

IN THE COURT OF APPEALS OF IOWA

No. 3-491 / 13-0498
Filed May 30, 2013

**IN THE INTEREST OF D.B., O.B.,
T.B., and J.B., Minor Children,**

A.B., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Gregory D. Brandt,
District Associate Judge.

A mother appeals a juvenile court's order terminating parental rights to her
four children. **AFFIRMED.**

Erin M. Carr of Carr & Wright, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, John Sarcone, County Attorney, and Jennifer Galloway, Assistant
County Attorney, for appellee.

Stephie Tran, Des Moines, for appellee father of O.B., T.B., and J.B.

Donna Beary, Des Moines, for appellee father of D.B.

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

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

TABOR, J.

A mother of four, Amanda, appeals a juvenile court's order terminating her parental rights under Iowa Code section 232.116(1)(d), (1)(e), (1)(f), and (1)(h) (2011). Amanda contends the State failed to meet its burden to prove each ground by clear and convincing evidence, and termination was not in the four children's best interest. She also asserts the court erred by not granting a six-month continuance for her to improve her parenting abilities.

Because the record reveals the conditions causing the children's initial removal continue to exist, the State met its burden to prove the statutory grounds to terminate. Amanda's minimal improvement over the span of the case shows a six-month continuance would only delay a permanent placement for the children. Because all four children are thriving in their current home environments, it is in their best interest to terminate Amanda's parental rights.

I. Background Facts and Proceedings

The children involved in this termination proceeding are D.B., O.B., T.B., and J.B., who are eight years, five years, two years, and eleven months old respectively. The four children share the same mother, Amanda. D.B.'s father is Matthew,¹ and Manuel is the father of the other three children. Manuel and Amanda have been in a relationship for the past seven years.

The Department of Human Service (DHS) provided services to Amanda in 2007 based on drug trafficking in Amanda's home and her admitted use of marijuana in the presence of D.B. In July 2011, DHS again became involved

¹ Matthew has not participated in the case. The juvenile court described Matthew as having "serious substance abuse issues" and "abandoning his child."

following allegations the children were enduring “deplorable” living conditions. The assessment showed Amanda’s home had no electricity and no running water; was filthy with dog feces throughout; was infested with bedbugs, and smelled of urine, body odor, and pet odor.

DHS began an additional investigation one month later after receiving allegations that Manuel and Amanda were leaving their children with caretakers who were under the influence of methamphetamine. Workers grew concerned the couple also used illegal drugs. Amanda’s hair sample tested positive for marijuana and methamphetamine; Manuel’s hair sample tested positive for multiple controlled substances. Hair samples from two of Amanda’s children also tested positive for drugs.

On November 10, 2011, D.B., O.B., and T.B. were temporarily removed from the couple’s care. Four days later, the State filed a petition alleging all three were children in need of assistance (CINA). At the removal hearing, the couple stipulated to Amanda’s mother watching D.B., while T.B. and O.B. remained with a family friend, subject to her negative drug screen.

During an adjudication hearing, Amanda’s mother admitted she knew both parents used marijuana, and actually witnessed them using methamphetamine in August 2011. The grandmother said she removed herself and D.B. from the environment, but O.B. and T.B. stayed with their parents. On December 14, 2011, the juvenile court adjudicated the children as CINA under Iowa Code section 232.2(6)(b), (6)(c)(2), and (6)(n), and removed D.B. from his grandmother’s custody and placed him in family foster care.

Also in December 2011, Manuel and Amanda underwent substance abuse evaluations. The evaluations did not recommend treatment for Amanda, based on her self-report, but urged Manuel to complete extended outpatient treatment. A psychosocial evaluation on January 2, 2012, recommended individual therapy for both and diagnosed Amanda with “adjustment disorder with depressed mood.” The therapist characterized Manuel as having underreported mental health symptoms and believed he had low motivation to improve his current situation. That month, O.B. and T.B. were placed in family foster care with D.B.

After a January 17, 2012 dispositional hearing, the court confirmed the three boys as CINA. Because of D.B.’s behavioral issues, the court placed him in shelter care. A second evaluation in January 2012 recommended extended outpatient treatment for Amanda and intensive outpatient treatment for Manuel. Both completed the treatment, but because neither followed through with aftercare, they were unsuccessfully discharged in July 2012. One month earlier, in June 2012, Amanda tested positive for alcohol.

Also in June 2012, Amanda gave birth to her daughter, J.B. Authorities removed J.B. from Amanda’s care one day after her birth. On July 11, 2012, parties stipulated J.B. also was a CINA on the same grounds as her brothers. Later that month, after one of the parental visits, a DHS worker saw a pack of beer in the car driven by Amanda and Manuel.

