

IN THE COURT OF APPEALS OF IOWA

No. 7-180 / 07-0289

Filed April 25, 2007

**IN THE INTEREST OF A.W. AND A.W., JR.,
Minor Children,**

A.J.W., SR., Father,
Appellant,

S.R.G., Mother,
Appellant.

Appeal from the Iowa District Court for Des Moines County, Mark Kruse,
District Associate Judge.

A father and mother both appeal from the termination of their parental
rights to their daughter and son. **AFFIRMED.**

Angela Oakland, Burlington, for appellant father.

Alan Waples of Wittkamp & Waples, Burlington, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Patrick C. Jackson, County Attorney, and Pamela Dettmann,
Assistant County Attorney, for appellee.

Shane Wiley of Hirsch, Adams, Putnam, Cahill, Rashid & Wiley, P.L.C.,
Burlington, guardian ad litem for minor children.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

BAKER, J.

A mother and father both appeal from the termination of their parental rights to their daughter and son. Because we conclude the State proved the grounds for termination by clear and convincing evidence, we affirm on both appeals.

I. Background and Facts

Shayla is the mother and Andrew is the father of two children, Addison, born in November 1997, and Andrew Jr., born in August 1999. The children were adjudicated to be children in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(n) (2001) on December 11, 2002. The Iowa Department of Human Services (DHS) first removed them from the custody of their mother in November 2002. They were returned to her care in August 2004, but were again removed in July 2005. They have lived in foster family placement since. The children have been in out-of-home placement for thirty-eight out of forty-nine months since 2002.

Andrew is currently serving a twelve-year prison term for second offense possession of a controlled substance. Andrew's parole date is August 2007. Andrew has supplied DHS with certificates showing his successful completion of several programs, including an anger management group and "active parenting today."

Shayla has a history of substance abuse. She substantially completed a treatment program in January 2006. She has two other children who are in the custody of their biological father, and she had another child in the summer of 2006. She lives in a small efficiency apartment but testified she could obtain

larger housing if Addison and Andrew Jr. were placed with her. She has a minimal part-time job and attends classes at the local community college seven hours per week.

On September 12, 2006, a hearing was held to determine whether Shayla's and Andrew's parental rights should be terminated. The hearing was continued for approximately three months. The juvenile court ordered parent skill development, random drug testing, and visitation be provided to Shayla and that DHS and the children's guardian ad litem assess Shayla's home. Shayla refused to participate in the ordered services, other than visitation. After the September 12 hearing, the guardian ad litem for Addison and Andrew Jr. concluded it was in their best interests that Shayla's and Andrew's parental rights be terminated.

Following a January 19, 2007 hearing, the juvenile court issued an order terminating the parental rights of both parents pursuant to Iowa Code section 232.116(1)(f) (2005). The parents appeal.

II. Merits

We review termination orders de novo. Iowa R. App. P. 6.4; *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). Although we give weight to the juvenile court's factual findings, especially when considering the credibility of the witnesses, we are not bound by them. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001); *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992).

Our primary concern in termination proceedings is the best interests of the children. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). In determining the children's best interests, we look to both long-term and immediate needs. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We consider what the future holds for

the children if returned to the parent. *M.M.*, 483 N.W.2d at 814. “Evidence of the parent’s past performance is relevant on this issue because it may show the quality of future care the parent is capable of providing.” *Id.*

A. Mother

The juvenile court concluded there was clear and convincing evidence that the children could not at the present time be returned to the custody of their parents within the meaning and scope of Iowa Code section 232.116(1)(f).

Shayla asserts that “[t]here was not clear and convincing evidence that the children could not be returned to [her] home because the definitional grounds of CINA exist.” She argues (1) the case went on for a long time due to the duplicity of a DHS caseworker, (2) Shayla “got her act together,” (3) the juvenile court “had developed an extreme dislike for” her, (4) she completed substance abuse treatment and remains clean, and (5) she has had good visits and maintained a good mother-child relationship with the children.

Shayla’s assertions do not change the fact that, following the September 12 termination hearing, despite her poor parenting record, she was given one more opportunity to demonstrate a willingness and ability to parent her children. In response to that opportunity, Shayla refused to cooperate. She did not allow DHS to make a home visit. She would not submit to a hair stat drug test. She refused to participate in parent skill development. After our careful review of the record, we agree with the juvenile court’s conclusion that Shayla’s explanations for her noncompliance with the ordered drug testing and parent skill development lacked merit.

