

IN THE COURT OF APPEALS OF IOWA

No. 3-568 / 13-0613
Filed June 26, 2013

**IN THE INTEREST OF R.G.,
Minor Child,**

**S.G., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Constance Cohen,
Associate Juvenile Judge.

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

AFFIRMED.

Bryan Webber of Carr & Wright, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John Sarcone, County Attorney, and Stephanie Brown,
Assistant County Attorney, for appellee.

Kimberly Ayotte of Youth Law Center, Des Moines, attorney and guardian
ad litem for minor child.

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

BOWER, J.

A mother appeals the termination of her parental rights to her child. She contends the State failed to prove the grounds for termination by clear and convincing evidence and that termination is not in the child's best interests. She also contends the juvenile court erred in failing to apply the provisions of Iowa Code section 232.116(3)(c) (2013) because termination would be detrimental to the child.

Upon our de novo review, we find the grounds for termination under section 232.116(1)(d) have been proved by clear and convincing evidence. We also find termination is in the child's best interests. Because preserving the strength of the parent-child bond does not outweigh the harm that would visit the child if the parent-child relationship were preserved, the provisions of section 232.116(1)(c) are not applicable. Accordingly, we affirm the termination of the mother's parental rights.

I. Background Facts and Proceedings.

The child was born in February 2008 to a mother with a lengthy substance abuse history. The mother began abusing drugs when she was fifteen years old, using marijuana, methamphetamine, cocaine, and ecstasy. She was twenty-nine years old at the time of the termination of her parental rights. The longest period of sobriety the mother has maintained is seven consecutive months.

The child first came to the attention of the department of human services (DHS) after the mother exposed the child to the supervision of a registered sex offender. On November 16, 2011, the child was removed from the mother's care

after the mother tested positive for methamphetamine and marijuana. The child also tested positive for amphetamine and methamphetamine. The child was adjudicated to be in need of assistance the following month.

The mother was offered services to address her substance abuse issues. The mother completed inpatient substance abuse treatment but relapsed. She agreed to return to inpatient treatment but failed to do so before entering the House of Mercy residential recovery program on April 26, 2012. For six months, the mother maintained her sobriety while at the House of Mercy, and the child was returned to her care at the end of October 2012. Approximately one week later, the mother relapsed by using methamphetamine. Although service providers and House of Mercy staff worked to get the mother back on track, she continued to struggle. She had another relapse at the end of December 2012 and did not admit she had relapsed until she tested positive on a December 28, 2012 drug screen.

Due to the mother's relapse, the child was removed from her care on January 4, 2013. Although she was advised to remain at the House of Mercy and to continue to get treatment, the mother chose to leave. She engaged in a two-week drug binge. The mother claims that she has since remained sober. A February 22, 2013 substance abuse evaluation recommended residential treatment followed by placement in a halfway house. Unable to locate a bed in residential inpatient treatment, the mother's only recovery tool was to attend AA and NA meetings.

The State filed a petition to terminate the mother's parental rights on February 12, 2013. A hearing was held on March 29, 2013. On April 3, 2013, the juvenile court entered its order terminating the mother's parental rights pursuant to sections 232.116(1)(d) and (l).

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 no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.*

III. Analysis.

Termination of parental rights under Iowa Code chapter 232 follows a three-step analysis. See *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). The first step is to determine whether a ground for termination under section 232.116(1) is established. *Id.* If so, the court then applies the best-interest framework set out in section 232.116(2) to determine if the grounds for termination should result in a termination of parental rights. *Id.* If the statutory best-interest framework supports termination of parental rights, the court must finally consider if any of

the factors set out in section 232.116(3) weigh against termination of parental rights. *Id.*

The mother first contends the juvenile court erred in terminating her parental rights because the State failed to prove the grounds for termination by clear and convincing evidence. Although the juvenile court terminated the mother's parental rights on two 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 is appropriate under section 232.116(1)(d) where clear and convincing evidence establishes the following have occurred:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

The mother does not dispute the first element has been proved. Instead she argues there is insufficient evidence of the second element: that she was offered or received services to correct the circumstances that led to the adjudication, and the circumstances continue to exist.