On August 20, 2012, the court confirmed J.B. to be a CINA. Six days later, the car Manuel was driving collided with a motorcycle. Officers found a half-empty liter bottle of vodka in the car’s glove compartment. Amanda reported

the alcohol belonged to their roommate, as neither she nor Manuel drank. When an officer came to the couple's apartment to interview Amanda the next day, the officer smelled burnt marijuana and observed Amanda with bloodshot glossy eyes, slow, slurred speech, and unsteady balance. The officer also found marijuana in another occupant's pockets and found an ecstasy pill on the floor.

Throughout the proceedings, both parents have skipped drug screens or tested positive. The juvenile court noted unusual creatinine levels in Amanda's urine raise the suspicion that she tampered with the urinalyses.

For a six-month stint, the oldest three children were placed in the care of a paternal grandmother. But after questions arose regarding her financial condition and ability to provide a stable environment to meet the children's needs, on August 31, 2012, the children were placed in foster care. T.B. and O.B. joined J.B. in a pre-adoptive foster home, and D.B. was placed in a separate foster home.

Throughout DHS's involvement, Manuel attended one intake session and one therapy session. Although Amanda consistently saw her therapist earlier on, she was discharged from therapy on October 24, 2012 for missing two consecutive sessions without giving notice. Her therapist summarized Amanda's lack of progress in a discharge report:

Amanda's perception of her progress has consistently been very different from workers and professionals involved in her case. Amanda struggled to identify her responsibility in regards to her family's involvement with [DHS]. Amanda remained in the contemplation state of change throughout services, which is evidenced by her willingness to accept suggestions from therapist in session; however, she struggled to implement the changes in her life.

On October 31, 2012, the State filed a petition to terminate the rights of all three parents to the four children under section 232.116(1)(d), (1)(e), (1)(f), and (1)(h).² The juvenile court held a termination hearing on January 22 and 30, 2013. On March 19, 2013, the court terminated the parental rights of Matthew, Manuel, and Amanda to the four children based on each ground filed by the State. Only Amanda appeals.

II. Scope and Standard of Review

Our review of proceedings to terminate parental rights is de novo. *In re H.S.*, 806 N.W.2d 737, 745 (Iowa 2011). Although we give weight to the juvenile court's fact-findings, especially concerning witness credibility, we are not bound by them. *Id.*

III. Analysis

Amanda argues the juvenile court erred in terminating her parental rights to D.B., O.B., T.B., and J.B. Whether to legally sever the biological ties between a child and parent is an issue of grave importance causing serious repercussions to both. *In re D.A.W.*, 552 N.W.2d 901, 903 (Iowa Ct. App. 1996). A juvenile court must follow a three-step analysis to terminate parental rights. *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011). First, the court determines whether the State has proven termination is appropriate under one of the grounds listed in section 232.116(1). *Id.* If the State establishes at least one ground, the court then applies the section 232.116(2) best-interest framework. *Id.* The court finally

² The State also petitioned to terminate Matthew's rights under section 232.116(1)(b) for abandonment.

considers whether any of the section 232.116(3) factors weigh against termination. *Id.* Amanda challenges the first and second steps.

When a juvenile court terminates parental rights based on multiple statutory bases, we may affirm the order on any ground supported by the record. *In re A.B.*, 815 N.W.2d 764, 774 (Iowa 2012). The juvenile court terminated Amanda's rights under four different provisions. Among these grounds, the court terminated rights to D.B. and O.B. under section 232.116(1)(f), and terminated rights to T.B. and J.B. under section 232.116(1)(h).

Paragraph f permits termination if:

- (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.

Id. § 232.116(1)(f).

Paragraph h permits termination if:

- (1) The child is three years of age or younger.
- (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 six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

Id. § 232.116(1)(h).

If the grounds for termination under Iowa Code section 232.116 are supported by clear and convincing evidence, we will uphold the court's order. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). "Clear and convincing" means the absence of any "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.* (quoting section 232.116).

Amanda does not dispute the State's proof of the first three requirements of paragraphs f and h. She contends only that because she addressed housing and substance abuse issues that led to the children's removal, the State did not present clear and convincing evidence they could not be returned to her care.

To the contrary, the record shows conditions leading to the removal of Amanda's children persisted at the time of hearing. She and Manuel have not had suitable housing for their children since April 2011. They've spent the majority of the case homeless and living with friends. For a brief period, the couple rented a two-bedroom apartment in Des Moines, but were unable to make the payments. They now live in a one-bedroom apartment, but hope to receive government support to move into a larger residence if the children are returned to them. Neither parent has maintained a reliable source of income throughout DHS involvement, forcing the family to rely on public assistance to finance their accommodations.

