

IN THE COURT OF APPEALS OF IOWA

No. 6-761 / 06-1202
Filed October 25, 2006

**IN THE INTEREST OF S.D.T. and D.L.T.,
Minor Children,**

**C.B.T., Mother,
Appellant,**

**S.L., Father of S.D.T.,
Appellant.**

Appeal from the Iowa District Court for Buchanan County, Daniel L. Block,
Associate Juvenile Judge.

A mother and father appeal from the juvenile court order terminating their
parental rights. **AFFIRMED.**

Robert J. Pattee, Independence, for appellant-mother.

Franklin W. Sauer, Independence, for appellant-father of S.D.T.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Alan Vander Hart, County Attorney, and Karl Moorman, Assistant
County Attorney, for appellee.

Linnea Nicol, Assistant Public Defender, Waterloo, attorney and guardian ad
litem for minor children.

Considered by Sackett, C.J., and Vaitheswaran, J., and Robinson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

SACKETT, C.J.

C.T., the mother of S.D.T., D.L.T., and G.F.,¹ and S.L., the father of S.D.T., appeal from the juvenile court order terminating their parental rights. The parental rights of Christopher, the father of D.L.T., also were terminated, but he is not involved in this appeal. C.T. contends (1) the grounds for termination were not shown by clear and convincing evidence, (2) it was not shown that returning the children to their mother would subject them to adjudicatory harm, (3) termination is not in the children's best interest, and (4) reunification would have been possible if C.T. had been given an additional six months. S.L. contends (1) there was not clear and convincing evidence the children could not be returned to their mother, (2) reunification with the mother was possible if she were given additional time, and (3) termination is not in the child's best interest. We affirm.

BACKGROUND FACTS AND PROCEEDINGS

The children were removed from the mother's home in April of 2005 because of concerns about the unsafe conditions of their home, their mother's ability to provide a minimal degree of care and supervision, and the mother's mental and emotional stability. All visitation with the children since their removal has been supervised. There have been no trial periods at home. During the period of S.T.'s removal from his mother's home, his father, appellant S.L., has been incarcerated in a federal facility in Wisconsin.

During the period of their removal, the children have been in six foster placements, including the current placement with the paternal grandmother of their

¹ Although all three children were removed from their mother's care, only the two older children are involved in this appeal. The youngest child was placed in his father's sole custody.

youngest sibling, G.F. The guardian ad litem for S.T. and D.T. petitioned for termination of their parents' rights in May of 2006 under Iowa Code sections 232.116(1)(d) (2005) (child CINA for physical or sexual abuse (or neglect), circumstances continue despite receipt of services), (e) (child CINA, child removed for six months, parent has not maintained significant and meaningful contact with the child), and (f) (child four or older, child CINA, removed from home for twelve of last eighteen months, and child cannot be returned home). Following a contested hearing, the court filed an order in July of 2006 terminating the mother's parental rights to both children and S.L.'s rights to S.T. under all three sections pled.

SCOPE OF REVIEW

We review termination orders de novo. *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). While the district court terminated the parental rights on more than one statutory ground, we will affirm if at least one ground has been proved by clear and convincing evidence. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). "Clear and convincing evidence" means there are no serious or substantial doubts as to the correctness of conclusions of law drawn from the evidence. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

CLAIMS ON APPEAL

The mother. The mother contends the juvenile court erred in terminating her parental rights because (1) the statutory grounds were not proven by clear and convincing evidence, (2) there was no showing that returning the children to their mother would subject them to the adjudicatory harms that led to their removal, (3) termination is not in the children's best interest, and (4) termination would not have

been necessary if the mother had been given an additional six months to pursue reunification.

The father of S.D.T. The father of this child contends the juvenile court erred in terminating his parental rights because (1) there was not clear and convincing evidence the children could not be returned to the *mother's* care, (2) termination was not in the child's best interest, (3) the *mother* should have been given an additional six months to pursue reunification, and (4) a claim we are unable to distinguish from (2) and (3).²

The guardian ad litem. The guardian ad litem, who petitioned for termination under sections 232.116(1)(d), (e), and (f) claims on appeal, in her three-page response, that there was clear and convincing evidence to terminate under section 232.116(1)(g) (a section that was neither pled by the guardian ad litem nor cited by the juvenile court). She also argues the children would be subject to adjudicatory harm if returned to their mother.

The State. The State contends (1) there was clear and convincing evidence to terminate the mother's parental rights under Iowa Code section 232.116(1)(d) and (f), and (2) termination of the mother's parental rights was in the children's best interest. It does not appear to us that the State expressly responded to the father's claims.

² The father states the issue thus:

In child custody cases the first and governing consideration of the courts is the best interest of the child. Even if the statutory requirements for termination are met, the decision to terminate must still be in the best interests of the children. Termination is a harsh and extreme remedy, and one that must be sought by the State with caution and granted by the courts only when fully justified. With additional time, the appellant mother's ability to effectively and safely care for her children could be allowed to be accomplished.

ANALYSIS

The mother. Although the mother has addressed most of the problems identified in the case permanency plan, she has not been consistent in participation in family-centered services or visitation. She missed nearly one-third of scheduled visits. When she exercised visitation, she was not able to demonstrate sufficient parenting skills to control the children consistently. She became overwhelmed with their care during extended visits. D.T. in particular is a problem for his mother. He has a history of behavioral problems and reacts negatively during and following visits with this mother, including being extremely defiant and threatening others with physical harm. We find clear and convincing evidence the children could not be returned to their mother's care without suffering adjudicatory harm from lack of supervision or denial of critical care. See Iowa Code §§ 232.116(1)(f); 232.2(6)(c)(2), (g).

At the time of the termination hearing, the children were together in family foster care. The record suggests this placement could become permanent through adoption. This placement provides stability and the opportunity for a continuing relationship between the children and with their younger half-sibling. Although not addressed in the termination order, the juvenile court noted in its permanency order just three months earlier that "it cannot be concluded that it is reasonable to believe the children could be reunified successfully with their mother over the next six months, let alone the next ninety days." The evidence shows the court was correct. Extending the children's "parentless limbo" in foster care to give the mother more time to work toward reunification is not in their interest in this case. See *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). When children cannot be returned home,

termination and adoption is the preferred method of establishing permanency. *In re R.L.*, 541 N.W.2d 900, 903 (Iowa Ct. App. 1995). We affirm the termination of the mother's parental rights to S.T. and D.T.

The father of S.D.T. The father does not contend S.D.T. could be placed in his care, because he is incarcerated. As we have concluded the children cannot be returned to their mother's care, the father's argument to the contrary fails. We find clear and convincing evidence supports termination of his parental rights under Iowa Code section 232.116(1)(f).

The father's remaining claims are without merit or were not preserved for our review. See *In re N.W.E.*, 564 N.W.2d 451, 455 (Iowa Ct. App. 1997) (noting an issue not presented in the juvenile court may not be raised for the first time on appeal).

AFFIRMED.