

IN THE COURT OF APPEALS OF IOWA

No. 8-205 / 08-0082

Filed April 9, 2008

**IN THE INTEREST OF E.H., A.H., and A.H.,
Minor Children,**

**S.A.M., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Joseph E. Smith,
District Associate Judge.

A mother appeals from a juvenile court order terminating her parental
rights to three children. **AFFIRMED.**

Matthew W. Cunningham of Hope & Cunningham, Des Moines, for
appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John P. Sarcone, Attorney General, and Jennifer Galloway,
Assistant County Attorney, for appellee.

Jessica Miskimins, Des Moines, guardian ad litem for minor child.

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

MILLER, J.

Seairra is the mother of Ashawn, Amir, and Erica (“the children”), who were four, two, and one year of age respectively at the time of a late November 2007 termination of parental rights hearing. In a late December 2007 order the juvenile court terminated Seairra’s parental rights to the children. The order also terminated the parental rights of any putative fathers of the children, and no putative father has appealed. Seairra appeals. We affirm.

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court’s findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

In re C.B., 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

Seairra has had a lengthy relationship with Eric, who has a criminal history involving property damage, assaultive behavior, and involvement in illegal drugs. In 2004 Seairra apparently left Ashawn, then about one year of age, with Eric while she was hospitalized with prelabor while pregnant with Amir. Eric abandoned Ashawn in a car after a traffic stop.

In early December 2006 the children came to the attention of the Iowa Department of Human Services (DHS) when a search of the residence in which Seairra and the children were present with Eric revealed drugs and paraphernalia in reach of the children and suspected drug use by Seairra and Eric. Seairra and Eric were arrested, charged with child endangerment, possession of a controlled substance, and interference with official acts, and jailed. The children were removed from Seairra’s physical custody and placed in the legal custody of a

maternal aunt of Seairra. They were adjudicated children in need of assistance (CINA) in early January 2007. By the time of an early February dispositional hearing and order the children were placed in the legal custody of another aunt of Seairra, where they have thereafter remained. The criminal charges against Seairra were dismissed and she was released from jail in February 2007 when a codefendant acknowledged responsibility for the drugs.

Until September 2007 Seairra represented that Eric was the children's father. Paternity testing then revealed that he was not, and he was dismissed as a party in the underlying CINA cases. Seairra has refused to identify the father or fathers, or the potential father or fathers, of the children.

In mid-October 2007 the State filed a petition seeking termination of the parental rights of Seairra and any putative fathers of the children. Following hearing, the juvenile court found the State had proved the grounds for termination of Seairra's parental rights pursuant to Iowa Code sections 232.116(1)(b) (2007) (abandonment), (d) (children adjudicated CINA for abuse or neglect by parent, circumstances continue despite offer or receipt of services), (e) (children adjudicated CINA, children removed from parent at least six consecutive months, parent has neither maintained significant and meaningful contact during the six months nor made reasonable effort to resume care despite opportunity to do so), (f) (Ashawn) (child four or older; adjudicated CINA; removed twelve of last eighteen months, or last twelve months with any home trial period less than thirty days; cannot be returned at present time), (h) (Amir and Erica) (child three or younger; adjudicated CINA; removed six of last twelve

months, or last six months with any home trial period less than thirty days; cannot be returned at present time).

Seairra first claims the State did not offer adequate services to reunite her with the children. She has a history of associating with not only Eric, who has repeatedly physically abused her, but also with other individuals who have histories of violence and other criminal activities. Seairra alleges that a counselor was never provided to her for dealing with codependency issues and abuse issues.

Seairra was offered individual counseling to deal with those very issues. She initially refused to participate, denying any need for such counseling. She later agreed, at least ostensibly, to become involved in such therapy. She demanded, however, that any therapist be female, and be an African-American. The DHS attempted to find and arrange for such a therapist, but on August 8, 2007, Seairra was arrested, jailed, and charged with possession of a controlled substance, crack cocaine, with intent to deliver.¹ The anticipated counseling thus did not occur.

The State did not fail or refuse to offer the counseling Seairra complains she was not provided. Her own actions, rather than any inaction on the part of the State, caused her to not receive counseling for her codependency and abuse issues.

