

IN THE COURT OF APPEALS OF IOWA

No. 3-733 / 13-0891
Filed August 7, 2013

**IN THE INTEREST OF J.C.P.S. and
A.M.S.S.,
Minor Children,**

**C.S., Mother,
Appellant.**

Appeal from the Iowa District Court for Monona County, Timothy T. Jarman, District Associate Judge.

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

Daniel P. Vakulskas of Vakulskas Law Firm, P.C., Sioux City, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Michael P. Jensen, County Attorney, and Ian A. McConeghey, Assistant County Attorney, for appellee.

Marchelle Denker, Sioux City, attorney and guardian ad litem for minor children.

Considered by Potterfield, P.J., and Mullins and Bower, JJ.

MULLINS, J.

The mother appeals the termination of her parental rights to two of her children, A.S. (born 2007) and J.S. (born 2009). The mother challenges the sufficiency of the evidence supporting the termination and also asserts the termination was not in the children's best interests. The juvenile court terminated the mother's rights to both children under Iowa Code section 232.116(1)(b), (d), (e), and (f) (2013). The juvenile court also terminated the mother's rights with respect to J.S. under section 232.116(1)(h). "When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm." *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Here, we focus on the evidence supporting the court's termination of the mother's parental rights under section 232.116(1)(b).

Iowa Code section 232.116(1)(b) provides the court can order the termination of a parent's rights with respect to a child if "[t]he court finds that there is clear and convincing evidence that the child has been abandoned or deserted." "Abandonment of a child" under the juvenile justice chapter has been defined as:

[T]he relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.

Iowa Code § 232.2(1). On appeal, the mother claims there was not clear and convincing evidence of her intention to abandon her children. While she admits

she left the children in Onawa in the care of her grandmother, the great-grandmother of the children, the mother asserts it was always her intention to return to collect the children once she obtained stable housing and employment in Omaha. She also asserts the evidence showed she would call the children and visit them occasionally while she was away. Thus, she claims there is not sufficient proof she abandoned the children.

We need not address the issue of the mother's intent to abandon the children because the mother's parental rights can be terminated under section 232.116(1)(b) if there is clear and convincing evidence she deserted the children.

"Desertion" has been defined as:

[T]he relinquishment or surrender for a period in excess of six months of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of desertion need not include the intention to desert, but is evidenced by the lack of attempted contact with the child or by only incidental contact with the child.

Id. § 232.2(14). Desertion does not require the proof of the intention to desert, but we look to see whether there was a lack of an attempt to contact the children or only incidental contact during a period in excess of six months. *Id.*

The children came to the attention of the Iowa Department of Human Services (DHS) when it was reported that A.S. had a tube in her abdomen that was not being properly cared for. When child protective services investigated it was discovered that the mother had left the children in the care of her grandmother. The mother had left in late January or early February 2012 for Omaha to seek housing and employment, but the mother was not providing financial assistance and would visit the children only on rare occasions. Because

the grandmother did not have guardianship of the children, she was not able to get A.S. medical care to address the abdominal tube. The tube should have been removed, according to one doctor, for three and one-half years, but it was believed the mother left the tube in so she could continue to collect Supplemental Security Income benefits.

The children were adjudicated in need of assistance in August of 2012. Although the mother was aware of the adjudication hearing, she did not attend. The children were removed from the grandmother's home and placed in family foster care in September 2012 due to safety concerns for the children that were not being addressed. The mother was advised in September that she needed to complete a substance abuse evaluation,¹ a mental health evaluation,² follow up on treatment recommendations, cooperate with drug testing, find suitable housing, find and maintain employment, create and submit a budget for approval, and cooperate with family safety, risk, and permanency services. A dispositional hearing was held in October, and the mother once again did not attend though she was made aware of the hearing.

The mother first appeared at the permanency hearing in February 2013, having just completed her substance abuse evaluation the day before. She also attended the termination hearing, which was conducted over two days in March. She asserted she had moved in with her boyfriend and had housing available for

¹ The juvenile court found the mother had a serious drug abuse problem involving methamphetamine. The mother admitted to using methamphetamine in September 2012.

² The mother admitted she had been diagnosed with bi-polar disorder but was refusing to take medication or attend therapy.

her children, she was going to start substance abuse treatment shortly, and she had an appointment with a mental health counselor. However, she had not had any contact with her children since they were placed in family foster care in September and had only sporadic, incidental contact with the children since she left for Omaha in February 2012.

We find these facts clearly support a finding by clear and convincing evidence that she had deserted her children under Iowa Code section 232.116(1)(b), as defined in section 232.2(14). The mother asserted she had much more contact with her children from February until August 2012 than was reported initially by the grandmother to the DHS workers. However, the district court found the mother to be “severely lacking in credibility and reliability,” and we give weight to the credibility assessments of the juvenile court as it was in a position to see and hear the mother testify. See *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998).

The mother also maintains that termination was not in the children’s best interests, but she should instead be granted more time to work toward reunification in light of her recent completion of her substance abuse evaluation, commencement of treatment, and procurement of housing. Our primary concern in any termination case is the long-range and immediate best interests of the child. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We look to the parent’s past performance as “it may indicate the quality of care the parent is capable of providing in the future.” *Id.*

The mother waited until the case was on the eve of the termination hearing to begin to address the issues identified by DHS, and her efforts to address the concerns were minimal at best. The children are closely bonded with the foster family, which is a potential adoptive placement, and do not ask about the mother. We find the termination of the mother's parental rights is in both children's best interests.

We therefore affirm the juvenile court's ruling terminating the mother's parental rights.

AFFIRMED.