Shayla further asserts that “DHS has not disturbed the custody of her new baby” and “[i]f there has been even a hint of substance abuse surely DHS would have removed this child.” Where a parent is allowed to continue to parent some children, it may nonetheless be in the other children’s best interests to terminate parental rights. See *In re E.B.L.*, 501 N.W.2d 547, 553 (Iowa 1993) (noting “while the mother can successfully parent the three children she now has custody of, she does not possess the skills necessary to deal successfully with” the other two); *In re T.J.O.*, 527 N.W.2d 417, 421 (Iowa Ct. App. 1994) (holding it is not a valid argument that it is safe to return one child to the home simply because there is no evidence another child has ever been harmed). DHS’s failure to remove the new baby from Shayla’s home does not convince us that the children could be returned to Shayla’s home.

It has often been stated that a parent’s past “performance may be indicative of the quality of the future care that parent is capable of providing.” *In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1989). The juvenile court found “the record is replete with instances of drug use, failed treatment, and efforts to subvert drug testing by the mother.” It also found “the record is replete with instances of poor parenting,” Shayla’s failure to have meaningful employment is a problem that has persisted for years, and “[t]here is little or no motivation to change.” We agree. See *M.M.*, 483 N.W.2d at 818 (holding two years is more than enough time to prove parenting capabilities).

The record contains clear and convincing evidence that the children could not be returned to Shayla’s care. We therefore affirm the termination of Shayla’s parental rights. See *In re R.J.*, 436 N.W.2d 630, 636 (Iowa 1989) (“[P]atience on

behalf of the parent can quickly translate into intolerable hardship for the children.”); *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) (“The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.”).

B. Father

Andrew also asserts the State did not prove the statutory grounds for termination under Iowa Code section 232.116(1)(f) (2005) by clear and convincing evidence and, because the children could be returned to the care of their mother, his parental rights should not be terminated. He argues (1) both parents have completed substance abuse treatment, (2) he is likely to receive parole in August 2007, and (3) because Shayla has custody of her youngest child, DHS must not be concerned that Shayla currently has substance abuse issues, or the baby would have been removed.

Andrew is currently serving a twelve-year prison term for second offense possession of a controlled substance and his parole date is August 2007. “While we recognize the law requires a ‘full measure of patience with troubled parents who attempt to remedy a lack of parenting skills,’ Iowa has built this patience into the statutory scheme of Iowa Code chapter 232.” *C.B.*, 611 N.W.2d at 494 (quoting *A.C.*, 415 N.W.2d 609 at 613). The legislature has determined twelve months is sufficient for patience with parents in such cases. See Iowa Code 232.116(f). Andrew’s completion of substance abuse treatment while incarcerated and his upcoming parole do not compel us to exceed the twelve-month period. See *R.J.*, 436 N.W.2d at 636 (holding a mother’s “affection for her children and remorse for her failings” do not compel the court to allow patience

beyond the statutory period). “This period must be reasonably limited because patience on behalf of the parent can quickly translate into intolerable hardship for the children.” *Id.* There is little question that at the time of the termination hearing the children could not be returned to the custody of Andrew. Most significantly, his incarceration prevented such a reunification.

To the extent Andrew’s argument concerns Andrew Jr. and Addison’s return to Shayla’s care, he lacks standing. See *In re D.G.*, 704 N.W.2d 454, 459 (Iowa Ct. App. 2005) (noting one parent cannot join in another parent’s “best interests” claim). Moreover, for the reason noted previously, DHS’s failure to remove the new baby from Shayla’s home does not convince us that the children could be returned to Shayla’s home.

The record contains clear and convincing evidence that the children could not be returned to their parents’ care. We therefore affirm the termination of Andrew’s parental rights.

III. Conclusion

We find the record contains clear and convincing evidence that Addison and Andrew Jr. cannot be returned to their parents’ care and that termination of Shayla’s and Andrew’s parental rights are in the best interests of the children. We therefore affirm the termination order.

AFFIRMED.