

IN THE COURT OF APPEALS OF IOWA

No. 7-383 / 07-0649

Filed June 13, 2007

**IN THE INTEREST OF J.E.G., R.C., and A.C.,
Minor Children,**

**L.M.C., Mother,
Appellant.**

Appeal from the Iowa District Court for Woodbury County, Mary L. Timko,
Associate Juvenile Judge.

Mother appeals from the order terminating her parental rights.

AFFIRMED.

Patrick T. Parry of Forker & Parry, Sioux City, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Patrick Jennings, County Attorney, and Dewey Sloan,
Assistant County Attorney, for appellee State.

John Polifka of the Juvenile Law Center, Sioux City, for minor children.

Considered by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

HUITINK, P.J.

Leticia appeals the termination of her parental rights to two of her children, claiming there is insufficient statutory grounds for termination and termination is not in the children's best interests. We affirm.

I. Facts and Prior Proceedings

Leticia has three children: J.E.G., R.C., and A.C. J.E.G.'s father, Eraquio, lives in Nebraska, while Rodrigo, the father of R.C. and A.C., has not participated in these proceedings and allegedly lives in Mexico so as to avoid criminal prosecution in Iowa.

All three children were removed on August 15, 2005, when officers found methamphetamine and other evidence of drug dealing at Leticia's residence. Hair stat tests performed on two of the children tested positive for amphetamine and methamphetamine. Leticia was arrested and jailed on multiple charges, including possession of methamphetamine with intent to deliver and child endangerment. All three children were adjudicated children in need of assistance (CINA) on September 12, 2005, pursuant to multiple sections of the Iowa Code. In the months following removal, Leticia retained full-time employment and participated in many offered services. However, she failed one drug test and was arrested for operating a vehicle while intoxicated. Due to her lack of progress in substance abuse treatment, there was no trial period for the children in her home.

The Iowa Department of Human Services made several attempts to place the children with relatives during the CINA proceedings, so the children resided with four different relatives between the date of removal and October 2006. Each

placement ended because the relative was unable to appropriately provide for the children's care. The last relative placement was in the home of Eraquio and his mother. This placement was brief because Eraquio and his mother were financially unable to provide for all three children. In October 2006 the children were separated. R.C. and A.C. were placed in foster care, while J.E.G. remained with Eraquio and his mother.

On October 11, 2006, Leticia was convicted of conspiracy to distribute illegal drugs and sent to federal prison. She will not be eligible for release until 2015, though she may be released in 2014 if she successfully completes certain substance abuse programs.¹

The State filed the present action to terminate her parental rights to all three children. On April 7, 2007, the court terminated Leticia parental rights in regards to R.C. and A.C. pursuant to sections 232.116(1)(d), (e), (f) and (l) of the Iowa Code (2005).² However, the court did not terminate her parental rights in regards to J.E.G., and he continues to reside with Eraquio and his grandmother.

II. Standard of Review

We review termination proceedings de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). Although we give weight to the juvenile court's factual findings, we are not bound by them. *Id.* The State must prove the grounds for termination by clear and convincing evidence. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Our primary concern is the best interests of the children. *Id.*

¹ At the termination hearing, Leticia said she was hopeful her sentence could be reduced further if she gave federal authorities information on other drug dealers. However, there is no evidence any such deal exists or likely will occur.

² Rodrigo's parental rights were also terminated, but he is not a party to this appeal.

III. Merits

Leticia contends the evidence does not support termination under sections 232.116(1)(d), (e), (f), or (l). Because we find statutory grounds for termination under section 232.116(1)(f), we need not address the arguments pertaining to the other statutory grounds listed by the district court. See *S.R.*, 600 N.W.2d at 64 (“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.”).

Section 232.116(1)(f) provides that parental rights can be terminated if the State proves by clear and convincing evidence that the children are four years of age or older; the children have been adjudicated CINA; the children have been removed from the physical custody of their 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; and there is clear and convincing evidence that at the present time the children cannot be returned to the custody of the parents as provided in section 232.102. The first three elements were clearly proved and are not in dispute, but Leticia claims there is insufficient evidence that the children could not be returned to her care or Rodrigo's care.

We disagree. Leticia is incarcerated and unable to care for her children. See *In re J.S.*, 470 N.W.2d 48, 51 (Iowa Ct. App. 1991) (rejecting father's claim his child could be returned to his care because father was incarcerated). There is no indication she will be released from federal prison until at least 2014. Rodrigo has not participated in these proceedings, and his whereabouts are unknown. It is not only inappropriate to place the children with Rodrigo, but also

physically impossible. We find ample evidence to support the court's conclusion that R.C. and A.C. cannot be returned to their parents' care at the present time.

Leticia also claims termination is not in the children's best interests. She claims she has a strong bond with her children, is able to communicate with them through letters and occasional phone calls, and will eventually be released from prison. She also claims the State failed to establish the children could not be placed with Eraquio while she is in prison. After our de novo review of the record, we find termination is in the children's best interests. The termination hearing clearly established Eraquio is unable to care for these two children. Also, despite Leticia's strong bond with her children, the court is cognizant of the fact the children need a parent to provide for their day-to-day physical and emotional needs. Leticia will be unable to do so for at least the next seven years. R.C. and A.C. deserve to grow in a permanent environment; they should not be forced to endlessly await the maturity of their natural parent. See *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983); see also *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring) ("A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests.").

Giving "primary consideration to the child[ren's] safety, to the best placement for furthering the long-term nurturing and growth of the child[ren], and to the physical, mental, and emotional condition and needs of the child[ren]," we conclude the children's needs are served by terminating Leticia's parental rights. Iowa Code § 232.116(2).

AFFIRMED.