

IN THE COURT OF APPEALS OF IOWA

No. 3-531 / 13-0553
Filed June 12, 2013

**IN THE INTEREST OF J.T. AND R.T.,
Minor Children,**

**T.G., Mother,
Appellant,**

**C.T., Father
Appellant.**

Appeal from the Iowa District Court for Polk County, Louise M. Jacobs,
District Associate Judge.

A mother and father separately appeal the district court order terminating
their parental rights. **AFFIRMED AS TO BOTH APPEALS.**

Nancy L. Pietz of Pietz Law Office, Des Moines, for appellant mother.

Michael J. Piper of Dickey & Campbell Law Firm, P.L.C., Des Moines, for
appellant father.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant
Attorney General, John Sarcone, County Attorney, and Annette Taylor, Assistant
County Attorney, for appellee State.

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

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

VOGEL, P.J.

A mother, Tabitha, appeals the district court order terminating her parental rights to her children, R.T. (born 2009) and J.T. (born 2010).¹ R.T.'s father, Clinton, also appeals the order terminating his parental rights. Tabitha's rights were terminated pursuant to Iowa Code section 232.116(1)(d) (2011) (adjudicated child in need of assistance (CINA) for physical abuse or neglect, circumstances continue despite services), (h) (child three or younger, adjudicated CINA, removed from home for six of last twelve months, and child cannot be returned home), (i) (child CINA, child because of abuse or neglect was in imminent danger, services would not correct conditions), and (l) (child CINA, parent has substance abuse problem, child cannot be returned home within a reasonable time). Clinton's rights were terminated pursuant to Iowa Code section 232.116(1)(d), (h), and (i). Both parents argue the State has not proved the statutory elements by clear and convincing evidence, there is an exceptionally close bond militating against termination especially since the children are placed with a relative, and termination is not in the children's best interests.

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

¹ J.T.'s putative father's parental rights were also terminated by the district court. He does not appeal.

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.* 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. *Id.* at 707.

I. Statutory Elements

Both parents argue the State has not proved the statutory elements by clear and convincing evidence.² We however, agree with the district court and find the elements of section 232.116(1)(i) are satisfied as to each parent.

This family came to the attention of the Department of Human Services in 2011 due to Tabitha caring for the children while under the influence of methamphetamine. The children were adjudicated CINA on January 3, 2012, over a year before the termination hearing. According to the DHS report to the court “Tabitha struggles to be truthful or take any accountability for her [drug] use, lack of insight into the dangers that her use presents with her children, and the people that are around her who are inappropriate and would be a safety concern for her children.” Tabitha has never progressed beyond supervised visits. She completed a substance abuse treatment program in December 2012, but relapsed again by January 2013. At the termination hearing Tabitha declined the opportunity to present evidence and told the court “The only evidence I could

² The State argues Tabitha has not preserved this issue for appeal because she does not specify how the grounds for termination were not met. Because our paramount concern in termination case is the best interests of the child, we choose to address the merits.

produce would be sobriety or, you know, a residence and stability; and I don't have that today.”

Clinton has struggled to follow through with expectations in a timely manner. He too has struggled to maintain his sobriety and admitted to DHS to using methamphetamine with Tabitha during the pendency of this case. He also declined to present any evidence at the termination hearing. Clinton has a domestic assault causing injury conviction as recent as March, 2011. Clinton did improve his visitation attendance, but did not progress to semi-supervised visits due to a hair stat test coming back positive for methamphetamines and his delay in getting a drug evaluation and engaging in treatment. He has also been inconsistent in complying with drug screening requests.

We agree with the district court the State has proved the offer of services to the parents would not, within a reasonable period of time, lead to the correction of the conditions that led to the neglect of the children within the meaning of Iowa code section 232.116(1)(i).

II. Best Interests with Other Statutory Considerations

We next give consideration to whether any factor in section 232.116(3) applies to make termination unnecessary. The State argues this issue has not been preserved because the district court order does not specifically address the factors found in Iowa Code section 232.116(3) and neither parent filed a motion to address this deficiency. Even if we were to find the issue properly preserved it has no merit such that we would reverse the district court.

The factors militating 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).

The children have been residing with their maternal grandmother since November 2011. The grandmother is meeting all the needs of the children and is willing to adopt the children to give them the permanency they need. There is no evidence of a particularly strong bond between either parent and the children to preclude termination. Tabitha acknowledged at the hearing, “my children are better with my mom,” and the record establishes the children cannot be returned to the care of either parent in the foreseeable future. As the guardian ad litem told the court, “I believe that the parents do love their children. I think at this time they are not able to safely and properly care for them and I believe the children deserve a safe, stable, and permanent home and they have that with their grandmother.” We agree. Children should not be asked, “continuously [to] wait for a stable biological parent, particularly at such tender ages.” *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010).

AFFIRMED AT TO BOTH APPEALS.