

**IN THE COURT OF APPEALS OF IOWA**

No. 9-617 / 09-0863  
Filed September 2, 2009

**IN THE INTEREST OF R.L., K.L, and W.L.,  
Minor Children,**

**S.A.L., Father,**  
Appellant,

**L.L., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Polk County, Constance Cohen,  
Associate Juvenile Judge.

A father and mother appeal separately from the order terminating their  
parental rights. **AFFIRMED ON BOTH APPEALS.**

Todd E. Babich of Babich, Goldman, Cashatt & Renzo, P.C., Des Moines,  
for appellant father.

Jami J. Hagemeyer of Williams, Bladeburn, Hudson & Maharry, P.L.C.,  
Des Moines, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, John P. Sarcone, County Attorney, and Andrea S. Vitzthum,  
Assistant County Attorney, for appellee State.

John Jellineck, Des Moines, for minor children.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

**DOYLE, J.**

A mother and father appeal separately from the order terminating their parental rights. Upon our de novo review, we affirm on both appeals.

***I. Background Facts and Proceedings.***

S.L. is the father and L.L. is the mother of K.L., born January 2005; R.L., born July 2006; and W.L., born January 2008. The parents are married and have a history of criminal activity and substance abuse. The mother, age thirty-eight at the time of trial, began abusing substances at age sixteen. The father, age forty-five at the time of trial, began abusing substances and alcohol when he was seventeen or eighteen years old. Both parents have participated in substance abuse treatment programs in the past only to relapse.

K.L. and R.L. came to the attention of the Iowa Department of Human Services (Department) in August 2007. At that time, the mother was approximately four months pregnant with W.L. and had left the father, allegedly due to verbal abuse by the father. While the mother and the children were staying with a family friend, it was reported to the Department that the adults in the family friend's home smoked marijuana in the presence of the children. The mother agreed to provide a sample for urinalysis, which tested positive for methamphetamine and cocaine. The mother then consented to the temporary removal of the children from her custody. The children were placed in the temporary legal custody of the family friend under the Department's supervision, and the mother moved back in with the father. The father then provided a sample for urinalysis, which tested positive for cocaine.

On August 27, 2007, the State filed its petition alleging K.L. and R.L. to be children in need of assistance (CINA). On September 4, 2007, a hearing was held regarding the children's removal. The juvenile court found that K.L. appeared to have developmental delays and ordered ongoing services, including an Area Education Agency screening for K.L., family contact, child protective assessments, protective day care, in-home family-centered services, visiting nurse services, bus tokens, drug screens, substance abuse evaluations for the parents, and compliance with prenatal care for the mother. The court also ordered an intake appointment at the House of Mercy, a transitional home that offers clinical services for parenting women with addiction.

An adjudication hearing was held October 26, 2007. The father did not appear for the hearing. The mother, who had just entered the House of Mercy, appeared and stipulated to the adjudication. The juvenile court adjudicated the children CINA and ordered that the father follow the recommendations for treatment and that the parents comply with prior orders for services.

A dispositional hearing was held November 21, 2007. The father did not appear, and it was reported that the father had not participated in the case or services. The court adopted the Department's case permanency plan and also ordered that the mother pursue obtaining her GED. The court set a date for a review hearing and ordered that the father attend.

On January 4, 2008, the juvenile court entered a modification order per agreement of the parties returning the children to the mother's custody. The court found the mother had made sufficient progress in her treatment program at

the House of Mercy to reunify her with the children. W.L. was born thereafter and lived with the mother and the other children at the House of Mercy.

A review hearing was held January 30, 2008. The court found the mother was complying with services and succeeding at the House of Mercy with her children. The court further found the father continued to be noncompliant with services and failed to attend despite the court's previous order.

On February 19, 2008, a review hearing was held concerning K.L. and R.L., and a removal hearing was held concerning W.L. due to ongoing protective concerns regarding the father. The court found the mother was doing well at the House of Mercy and the children were thriving with her. The court adopted the case plan as to the children. Additionally, the court offered the father family contact with the children.