DHS also removed the children based on concerns about the parents' drug use and their choice to leave the children with caretakers who were under the influence of illegal substances. As the DHS termination report reveals, the same underlying concerns remain:

Manuel and Amanda have been unable to show that they can provide a safe, stable environment for their children, free of drug abuse. They have not successfully engaged in services enough to consistently gain insight into being protective parents and addressing their on-going mental health and substance abuse issues. There have been on-going concerns that Amanda and Manuel have continued to use illegal substances based on their affect and behaviors. It also appears as if they have tampered with their urine analysis tests based on the inconsistency of their creatinine levels.

Workers also believed the parents have been under the influence while interacting with their children and caseworkers. Despite Amanda's vehement denial of using alcohol, her positive drug screen while pregnant with J.B., the half-consumed bottle of vodka found after the August automobile collision, and the pack of beer observed in her vehicle show substance abuse issues remain. The drug discovery in their apartment in August also indicates Amanda and Manuel's continued association with drug users.

DHS provided the family with numerous services, including urinalyses, hair tests, family team meetings, gas cards, bus tokens, substance abuse treatment, mental health therapy, psychosocial evaluations, relative placement, foster care, shelter care, FSRP services, and ongoing DHS case management. Despite receiving these services for eighteen months, Amanda is not ready to regain custody of her children. She's missed or been late to several visitations and rarely attends her children's medical appointments. Her refusal to undergo drug treatment or continue individual therapy demonstrates her failure to gain insight into her substance abuse and mental health issues. Amanda has not demonstrated progress sufficient to warrant returning D.B., O.B., T.B. and J.B. to

her care. Accordingly, the State met its burden to present clear and convincing evidence of statutory grounds to terminate the parent-child relationships.

Amanda next argues the juvenile court erred in not continuing placement of the children for an additional six months so she could improve her ability to care for them. After a permanency hearing, a juvenile court may either return children to their home, continue their placement for an additional six months, direct the State to institute proceedings to terminate parental rights, transfer the children's guardianship or custody, or order another planned permanent living arrangement. Iowa Code § 232.104(2). In the court's permanency order, it agreed with the State's filing the termination petition: "In general, parents are not participating in recommended services, indicating failure to attend individual therapy and substance abuse treatment. Parents have missed or been late for multiple visits, causing the number of visits to be decreased. Parents have both provided tampered UA since the last hearing."

Considering her anemic progress over the past eighteen months, workers harbored little optimism that Amanda would surge in her ability to be an effective parent if offered an additional six months. During the termination hearing, Amanda testified she and Manuel would be entering drug treatment the following day. One month before, she told a DHS worker she would be entering treatment the following day, but did not follow through—typifying her procrastination during these proceedings. Therapists and social workers reported Amanda fostered a deluded perception of the progress she actually made toward reuniting with her children.

We agree an additional six months would unnecessarily delay the children's stability. We cannot deprive children of permanency when the State proves a ground for termination exists under section 232.116(1) by hoping a parent will someday be able to provide them with a stable home. *In re P.L.*, 778 N.W.2d 33, 41 (Iowa 2010).

Finally, Amanda contends even if the State proved termination is appropriate under section 232.116(1), it would be in the children's best interest to return to her care. She believes they would be better off "all under one roof" as a family unit, rather than remaining with their foster families, in which she admits they are "admittedly thriving."

In making the best-interest determination, we give primary consideration to the children's safety, to what placement would best further the children's long-term nurturing and growth, and to the emotional, mental, and physical condition and needs of the children. *Id.* at 39. We glean insight from a parent's past performance when determining the children's long-range best interests, because that performance may indicate the quality of future care the parent will be capable of providing. *A.B.*, 815 N.W.2d at 778 (noting a severe, unresolved, and chronic drug addiction can render a parent unfit to raise their children).

While Amanda attended some parenting classes, therapy, and visits, as discussed above, she has not progressed to the point where she can provide consistent care for her children. She has had eighteen months to address the root causes for her children's initial removal—but made only minimal strides. Service providers agree she will be unable to render appropriate care in the

foreseeable future. Moreover, returning the children to her care would expose them to Manuel, who has made even less progress with his substance abuse issues.

Although D.B. previously had behavior problems, the record shows he is now doing well, and his bond is strengthening with his foster family. O.B., T.B., and J.B. are also thriving in their foster home and feel safe and comfortable there. The two foster families have encouraged continued contact among the siblings. It would not benefit the children to disturb their nurturing environments for the uncertain prospect of reunification with Amanda. We believe termination of her parental rights was in the best interest of all four children.

AFFIRMED.