

IN THE COURT OF APPEALS OF IOWA

No. 3-955 / 13-1322
Filed October 23, 2013

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

**A.J., Mother,
Appellant,**

**T.B.J., Father,
Appellant.**

Appeal from the Iowa District Court for Jasper County, Steven J. Holwerda, District Associate Judge.

A mother and father separately appeal from the termination of their parental rights. **AFFIRMED.**

Larry Pettigrew of Pettigrew Law Firm, P.C., Newton, for appellant mother.

Nicholas Bailey of Bailey Law Firm, P.L.L.C., Mitchellville, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Michael K. Jacobsen, County Attorney, and Scott Nicholson, Assistant County Attorney, for appellee State.

Jennifer Meyer of Jennifer Meyer Law, P.C., Marshalltown, attorney and guardian ad litem for minor children.

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

POTTERFIELD, P.J.

A mother appeals from the termination of her parental rights to three children; a father separately appeals from the termination of his parental rights to two of the three children.¹ The mother and father both argue termination of their rights was not in the best interests of the children, as an exception should have been made to termination under Iowa Code section 232.116(3) (2013). We affirm, finding the court properly terminated the parental rights of the mother as to the three children and the parental rights of the father as to the two children.

I. Facts and Proceedings.

Both the mother and father have struggled with drug use throughout these proceedings. All three children came to the attention of the department of human services (DHS) in November of 2011, after a report that the mother and father were using illegal drugs in front of the children. A search of the home by local officers yielded drugs and drug paraphernalia. The children were removed from the home pursuant to a temporary order on November 22, 2011. A removal hearing was held December 1. The children were adjudicated in need of assistance (CINA) on December 30, 2011. After the children were removed from the home the mother tested positive for amphetamine and marijuana. A CINA dispositional hearing was held February 3, 2012. The mother began actively participating in services including substance abuse treatment, family services, and medication management. At the August 17, 2012, dispositional review

¹ The parental rights of the father of the third child were not terminated and are not at issue on appeal.

hearing DHS recommended the children be returned to the mother's care and the court issued an order returning the children to her care that same day.

On September 24, 2012, the children were once again removed pursuant to a temporary removal order, and a removal hearing was held three days later. The removal was in response to the mother's absence from the home and her leaving the children with an unapproved caretaker who had a history of marijuana and methamphetamine use. The mother had also tested positive for methamphetamine. The mother continued to test positive for methamphetamine on November 10, 2012, December 19, 2012, March 13, 2013, and April 10, 2013. On January 13, 2013, the mother was present at a police raid involving a known methamphetamine manufacturer. She later pleaded guilty to interference with official acts. In March 2013, she was investigated regarding the manufacture of methamphetamine and she admitted to some involvement. She was charged with conspiracy to manufacture methamphetamine. The mother's visits with the children at this time continued to be supervised, as moving forward with unsupervised visits required a clean drug test. The children were engaged in therapy at this time; however, the therapists recommended the mother no longer have visits with the children because she had a detrimental effect on their behavior.

The father similarly tested positive for drug usage several times throughout the proceedings, though he did provide two clean drug screens in April and November of 2012. He had minimal supervised and no unsupervised visits with the children throughout the proceedings. DHS reported he was not involved in services for approximately ten of the nineteen months of the open

CINA case. He pleaded guilty to a class C felony drug possession charge in June 2013, and was released from jail pending sentencing. That same day he admitted to using methamphetamine and tested positive on June 13.

On July 8, 2013, a combined permanency and termination hearing began, lasting until July 16, 2013. The father could not be found at the time of the hearing; a warrant was active for his arrest. The court heard testimony from service providers, relatives, and the mother. The court carefully considered all of the grounds for termination, found it was proper under Iowa Code section 232.116(1)(d), (e), (f), (i), and (l), and declined to save the relationships from termination under 232.116(3). Both the mother and father appeal.

II. Analysis.

We review the termination of a parent's rights de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010).

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.

Id. at 706–07 (internal citations omitted). Both parents concede their actions meet the criteria for termination under our statute; however, both argue we should apply Iowa Code section 232.116(3) to save the parent-child relationship, which reads, in relevant part:

The court need not terminate the relationship between the parent and child if the court finds any of the following:

a. A relative has legal custody of the child.

. . . .

c. There is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.

This section is permissive, rather than mandatory; its application rests in the court's discretion and is based on the unique circumstances of each case and the best interests of the children. *In re D.S.*, 806 N.W.2d 458, 474-75 (Iowa Ct. App. 2011). It is the last consideration of the court after finding termination is proper under the prior two sections. See *In re D.W.*, 791 N.W.2d at 706. The parents argue that because the children are currently placed with relatives and because there is a bond between the children and the parents, their rights should be saved from termination.

"We have long recognized that an unresolved, severe, and chronic drug addiction can render a parent unfit to raise children. No parent should leave his small children in the care of a meth addict—the hazards are too great." *In re A.B.*, 815 N.W.2d 764, 776 (Iowa 2012) (internal citations and quotation marks omitted). Over the almost two years of these proceedings, both parents have proved unable to stay away from drugs.

We look to the overall circumstances and the children's best interests. See *D.S.*, 806 N.W.2d at 475. The parents have continued to struggle with substance abuse and place their desires over the needs of the children. The children have been placed outside of the home for all but one month of these proceedings. While witnesses described friendly interaction between the parents and the children, none testified to a strong bond between the parents and children. In fact, the children's therapist stated the mother's effect on the children

was detrimental. Neither parent has had unsupervised visitation since the second removal in September of 2012. There is no evidence the situation will improve with any further time. These children need and deserve permanency. We decline to apply Iowa Code section 232.116(3).

AFFIRMED.