On April 2, 2008, a review hearing was held concerning K.L. and R.L., and an adjudicatory hearing was held concerning W.L. The father appeared for the hearing and admitted he needed inpatient substance abuse treatment and that he would test positive for cocaine if he were tested that day. Additionally, the House of Mercy case manager provided the court a summary, dated March 21, 2008, reporting:

In the last two months, [the mother] has withdrawn from peers and staff. She has struggled with seeking support from others and has been closed off from processing her feelings and thoughts. [The mother] has also struggled overall with addressing her addiction during this time and has appeared to be focused on external factors such as her husband and maintaining her family ties with him, although he may still be using. [The mother] has struggled to see the importance of coping with her own issues and how the lack of doing so may hinder her ongoing sobriety. While she has made some changes in the last week, she was at a point where she wanted to leave [the House of Mercy] and felt she could

remain sober on her own. [The mother] recently made a strong commitment to stay [at the] House of Mercy after meeting with her treatment team, and [she] committed to working in the area of addiction and issues surrounding her addiction. She is currently in a two week assessment period to assess whether or not continued stay at [the House of Mercy] is appropriate for [her]. In the last week, [the mother] has been much more open to feedback and appears to be giving genuine feedback in groups and individual session. It is hoped that [the mother] will continue with this progress in order to support recovery and long-term sobriety.

The court adjudicated W.L. a CINA and ordered that custody of the children remain with the mother so long as the mother continued to reside at the House of Mercy. The court further ordered the father receive inpatient treatment.

A disposition/review hearing was held on April 29, 2008. The Department's caseworker reported that an evaluation was scheduled for the father at MECCA for inpatient treatment but the father failed to attend. The father also failed to schedule visits with the children. The court found the father "patently fail[ed] to comply with services and visits" with the children. The court found the children continued to be CINA and ordered ongoing services.

On May 23, 2008, the mother was discharged from the House of Mercy, and a discharge summary was provided to the court. The summary reported that the mother was discharged based upon her lack of movement forward in her recovery. The mother agreed that she had gained all she could from treatment and agreed to be discharged with maximum benefits. As to the mother's readiness to change, the mother was assessed at "being in the Precontemplative State of Change, based on her inability to recognize that her continued involvement with outside persons who are using will impact her own recovery."

The House of Mercy staff found the mother was at a

significant risk of relapse at this time. [The mother] continues to maintain a close relationship with her husband who is actively using and he has not complied with [the Department] in regards to dropping [samples for urinalysis] or attending treatment. [The mother] does not see her connection to her husband and other negative outside influences as a concern for her.

The summary reported the mother's prognosis was "poor given her significant chemical use history and lack of engagement in residential treatment at [the] House of Mercy." The mother then moved in with her cousin.

A family team meeting was held, and a discharge plan was formulated to allow the children to remain in their mother's custody so long as the mother enrolled the children in protective daycare and continued to reside with her cousin. The court filed its order on May 23, 2008, ordering the discharge plan be followed and that the mother participate in outpatient substance abuse treatment and in-home therapy, and that the mother provide samples for urinalysis.

In May 2008, the father underwent a substance abuse evaluation at MECCA and then entered MECCA's twenty-one-day inpatient treatment. On June 11, 2008, the father was discharged from MECCA's inpatient program. He then began outpatient group therapy and participated in some visitation with the children.

The parents continued to make strides towards their reunification with the children; however, the father relapsed in September 2008 and twice tested positive for drugs. The father stopped cooperating with his continuing outpatient care and attending NA and AA meetings. The father did not provide samples for urinalysis in October and tested positive again in November. The mother also failed to provide some samples for urinalysis in October.

Due to the father's relapse, he was only to have supervised visitation with the children. Although the mother was instructed of this change by the Department's caseworker and was aware he had been using cocaine, she allowed him to have an unsupervised visit with the children on November 30, 2008. The mother also failed to provide a sample for urinalysis on December 1. The children were subsequently removed from the mother's care on December 3, 2008, and placed in foster care.

A review hearing was held December 11, 2008. The father failed to appear. The court found the children's placement outside the home continued to be necessary because the parents had relapsed and the children could be exposed to drugs and/or neglect. The court ordered ongoing services plus additional services, including bus tokens for the mother and preschool and speech therapy for K.L. On December 12, 2008, the children's guardian ad litem filed a statement with the court stating:

The recent turn of events in this case is perhaps the most disappointing in my year of service. At this point, I see no alternative to [terminating the parental rights of the] father. If [the] mother cannot put the needs of the children ahead of her feelings for her husband, [the termination of parental rights] will follow for her, as well.

On December 16, 2008, the mother completed an evaluation of her substance abuse and need for treatment services at MECCA. The mother was admitted to the Women's Continuing Care Group and it was recommended that she attend outside NA/AA meetings and continue seeing her therapist.