Seairra claims the State did not prove that the children would suffer harm by being returned to her physical custody. She argues the State did not show

¹ Seairra eventually pled guilty to this class "C" felony, received a deferred judgment and probation, and at the time of the termination hearing remained in jail awaiting placement in The Beacon of Life, which the record does not appear to further describe, but which this court assumes to be a residential substance abuse treatment facility.

that she would not be able to provide a safe and stable home for the children when she is placed at The Beacon of Life and subsequently at the House of Mercy. The State concedes that Seairra's claim implicates the sufficiency of the State's proof as to the grounds for termination under sections 232.116(1)(d), (e), (f), and (h), but asserts that Seairra has not preserved error with respect to section 232.116(1)(b) (abandonment) as she does not mention it.

We believe the absence of any challenge to the juvenile court's conclusion the State proved the grounds to terminate pursuant to section 232.116(1)(b) more correctly involves a waiver of any issue as to that ground rather than a failure to preserve error. See Iowa R. App. P. 6.14(1)(c) (stating a "failure . . . to state . . . an issue may be deemed waiver of that issue."). We deem waived any claim or issue concerning the juvenile court's conclusion the State proved the grounds for termination under section 232.116(12)(b). We therefore affirm that conclusion.

We need not rest our decision concerning statutory grounds for termination solely on section 232.116(1)(b), however, for we agree with the juvenile court that the State also proved the grounds for termination under section 232.116(1)(d). The children's December 2007 removal and subsequent adjudication as CINA was precipitated by suspected involvement with drugs by Seairra and Eric. After her February 2007 release Seairra claimed to no longer be associated with Eric. However, he frequently appeared at Seairra's scheduled visitations with the children. In April 2007 Eric assaulted Seairra. She did not report that assault to the DHS or service providers. In June 2007 Eric

attacked and severely beat Seairra, and also beat another person who was present.

In the period of February to May 2007 Seairra participated in parenting skill education, drug screens, and supervised visitation. As of May, semi-supervised visitations were started, but in May Seairra stopped participating in drug screens and in early June Eric severely beat her. Visits returned to supervised and moved from Seairra's residence to the DHS office. Seairra increasingly missed visitations with the children or was late to them. During the summer of 2007 Seairra associated with persons who had criminal records. On August 8 she was found in possession of about sixteen "rocks" of separately packaged crack cocaine. She pled guilty to intending to deliver the cocaine, but later testified she intended to use it herself.

The circumstances that caused the children to be adjudicated CINA and continue to be CINA included Seairra's involvement with drugs, her ongoing contact and suspected relationship with a violent and abusive criminal, and her relationship and continuing contact with others who had criminal records. As of the termination hearing she had not received counseling for her codependency and abuse issues, and had been arrested and remained incarcerated for involvement with drugs.

We conclude Seairra had been offered, and to the extent she was willing had received, services to correct the circumstances which led to the CINA adjudications, but the circumstances continued to exist. We conclude, as the juvenile court did, that the State proved the grounds for termination under section 232.116(1)(d).

Seairra finally claims it is not in the children's best interest to have her parental rights terminated. She argues, among other things, that the evidence shows a strong bond between her and the children.

Even if the statutory requirements for termination are met, a decision to terminate must still be in the best interest of a child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). Seairra's argument concerning a strong parent-child bond implicates Iowa Code section 232.116(3)(c), which provides that the court need not terminate if doing so would be detrimental to the child because of the closeness of the parent-child relationship. However, no such issue was presented to and passed upon by the juvenile court, and thus error was not preserved on such a claim. See *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003) ("Even issues implicating constitutional rights must be presented to and ruled on by the district court in order to preserve error for appeal."). We therefore decline to address this argument.

Seairra's final claim may also arguably be seen as asserting in more general terms that termination is not in the children's best interest. The record shows that as of the termination hearing the children had been removed from Seairra's legal and physical custody for almost a full year. The first two months of that time Seairra spent in jail. The next three months she cooperated with services to a certain extent and made some progress. However, during the three months between early May and early August she refused to provide drug screens; initially flatly refused individual counseling; later ostensibly accepted such counseling, but only on terms that made it difficult or impossible to arrange; missed some visitations and was late to others; associated with persons with

criminal records; and resumed or continued involvement with drugs, for which she was arrested on August 8. Seairra then remained in jail for the period of almost four months immediately preceding the termination hearing.

At the time of the termination hearing the children had been in the legal and physical custody of their maternal great-aunt for almost eleven months. Ashawn, who had been developmentally delayed at the time of removal, had overcome his delays. The children had behavioral problems when removed from Seairra, and those problems had been overcome. The children had formed attachments to their great-aunt and her husband, in whose home they had been provided security, stability, and permanency, previously lacking in their lives. That home is a pre-adoptive home.

We conclude, as the juvenile court did, that termination of Seairra's parental rights is in the children's best interest.

AFFIRMED.