

**IN THE COURT OF APPEALS OF IOWA**

No. 3-923 / 13-1247  
Filed October 2, 2013

**IN THE INTEREST OF B.H., J.E.-S., AND L.A.-S.,  
Minor Children,**

**L.S., Mother,  
Appellant.**

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

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

Kevin Hobbs, West Des Moines, for appellant mother.

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

ConGarry Williams of the Juvenile Public Defender's Office, Des Moines,  
attorney and guardian ad litem for minor children.

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

**POTTERFIELD, P.J.**

A mother appeals the termination of parental rights to three of her children; L.A.-S., born in June 2002; B.H., born in April 2006; and J.E.-S., born in December 2011. Because statutory grounds for termination were proved and termination will best further the long-term nurturing and growth of these children, we affirm.

Our review of termination of parental rights proceedings is de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We are not bound by the juvenile court's findings of fact, but we do give them weight, especially in assessing the credibility of witnesses. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

Termination of parental rights under chapter 232 follows a three-step analysis. First, the court must determine if a ground for termination under section 232.116(1) has been established. If a ground for termination is established, the court must, secondly, apply the best-interest framework set out in section 232.116(2) to decide if the grounds for termination should result in a termination of parental rights. Third, if the statutory best-interest framework supports termination of parental rights, the court must consider if any statutory exceptions set out in section 232.116(3) should serve to preclude termination of parental rights.

*In re D.W.*, 791 N.W.2d 703, 706-07 (Iowa 2010) (citations omitted).

In April 2009, the department of human services (DHS) confirmed the mother had struck L.A.-S. in the face. The mother, whose first language is Spanish, agreed to cooperate with services, and there was no juvenile court involvement at that time.

J.E.-S. tested positive for methamphetamine at birth in December 2011. The children were removed from their mother's custody on January 4, 2012, due to the mother's use of methamphetamine. The mother's DHS social worker,

Jessica Munoz, is bilingual. The mother was provided supervised visits and progressed to semi-supervised and then overnight visits with the children by June 2013. However, the mother submitted a hair for testing, which tested positive for methamphetamine. Visits returned to fully supervised.

The mother returned to therapy, had another drug evaluation, and began following through with recommendations. J.E.-S. and an older sibling not involved in these termination proceedings were returned to the mother in October 2012 for a trial home placement. But, despite the mother's assertions that she was not using drugs, J.E.-S. again tested positive for methamphetamine and amphetamine in November 2012—as did the mother.

The children were again removed from the mother's care. The mother failed to appear for UAs on January 22, 23, 30, February 6, 13, 23, and March 12, 2013. She submitted to a hair stat test on March 13, 2013, at which time she tested positive for methamphetamine and amphetamine.

The termination trial was initially scheduled for March 28, but was continued to May 20, 2013, due to the judge being ill. In March, the mother indicated her maternal aunt, Ms. Duarte, should be considered as a placement option for the children. Ms. Duarte had not seen the children during the pendency of the juvenile proceedings and had not called to inquire about them.

At the termination trial, Jessica Munoz testified that the mother had been “[i]ncredibly adamant” throughout the juvenile court proceedings that she had been clean. Ms. Munoz testified the mother had informed her that the level of drug treatment she was receiving was what she needed. Ms. Munoz stated that

determining what level of treatment was appropriate for the mother was “very hard to ascertain” due to the mother’s dishonesty about her drug use.

The mother testified she had not used methamphetamine for about two months, since March 2013. She stated she was attending individual therapy; had a substance abuse counselor; and was attending Narcotics Anonymous meetings on Mondays, Wednesdays, and Fridays.<sup>1</sup> She acknowledged she had not been honest with her DHS worker, Ms. Munoz.

Ms. Duarte testified she lived with her husband, a daughter, and a son and his wife and their daughter. She stated the mother had lived with her for six months when she was pregnant with B.H. Ms. Duarte stated she talked with DHS in March 2013, but then was away for several weeks. She acknowledged she had not tried to contact the children while they were in DHS’s care. She testified she had just learned that the children were removed due to the mother’s drug use and acknowledged the mother had not been honest with her.

The juvenile court terminated the mother’s parental rights to L.A.-S., B.H., and J.E.-S. pursuant to Iowa Code section 232.116(1)(d), (f) (as to the L.A.-S. and B.H.), (h) (as to J.E.-S.), (i), and (j) (2013).<sup>2</sup>

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<sup>1</sup> As noted, the mother’s first language is Spanish and she testified via an interpreter. She testified that her therapist helped her find a Spanish-speaking substance abuse counselor. The mother stated it was difficult to find treatment because she was Spanish speaking, and “[a]t the end, I just opted to go to the [NA] meetings in English, and they also helped me a lot.”

<sup>2</sup> Iowa Code section 232.116(1) allows the juvenile court to terminate parental rights if:

d. The court finds that both of 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

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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.

