her parental rights and asked that the Court give the father additional time to gain reunification." The court further found that, "After three and a half years, [the mother] is no closer to being able to provide a safe, stable, and secure home for these children than at the time of removal. She does not even claim that she is able to take custody of the children now or at any time in the near future." The juvenile court terminated the

mother's parental rights pursuant to Iowa Code section 232.116(1)(e) and (i) (2011), and terminated the father's parental rights pursuant to section 232.116(1)(i) and (j). The mother appeals. Although the father also appealed, his appeal was dismissed as untimely.

II. Standard of Review

We review termination of parental rights proceedings de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We give non-binding deference to the juvenile court's factual findings. *Id.*

III. Analysis

The mother contends the State failed to present clear and convincing evidence of the grounds for termination. On appeal, we may affirm the juvenile court's termination order if clear and convincing evidence supports any one ground for termination. *See id.* at 707. To terminate parental rights under section 232.116(1)(i), the State must present clear and convincing evidence that

(1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.

(2) There is clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child.

(3) There is clear and convincing evidence that the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.

The mother stipulated to a child-in-need-of-assistance adjudication pursuant to section 232.2(6)(b) and (c)(2). During the uncontested July 2009 adjudication hearing, the juvenile court found the children "are children whose parent, guardian, custodian, or other member of the household in which they

reside has physically abused or neglected them or is imminently likely to abuse or neglect them.” This finding was based on reports that the mother’s boyfriend physically abused D.K. We find both children meet the definition of children in need of assistance based on a finding of physical abuse or neglect as a result of the mother’s acts or omissions. See Iowa Code §§ 232.116(1)(i)(1), .2(6)(b).

The record supports findings that the mother’s boyfriend physically abused D.K. R.K.’s fragile medical condition made her particularly vulnerable to such abuse. We find clear and convincing evidence that this abuse and the mother’s continued abusive relationship posed a significant risk to the children’s lives and placed them in imminent danger. See *id.* § 232.116(1)(i)(2).

The mother makes no claim about being able to care for these children now, or any time in the near future. The record supports the juvenile court’s finding that “[a]fter three and a half years, [the mother] is no closer to being able to provide a safe, stable, and secure home for these children than at the time of removal.” We find clear and convincing evidence that the offer or receipt of services would not correct the conditions that led to the abuse or neglect of the children within a reasonable period of time. See § 232.116(1)(i)(3). Thus, upon our de novo review, we find clear and convincing evidence supports terminating the mother’s parental rights to R.K. and D.K. under Iowa Code section 232.116(1)(i).

Next, we must consider whether terminating the mother’s parental rights is in the children’s best interest. See *In re P.L.*, 778 N.W.2d 33, 40–41 (Iowa 2010) (setting forth the analytical framework to review termination proceedings). To

determine whether terminating parental rights is in the child's best interests, we "give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child." *Id.* (quoting Iowa Code § 232.116(2)).

Although the mother asserts the juvenile court erred in finding termination of her parental rights was in the children's best interest, she makes no argument and sets forth no facts to support this assertion.¹ These children have been in parentless limbo for almost four years. Throughout this time, the mother has consistently squandered opportunities to visit her children and work toward reunification. The mother did not claim that she could care for these children at the termination hearing, and she makes no such claim on appeal. The time for permanency is well past due. We find the children's safety and their long-term nurturing and growth are best served through terminating the mother's parental rights. We find no statutory exceptions applicable under section 232.116(3). Accordingly, we affirm the termination of the mother's parental rights.

AFFIRMED.

¹ Ordinarily, "we will not speculate on the arguments [appellant] might have made and then search for legal authority and comb the record for facts to support such arguments." *Hylar v. Gardner*, 548 N.W.2d 864, 876 (Iowa 1996). In most cases, the appellant's "random mention of an issue, without analysis, argument, or supporting authority is insufficient to prompt an appellate court's consideration." *State v. Mann*, 602 N.W.2d 758, 788 n.1 (Iowa 1999); *Soo Line R.R. v. Iowa Dep't of Transp.*, 521 N.W.2d 685, 691 (Iowa 1994). Given the incredible stake of innocent children in this action, we hesitate to find the mother failed to preserve error and will address the best interests of the children.