On February 5, 2009, a permanency review hearing was held. The court found that the father had abandoned reunification efforts. The court also found

that the mother had recently failed to provide a sample for urinalysis testing. The court ordered that the matter be continued for about a month, with services continuing. The court further stated that if the mother's next urinalysis sample tested negative for drugs, her visitation with the children would transition to unsupervised.

On February 9, 2009, the mother was instructed to provide a sample for urinalysis by the end of the day on February 10. The mother contacted the caseworker at five o'clock on the 10th to tell the worker that she was unable to provide enough urine for testing. The mother asked if she could provide a sample the following day, and her request was denied because she had missed two drug screens prior to this request. The mother proceeded to provide a sample, only to spill it on the floor as the facility was closing. The missed sample was deemed to be a positive sample.

On March 12, 2009, the court entered an order directing the State to file a petition to terminate the parents' parental rights. The State filed its petitions on March 30, 2009. Hearing on the petitions was held May 5th and 6th. At the hearing, the mother admitted that her missed drug screens in November 2008 and on February 9, 2009 would have tested positive for drugs. She testified that she was now maintaining her sobriety, she was doing well in MECCA's treatment program, she was regularly seeing a therapist, she had a job and was able to provide for the children, and that the children could be returned to her care. The father also testified he was now maintaining his sobriety and intended to comply fully with MECCA's treatment program. He requested additional time to be



reunited with the children and testified he would fully cooperate with the Department. The parents testified they intended to seek a divorce.

The Department's caseworker testified and recommended termination of the parents' parental rights. The worker continued to have concerns about the mother's ability to maintain her sobriety and stability for herself and the children. The worker testified that she was also concerned with the mother's ability to keep stable housing and the mother's honesty regarding her relationship with the father. The caseworker admitted she had difficulty recommending termination of the mother's parental rights because, at the time of trial, the mother was doing better than she had done throughout most of the case, even when the children were with her. The mother was cooperating with all of the services that were being requested, had her own home, and was employed. The caseworker testified she was concerned about the children's attachment to the mother and the impact termination of the mother's parental rights would have on the children. She testified that it would be very difficult for the children to be returned to the mother only to be taken away if she relapsed. She testified that the children needed permanency and stability and she believed it would be very difficult for the children to have their bond with their mother severed. She also testified that the father also had a close bond with the children.

On June 2, 2009, the court entered its order terminating the parents' parental rights. The court found the father's rights to all three children should be terminated pursuant to Iowa Code section 232.116(1)(b), (e), and (f) (2009). The father's parental rights to K.L. were also terminated pursuant to section 232.116(1)(f), and with respect to R.L. and W.L., his rights were also terminated

pursuant to section 232.116(1)(h). The court found the mother's parental rights to all three children should be terminated pursuant to section 232.116(l). The court found termination was in the best interests of the children and there were no compelling reasons to maintain the parent/child relationships.

The mother and father appeal separately.

## ***II. Scope and Standards of Review.***

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). Although we give weight to the juvenile court's findings of fact, we are not bound by them. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). The grounds for termination must be supported by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Evidence is clear and convincing when it leaves no serious or substantial doubt about the correctness of the conclusion drawn from it. *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). Our primary concern in termination cases is the best interests of the child. *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007).

## ***III. Discussion.***

On appeal, both parents argue the State failed to establish by clear and convincing evidence grounds for termination. Additionally, the mother contends the court erred in determining termination was in the children's best interests. We address each argument in turn.

### ***A. Grounds for Termination.***

When the juvenile court terminates parental rights on more than one statutory ground, we only need to find grounds to terminate under one of the sections cited by the court in order to affirm the court's ruling. *In re S.R.*, 600

N.W.2d 63, 64 (Iowa Ct. App. 1999). In this case, we choose to focus our attention on section 232.116(1)(f) as the basis for termination, as both parents' parental rights were terminated on this ground. Section 232.116(1)(f) permits termination of parental rights if:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