The mother first argues the State failed to provide services to address her substance abuse. Specifically, she complains she could not secure a placement in a long-term residential treatment facility because the DHS would not provide

assurance that the child would be returned to her care within thirty days of entering treatment and, therefore, Title XIX would not pay for the treatment. This claim is without merit. The mother received inpatient treatment from the outset of this case. After her successful discharge, she relapsed and was again offered inpatient treatment. Although she agreed, she failed to follow through. She then spent approximately eight months in a residential treatment facility. When the mother relapsed at the end of 2012, the residential treatment facility did not discharge her; the mother voluntarily left treatment when her child was removed from her care, choosing instead to indulge in a two-week drug binge. The mother cannot now complain that the DHS's concerns about returning the child to her care just two months thereafter—on the eve of termination—was a failure to provide services to address her substance abuse. As the juvenile court found, "At no time did a party request an available service that was not provided."

We also find clear and convincing evidence shows substance abuse concerns continue to exist despite the mother's receipt of substance abuse treatment. The mother was in treatment for the better part of a year and was still engaged in treatment at the House of Mercy when she relapsed. At the time of the termination hearing, her only ongoing treatment was her attendance in AA and NA meetings. By her account, she had been sober only two months at the time of the hearing. In her fourteen-year history of substance abuse, the mother had only managed to remain sober for seven consecutive months. While the mother's current progress is commendable, it is not enough to find the circumstance that led to the CINA adjudication no longer exists. 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).

Having found clear and convincing evidence supports termination of the mother's parental rights under section 232.116(1)(d), we next turn to the mother's arguments relating to the close bond she enjoys with the child. She argues that because of the bond, termination of her parental rights would be traumatic to the child. On this basis she claims termination is not in the child's best interest and the provisions of section 232.116(3)(c)¹ should be applied to avoid termination.

While the evidence shows the child does enjoy a bond with the mother, the child's bond with the foster family is strong. The child has been in the same pre-adoptive foster home during the pendency of this action, save for the two months when reunification was attempted in late 2012. When asked who would make the child feel safe if there was trouble, the child quickly answered with the foster parent's names. On March 14, 2013, the child picked out dolls to represent those persons the child considered to be family; the child picked the foster parents and a sibling before choosing the mother.

There is evidence in the record—including testimony by the in-home worker and the DHS worker—to show that termination of the mother's parental rights would be difficult for the child. However, any trauma experienced from

¹ This section states that the court need not terminate the parent-child relationship if the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship. Iowa Code § 232.116(3)(c).

termination does not exceed the harm that would befall the child if the mother's parental rights were preserved. Prior to the court's involvement, the mother had been involved with the DHS for failing to provide adequate health care to another child in 2005. She came to the attention of the DHS in 2011 for exposing the child and a sibling to a registered sex offender. The child tested positive for amphetamine and methamphetamine while in the mother's care. The mother relapsed on drugs shortly after the child was returned to her care, even though she was in a residential treatment program. Despite the support she received at the House of Mercy, she was unable to attain sobriety again and, as a result, the child was again removed from her care.

We find the child's best interests are served by terminating the mother's parental rights. The mother was given more than fifteen months to show she was capable of resuming the role of caretaker for the child. See *P.L.*, 778 at 39 (holding that in making the best-interest determination, 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"). In that time she has failed to make the improvement necessary to provide for the child's safety, long-term nurturing, and growth. While the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," this patience is built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). This is because patience on behalf of a parent can quickly translate into intolerable hardship for the child. *In re R.J.*, 436 N.W.2d 630, 636 (Iowa 1989).

“The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.” *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). “At some point, the rights and needs of the child rise above the rights and needs of the parents.” *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997), *overruled on other grounds by P.L.*, 778 N.W.2d at 39-40.

We also decline to apply the provisions of section 232.116(3)(c). The provisions of section 232.116(3) are permissive, not mandatory. See *id.* 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), *overruled on other grounds by P.L.*, 778 N.W.2d at 39-40. Because the child’s best interests require termination of the mother’s parental rights, we affirm.

AFFIRMED.