....

f. The court finds that all of the following have occurred:

(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.

....

h. The court finds that all of the following have occurred:

(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.

i. The court finds that all of the following have occurred:

(1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.

(2) There is clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child.

(3) There is clear and convincing evidence that the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.

....

l. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has a severe substance-related disorder and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the

The mother appeals, contending DHS did not make reasonable reunification efforts following the second removal of the children. She also argues she had been “drug free for a substantial period of time during the termination proceedings,” and her maternal aunt was not appropriately considered as a placement option.

The mother challenges only one of the five statutory grounds for termination—section 232.116(1)(d).<sup>3</sup> Pursuant to section 232.116(1)(d), a court may terminate parental rights if the court has previously adjudicated the child to be a child in need of assistance due to physical or sexual abuse or neglect by the parent and, subsequently, the parent was 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.” She contends termination is not proper because DHS made no efforts at reunification after the October 2012 trial home placement of J.E.-S. The record does not support her contention.

“The State must show reasonable efforts as a part of its ultimate proof the child cannot be safely returned to the care of a parent.” *C.B.*, 611 N.W.2d at 493. The State must show its efforts have been reasonable under the circumstances. See *In re S.J.*, 620 N.W.2d 522, 525 (Iowa 2000). Under the circumstances presented here—where the mother continued to use drugs and struggled to be honest with DHS about that usage, providing appropriate services was difficult. We agree with the following findings of the juvenile court:

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custody of the parent within a reasonable period of time considering the child’s age and need for a permanent home.  
<sup>3</sup> Her brief erroneously cites section 232.116(1)(c), but quotes the requirements of subsection (d).

[The mother], in part, defends her lack of success by asserting that she asked service providers for and told them that she needed a more significant level of treatment but they did not recommend such for her. It is a bit uncertain when she made the request. Unfortunately, [the mother]'s dishonesty with DHS and other service providers about her use of methamphetamine and her progress (or lack thereof) in addressing such, has adversely affected the level of services offered. When she was not honest, services providers were less likely to make the needed referrals. Even Ms. Duarte [a maternal aunt] testified that she did not realize that the children had been removed because of drug abuse issues. [DHS social worker] Ms. Munoz testified that [the mother] has not been honest in her communication.

Given the severity of [the mother]'s substance abuse issues, her slow progress, and recent use, the children cannot be returned to her care at this time or in the reasonable foreseeable future. It is to [the mother]'s own detriment and to the detriment of the children that she did not believe the consequences of continued drug use would be real, and that the risks were those identified in court orders [that] the children being removed from the custody and care of a parent can result in termination of parental rights.

Despite the mother's poor choices, the children are doing well. The children are making good progress in therapy. They have adjusted well to their foster family, who has been steadfast in the caring for the children. Except for a short period of time after her birth and a short period of time in late October and early November, 2012, [J.E.-S.] has only lived in her lifetime with the foster family. While usually relative placement is the preferred concurrent plan, a relative who has known the children were removed from the custody of the parents should demonstrate an understanding of the children's need for healthy attachment and bonding and be proactive in establishing and/or maintaining a relationship with young children. Ms. Duarte did not do so. Perhaps she did not because [the mother] was not honest with her just as others (professionals and service providers) report she has not been honest with them. Such demonstrates again [the mother]'s poor choices.

However, the children have been developing a healthy attachment with their foster family. It would be to their detriment to disrupt such by placing them with a relative in a home with many family members of a family who are strangers to them.

While the State has an obligation to make reasonable efforts to reunify the parent and children, the parent has an equal obligation to demand other or additional services prior to the termination hearing. See *C.B.*, 611 N.W.2d at

493-94 (“We have repeatedly emphasized the importance for a parent to object to services early in the process so appropriate changes can be made.”). The mother does not suggest where she did so here.

In any event, the mother does not dispute the existence of the other statutory grounds for termination—section 232.116(1)(f) (as to the L.A.-S. and B.H.), (h) (as to J.E.-S.), (i), and (l)—and we affirm on these grounds. See *P.L.*, 778 N.W.2d at 40 (noting no necessity to address first step of the analysis where parent does not contest grounds); see also *D.W.*, 791 N.W.2d at 707 (“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.”). Termination under these provisions is supported by clear and convincing evidence.

We conclude, too, that the record does not support the mother’s complaint the court did not adequately consider Ms. Duarte as a possible relative placement for the children. As noted above, the court did consider the maternal aunt, but found such a placement wanting. We agree with the conclusion that the children’s best interests are best served in their current placement and the statutory best-interest factors support the termination of the mother’s parental rights. See Iowa Code § 232.116(2).

Finally, the mother does not assert any section 232.116(3) exception to termination exists. We therefore affirm.

**AFFIRMED.**