

IN THE COURT OF APPEALS OF IOWA

No. 8-1066 / 08-1827
Filed January 22, 2009

**IN THE INTEREST OF K.J.W. and A.N.W.,
Minor Children,**

**T.L.W., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Carol S. Egly, District
Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Samantha Kain of Sullivan & Ward, P.C., West Des Moines, for appellant
mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Jon Anderson,
Assistant County Attorney, for appellee State.

Jessica Miskimins of the Youth Law Center, Des Moines, for minor child.

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

MAHAN, J.

Tamara appeals the district court's order terminating her parental rights to her seven-year-old son, K.W., and eight-year-old daughter, A.W. We affirm.

I. Background Facts and Proceedings.

K.W. and A.W. are the children of Tamara and Joshua.¹ The children were removed from their home in August 2007 and were adjudicated children in need of assistance (CINA) under Iowa Code sections 232.2(6)(c)(2) and (n) (2007) in November 2007 due to Tamara's mental health issues and her inability to care for the children. The court originally placed the children with their stepfather and ordered extensive services designed to reunify the family. However, in October 2007 the court placed the children in foster care. The children have remained with the same foster care family since that time.

The termination hearing was held in October 2008. The district court found clear and convincing evidence supporting termination of Tamara's parental rights pursuant to Iowa Code sections 232.116(1)(d), (f), and (j). By order dated November 3, 2008, Tamara's parental rights were terminated. She now appeals.

II. Scope and Standard of Review.

We review termination of parental rights de novo. *In re Z.H.*, 740 N.W.2d 648, 650-51 (Iowa Ct. App. 2007). Grounds for termination must be proved by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Our primary concern is the best interests of the children. *Id.*

¹ The parental rights of Joshua were also terminated, but he does not appeal.

III. Merits.

The court terminated Tamara's parental rights pursuant to sections 232.116(1)(d), (f), and (l). The actual grounds for termination of her parental rights under these sections are not being contested or appealed. Tamara concedes the grounds for termination have been met.

She argues, however, that the district court erred in failing to consider the exception to termination as set forth in section 232.116(3)(c). The relevant portion of this section states:

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

...
 (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.

Iowa Code § 232.116(3)(c). A termination, otherwise warranted, may be avoided under the exceptions in this section. *In re D.E.D.*, 476 N.W.2d 737, 738 (Iowa Ct. App. 1991). The factors under section 232.116(3) have been interpreted by the courts as being permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). The words "need not terminate" are clearly permissive. *Id.* The court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply the factors in this section to save the parent-child relationship. *Id.*

Tamara contends her parental rights should not be terminated because she has a strong bond with the children. She argues she has made significant changes to remedy her mental health, substance abuse, housing, and unemployment issues and claims she has maintained a close relationship with

the children's foster family. Tamara further alleges she has exercised visitation with the children and requested additional time.

After a careful review of the record, we conclude the exception in section 232.116(3)(c) does not apply to the facts of this case. Although Tamara obviously loves her children and the children look forward to their visits with Tamara, the record does not show a strong bond between Tamara and the children. Tamara alleges she is making an effort to resolve her mental health issues, but the fact remains that the children have remained out of her care since August 2007 due to her mental health issues and her inability to care for them. Tamara has years of suicidal behavior and has had two suicide attempts since August 2008. The record shows that the children understand their mother has serious mental health issues and question whether she can care for them. While Tamara's mental health and substance abuse issues seem to improve for short periods of time, there is no evidence that those improvements can be maintained over time.

Even if we were to find a strong bond exists between Tamara and her children, the exception in section 232.116(3)(c) is permissive, not mandatory. Upon our review, we determine Tamara's rights should be terminated, and we therefore decline to apply the exception. We find Tamara is unable to provide any lasting support and stability for her children. The district court properly exercised discretion in this case.

Tamara further argues her parental rights should not be terminated because the Iowa Department of Human Services (DHS) failed to provide sufficient services to her during the pendency of the case to promote

reunification. A parent's challenge to services by the State should be made when they are offered, not when termination of parental rights is sought after services have failed to remedy a parent's deficiencies. *In re C.W.*, 522 N.W.2d 113, 117 (Iowa Ct. App. 1994). Specifically, Tamara contends DHS failed to make reasonable efforts to preserve the family unit. Tamara fails to indicate, however, that she requested or otherwise challenged the adequacy of services prior to the termination hearing. We therefore conclude this issue has been waived. Even if we were to address it on appeal, we find additional services would have most likely been unsuccessful. As the court noted:

The Department of Human Services has offered the following services to the family designed to help reduce or eliminate the adjudicatory harms present in the home: Child Protective Services, Family Centered Services, Court ordered Supervision, Parent Partners, Families First for In-Home Services, Global Drug Testing, Child Guidance Center for therapy, Gateway Committee, Flexible Family Support Fund for rent, gas, help with utility payments, Family team meetings, and Child Abuse Prevention Council care parenting classes, relative placement, and foster care.

.....

Tamara has used services. This judge concurs with the children's therapist, though. She concludes that the mother continues to have serious parenting deficits and recommends that her parental rights be terminated.

.....

This judge specifically finds there are no reasonable prospects that any additional time would result in Tamara making the necessary changes so that she could safely parent her children. Over a number of years those changes have not occurred. Tamara loves her children. Unfortunately, possibly due to her mental health condition, she is not able to make the changes necessary to be able to parent her children without causing them future trauma and neglect.

We agree and conclude additional services would not have made it possible for Tamara to responsibly parent K.W. and A.W.

The children have waited for more than a year for Tamara to provide the safe and stable home they deserve. Tamara has serious unresolved mental health issues and the children have suffered a long history of trauma while in her care. Given the children's ages and need for permanency and Tamara's failure to utilize services that would have fostered reunification, it is in the children's best interests that parental rights be terminated. Accordingly, we affirm the district court's order.

AFFIRMED.