Both parents contend the State failed to prove by clear and convincing evidence they are chronic substance abusers and present a danger to themselves or others. We disagree. Both parents admitted a twenty-year history of drug use. The mother admitted she started smoking marijuana at the age of sixteen and had moved up to methamphetamine use in her twenties and then crack cocaine in her thirties. She testified she used every couple of days for several years. She testified she had been in a treatment program prior to the initiation of this case. After testing positive for methamphetamine and cocaine at the beginning of this case, she maintained her sobriety for about a year and then relapsed, using marijuana and then methamphetamine months later. The father testified he began using alcohol and marijuana when he was about seventeen or eighteen, and moved up to methamphetamine use in his early thirties, and then cocaine a few years ago. He testified he had been in several treatment programs prior to the initiation of this case and relapsed during his initial

treatment in this case. We find the State presented clear and convincing evidence the parents are severe, chronic substance abusers. Moreover, parents who have severe, chronic substance abuse problems clearly present a danger to their children. See *State v. Petithory*, 702 N.W.2d 854, 858 (Iowa 2005); *In re J.K.*, 495 N.W.2d 108, 113 (Iowa 1993). Although it appears the parents have made some recent progress while participating in treatment, the mother had only been sober since February 2009, and the father had only been sober since approximately March 2009. Neither parent has been successful at maintaining sobriety outside a highly structured environment. At the time of the termination hearing, the case had been ongoing for approximately nineteen months, and the testimony at trial indicated both parents would need more treatment and aftercare services. “The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.” *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). We find clear and convincing evidence supports the juvenile courts decision to terminate the parents’ parental rights under section 232.116(1)(f).

***B. Best Interests.***

Additionally, the mother contends termination was not in the children’s best interests. As stated above, our primary concern in termination cases is the best interests of the children. *A.S.*, 743 N.W.2d at 867. The children’s safety and the need for a permanent home are now the primary concerns when determining the children’s best interests. *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially). Those best interests are to be determined by looking at the children’s long-range as well as immediate interests. *In re C.K.*,

558 N.W.2d 170, 172 (Iowa 1997). We are to consider what the future likely holds for the children if the children are returned to their parents. *In re J.K.*, 495 N.W.2d 108, 110 (Iowa 1993). Insight for that determination is to be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493-94 (Iowa 1990); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). In considering the impact of a drug addiction, we must consider the treatment history of the parent to gauge the likelihood the parent will be in a position to parent the child in the foreseeable future. *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998).

From our de novo review of the record, we agree with the juvenile court's thorough and well-reasoned ruling concluding the evidence was clear and convincing that termination of parental rights was in the children's best interests. Although the mother clearly loves the children and they share a close bond, the evidence in this record unfortunately does not establish that additional time would yield any different result. On the eve of gaining unsupervised visitation with the children, she again used methamphetamine in February 2009, approximately a year and a half after this case was initiated. Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting. *Id.*

While we recognize and commend the recent progress the mother has made in attempting to address her long-standing issues with substance abuse, such efforts are simply too little, too late, and it is far too early to have any

confidence that the mother will be able to maintain sobriety and her commitment to change. See *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (“A parent cannot wait until the eve of termination, after the statutory time periods for reunification have passed, to begin to express an interest in parenting.”). We are not unsympathetic to the mother’s struggle to maintain sobriety, yet the interests in permanency for the children must prevail over the mother’s long and uncertain battle with drugs. *N.F.*, 579 N.W.2d at 341. Although the mother loves her children and they love her, we find that the bond between the mother and her children is not enough to forestall termination. See *id.* Iowa Code section 232.116(1)(1)(3) provides that parental rights may be terminated when a child is not able to be “returned to the custody of the parent within a reasonable period of time considering the child’s age and need for a permanent home.”

This case had been ongoing for approximately nineteen months at the time of the termination hearing. The testimony at trial indicated both parents would need more treatment and aftercare services and that the children could not be immediately returned to the parents’ care. The evidence at trial established that these children are in need of permanency, and they should not have to wait any longer. See *A.C.*, 415 N.W.2d at 613 (“[P]atience with parents can soon translate into intolerable hardship for their children.”). “Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable.” *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). “At some point, the rights and needs of the child rise above the rights and needs of the parents.” *In re J.L.W.*, 570 N.W.2d 778, 781

(Iowa Ct. App. 1997). After carefully considering the mother's argument, we conclude termination is in the children's best interests.

***IV. Conclusion.***

Because we find clear and convincing evidence supporting termination of both parents' parental rights and termination is in the children's best interests, we affirm the juvenile court's decision terminating both parents' parental rights.

**AFFIRMED ON BOTH APPEALS.**

Eisenhauer, J., concurs; Sackett, C.J., concurs in part and dissents in part.

**SACKETT, C.J.** (concurring in part and dissenting in part)

I concur in part and dissent in part. I dissent from the majority's decision to terminate the mother's parental rights as I do not find it to be in these children's interests to terminate her rights. