

IN THE COURT OF APPEALS OF IOWA

No. 3-492 / 13-0499

Filed June 12, 2013

**IN THE INTEREST OF I.M., A.M.,
and C.M., Minor Children,**

M.M., Father,
Appellant,

G.C., Grandmother,
Appellant,

M.M., Mother,
Appellant.

Appeal from the Iowa District Court for Scott County, Christine Dalton,
District Associate Judge.

A mother, father, and grandmother appeal from a termination order.

AFFIRMED.

Angela Reyes, Davenport, for appellant-father.

Jack E. Dusthimer, Davenport, for appellant-grandmother.

Joel Walker, Davenport, for appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Michael Walton, County Attorney, and Julie A. Walton,
Assistant County Attorney, for appellee.

Marsha Arnold, Davenport, attorney and guardian ad litem for minor
children.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

BOWER, J.

The juvenile court terminated parental rights to three children. The mother, father, and maternal grandmother appeal. The mother and father argue the State failed to prove the grounds for termination of their parental rights. The children's maternal grandmother, an intervenor, argues the children should be placed with her.

Clear and convincing evidence supports termination of the mother's and the father's parental rights. Termination is also in the children's best interests. We also find placement of the children with the grandmother is not in the children's best interests. Accordingly, we affirm.

I. Background Facts and Proceedings.

This appeal involves three children, born in 2006, 2008, and 2011. The two older children lived outside of the home during part of 2009. They came to the attention of the Department of Human Services (DHS) in 2010 due to the mother and father's substance abuse and failure to provide proper supervision. The children were adjudicated to be children in need of assistance (CINA) in November 2010. One child was placed with the maternal grandmother and the other child was placed with the paternal grandmother.

The mother became pregnant in late 2010. She refused to abstain from drug use while pregnant. The mother was placed in jail to provide her with treatment and to protect the unborn child from further drug exposure. In June 2011, shortly after birth, the youngest child was also adjudicated to be CINA. On July 8, 2011, all three children were removed from their relative placements due

to concerns that family members were not following safety plans and allowed the mother to spend unsupervised time with the children. The children were placed together in a pre-adoptive foster home.

During the CINA case, the parents were inconsistent when participating in services, visiting the children, and attending hearings. The father refused recommended mental health services and only sporadically attended visitation with the children. The mother participated in substance abuse treatment approximately six times, all unsuccessfully, and continues to test positive for drug use, admit drug use, or refuse to submit to drug testing. The mother stopped visiting the children in December 2012, and marijuana was discovered in her apartment eleven days before the termination hearing.

Despite repeated requests from the mother and the father, the court refused to place the children with the maternal grandmother. The maternal grandmother has a history of putting the mother's needs ahead of the children's and being dishonest when it benefits the mother.

The State filed a petition to terminate the mother's and the father's parental rights on October 15, 2012. A hearing was held in January 2013. The mother and father requested the court consider denying the termination petition in favor of placing the children with the maternal grandmother.

On March 14, 2013, the juvenile court entered its order terminating both parents' rights to all three children pursuant to Iowa Code sections 232.116(1)(d) (2011). The court also terminated both the mother and father's parental rights to I.M. and A.M. pursuant to section 232.116(1)(f) and to C.M. pursuant to section

232.116(1)(h). The court found placing the children with the maternal grandmother was not in their best interests and instead placed the children in the custody and guardianship of the DHS.

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 a 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 "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.*

III. Analysis.

The mother, father, and maternal grandmother each appeal the termination order. They argue the State failed to prove the grounds for termination by clear and convincing evidence and advocate for the children to be placed in the maternal grandmother's care to avoid termination.¹

A. Termination of the mother's parental rights.

The mother argues the evidence does not support the juvenile court's finding that she failed to maintain significant and meaningful contact with the

¹ To the extent the grandmother argues against the mother and the father's parental rights being terminated, we find she lacks standing. See *In re D.G.*, 704 N.W.2d 454, 560 (Iowa Ct. App. 2005) (holding one parent cannot argue facts or legal positions pertaining to the other parent).

children or substantially comply with the case plan. She claims she was actively engaged in services at the time of the termination hearing. The mother contends termination is not in the children's best interests.

Although the juvenile court terminated the mother's parental rights on multiple grounds, we need only find sufficient grounds exist to terminate on one of these sections to affirm. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa 1999). Termination under sections 232.116(1)(f) and (h) are identical, save for the age of the child and length of time the child needs to have been removed from the parent's care. See Iowa Code § 232.116(1)(f) (applying to children four years of age or older and requiring removal for at least twelve of the last eighteen months or twelve consecutive months), (h) (applying to children three years of age or younger and requiring removal for six of the last twelve months or six consecutive months).

There can be no dispute the children have been removed for the requisite length of time for their ages and have been adjudicated CINA. The only argument that could be made against termination under these sections is that the children can be returned to the parent's custody as provided in section 232.102. See Iowa Code § 232.116(1)(f)(4), (h)(4). However, the mother makes no argument that the children could be returned to her care at the present time and therefore has waived her challenge to termination under sections 232.116(1)(f) and (h).

We also find termination is in the children's best interests. The evidence shows the children do not maintain a healthy bond with the mother. Given the

harm the two older children were subjected to while in the mother's care, their desire to avoid visits with the mother is understandable. The youngest child is not strongly bonded to the mother given the child's age at the time of the removal.

The mother's past behavior shows her unwillingness or inability to be a parent to her children. Despite multiple attempts, she has failed to complete substance abuse treatment and has not maintained any significant period of sobriety. The mother's parenting style is described as "usually passive." Her ability to act in a strong parenting role is "sporadic," with the mother acting timid with regard to disciplining the children. Despite DHS involvement with the family for approximately three years, the mother has failed to demonstrate an ability to appropriately and safely care for the children. These concerns would likely 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).

In contrast, the children are doing well in foster care and have bonded with their foster family. They are together in a safe and secure environment. The guardian ad litem recommended termination of the parental rights as well. Because the children's best interests require termination of the mother's parental rights, we affirm.

B. Termination of the father's parental rights.

The father argues the evidence does not support the juvenile court's finding that he failed to significantly comply with the family case plan. He argues the juvenile court erroneously concluded that he is unable to take care of the children. The father also argues termination is not in the children's best interests.

As stated above, the father's parental rights were terminated pursuant to sections 232.116(1)(d) (circumstances that led to the CINA adjudication continue to exist), (f) (child cannot be safely returned to the parent's care), and (h) (same as subsection (f)). Upon our de novo review, we find clear and convincing evidence shows the circumstances that led to the CINA adjudication continue to exist and, therefore, the children cannot be safely returned to the father's care. The father failed to follow through with mental health treatment offered to him, was inconsistent in his visitation with the children, and has failed to demonstrate a desire—let alone an ability—to care for the children.

We further find that the children's best interests require termination of the father's parental rights. The father failed to address questions regarding his paternity of A.M. and C.M., leaving the mother to parent A.M. alone and allowing C.M. to be placed with the maternal grandmother after birth. A.M., in particular, has suffered as a result of the father's failure to accept paternity, suffering asthma attacks, crying fits, and nightmares over visits. Repairing his relationship with the children would involve a significant amount of work that the father appears to be unwilling or unable to do. Meanwhile, ongoing contact with the father has proved to be traumatic for the two older children.

C. Placement with the maternal grandmother.

Both parents and the maternal grandmother asked the court to consider the maternal grandmother as an alternative placement for the children. Although the parents sought to avoid termination of their parental rights by having the children placed with the maternal grandmother, the provision found in section 232.116(3)(a), which allows termination to be avoided in such circumstances is inapplicable where, as here, the children were not in a relative placement at the time of termination.

Throughout the CINA proceedings, the parents and the maternal grandmother requested the court place the children in the maternal grandmother's care. The juvenile court found this placement would not be in the children's best interests and reaffirmed this position in the termination order. The court noted that if the children were placed in their grandmother's care, they would be exposed to the mother "without a clear, permanent, and legal relationship being established." Given the high level of dysfunction in the family, the court concluded this exposure would be detrimental to the children.

We agree with the juvenile court's assessment. After making an independent review of the evidence, we are troubled by the grandmother's enabling of the mother throughout the children's life at their expense. Although the grandmother now claims a newfound separation from the mother, she has lied to the court on at least one prior occasion. The grandmother's history in this case indicates she will continue to put her daughter's needs and desires ahead of those of her grandchildren. To place the children in the grandmother's care is

not in their best interests. Accordingly, we affirm the juvenile court order terminating the mother and father's parental rights and placing the children in the custody of the DHS.

AFFIRMED.