

IN THE COURT OF APPEALS OF IOWA

No. 7-929 / 07-1828
Filed December 28, 2007

**IN THE INTEREST OF G.M., W.P. III, J.P., and A.P.,
Minor Children,**

W.D.P. Jr., Father,
Appellant,

T.M., Mother,
Appellant.

Appeal from the Iowa District Court for Linn County, Susan Flaherty,
Associate Juvenile Judge.

A father and mother appeal from the orders terminating their parental
rights. **AFFIRMED.**

David N. Nadler, Cedar Rapids, for appellant father.

Carla Pearson of Sole, McManus, Pearson & Willems P.C., Cedar Rapids,
for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Harold Denton, County Attorney, and Lance Heeren, Assistant
County Attorney, for appellee State.

David Thinnis, Cedar Rapids, for minor children.

Considered by Vogel, P.J., and Mahan and Zimmer, JJ.

MAHAN, J.

A father and mother appeal from the orders terminating their parental rights. We affirm.

I. Background Facts and Prior Proceedings

Tanya is the mother of seven children. Four of these children—G.M., born in 1997; W.P. III, born in 1999; J.P., born in 2000; and A.P., born in 2002—are the subject of this appeal. Wilbert is the father of W.P. III, J.P., and A.P. G.M's father is not a party to this appeal.

When J.P. was born in 2000 he tested positive for cocaine. Tanya admitted to using cocaine within a few days of A.P.'s birth in 2002. On August 5, 2002, the State filed a child in need of assistance (CINA) petition regarding Tanya's seven children. During the ensuing months, Tanya did not follow through with substance abuse treatment or drug testing, and there was no running water in the family home. As a result, these four children¹ were removed from her care in September 2002 and eventually placed in foster care. Hair stat testing on three of the children tested positive for cocaine. Both parents stipulated that the children were in need of assistance pursuant to Iowa Code section 232.2(6)(n).

In October 2002 the court allowed G.M. to return to Tanya's care while she attended a residential substance abuse treatment center for women with children. Tanya made great strides during her treatment, and in January 2003 the court returned the children to her care.

¹ The other, older children did not enter foster care. They remained with various relatives.

The children remained with Tanya until she tested positive for cocaine in February 2004. A hair stat test on two of the children also tested positive for cocaine.

Tanya received more substance abuse treatment and began mental health treatment. Tanya's progress was slow and hampered by Wilbert's physical abuse. However, by April 2005 she had progressed to the point where the children could be returned to her care.

The children remained in her care for approximately six months. On October 25, 2005, the children were removed from her care for the third and final time when she again tested positive for cocaine.

Tanya enrolled for more substance abuse and mental health treatment, but she did not consistently perform drug screenings and she visited her children on an irregular basis. In May 2006 she was arrested for public intoxication. The State filed the petition to terminate parental rights in July 2006. Tanya tested positive for cocaine one more time before the termination hearing.

Wilbert's role in the children's lives between the initial removal in 2002 and the date of the termination hearing was limited, and his participation in visitation was sporadic. He was arrested on multiple occasions for physically assaulting Tanya, and he also tested positive for illegal substances on numerous occasions. Wilbert's last visitation with his children was in September 2005.

Although Wilbert was incarcerated, both parents were able to participate in the termination hearing on October 1, 2006. Tanya described her love for her children and the repeated instances of physical abuse she had suffered at the hands of Wilbert. Wilbert said that he loved his children and that he was a good

parent. The court allowed the record to remain open for thirty days to allow additional testimony from an expert in the area of domestic violence/substance abuse. This expert witness testified via deposition that women are more likely to continue abusing substances when they are exposed to domestic violence. He also opined that a woman in Tanya's situation should be given at least one more year to prove that she could maintain her sobriety so long as she was protected from domestic violence.

On October 15, 2007, approximately eleven months after the court received the expert's deposition testimony, the court entered its order terminating Tanya's parental rights pursuant to Iowa Code sections 232.116(1)(f) and (l) and Wilbert's parental rights pursuant to sections 232.116(1)(b), (e), (f), and (l). (2007).²

Both parents separately appeal. They challenge each statutory basis for termination and claim termination is not in the children's best interests because of the strong bond between themselves and the children. Wilbert also challenges whether "termination can be based on a stated need for permanency for the children when the terminating court takes almost a year to rule on the termination petition."

II. Standard of Review

We review termination of parental rights de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Grounds for termination must be proved by clear and convincing evidence, and our primary concern is the children's best interests. *Id.*

² The court also terminated the parental rights of G.M.'s father.

In determining the children's best interests, we look to the children's long-term and immediate needs. *Id.*

III. Merits

A. Statutory Grounds

On appeal, both parents contend the evidence does not support any of the statutory grounds for termination. Because we find there were statutory grounds for termination under section 232.116(1)(f), we need not address whether termination was appropriate under the other sections cited by the court. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) ("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: (1) are four years of age or older; (2) have been adjudicated CINA; (3) have been removed from the physical custody of their parents for the last twelve consecutive months with any trial period at home lasting less than thirty days; and (4) cannot be returned to the custody of their parents as provided in section 232.102. Beyond these statutory requirements for termination, there is also a requirement that reasonable services be offered to preserve the family unit. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994).

We find there was clear and convincing evidence to satisfy each of the aforementioned elements. There is no dispute that the children were adjudicated CINA and at least four years of age at the time of the termination hearing. The

children had been removed from their parents' care for more than twelve consecutive months, and there was no question that reasonable services were offered to preserve this family unit.³ The State also presented clear and convincing evidence that the children could not be returned to either parent's care. Tanya was not actively participating in substance abuse treatment and had tested positive for cocaine since the time the termination petition was filed. Wilbert was in jail and had not exercised visitation for more than a year. We conclude the State proved that neither parent was in any position to provide proper care for these children. The circumstances that led to the last removal still existed at the time of the termination proceeding.

B. Best Interests

Both parents claim their strong bonds with the children means that termination is not in the children's best interests. A strong bond between parent and child is a special circumstance which militates against termination when the statutory grounds have been satisfied. Iowa Code § 232.116(3)(c). However, this is not an overriding consideration, but merely a factor to consider. *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). A parental bond is not an overriding consideration when substance abuse endangers the children's health. *Id.* at 342.

These children have tested positive for cocaine on multiple occasions while under their mother's care. Despite countless offered or provided services, neither parent has demonstrated a long-term commitment to maintaining a drug-free lifestyle. See *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000) ("The future can

³ These services included but were not limited to substance abuse treatment, mental health treatment, drug testing, parenting instruction, individual therapy, and domestic violence counseling.

be gleaned from evidence of the parents' past performance and motivations.”). We simply cannot adopt the expert witness's recommendation that we delay termination of Tanya's parental rights for at least another year so she can have another chance to prove she can maintain her sobriety and adequately care for these children. The children have waited four years for their parents to secure their lives and make the children's care a constant concern. They should not be forced to wait any longer. See *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.”). We agree with the district court that termination is in the children's best interests. See *J.E.*, 723 N.W.2d at 801 (Cady, J., concurring specially) (“A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests.”).

C. Delay between Termination Hearing and Termination Ruling

Wilbert also contends termination was not proper in light of the eleven-month delay between the close of evidence and the court's ruling. While we would prefer that district courts rule on termination petitions in a more expeditious manner, we find the delay in this case has no bearing on our ultimate conclusion that termination is in the children's best interests.

We therefore affirm the order terminating both parents' parental rights.

AFFIRMED.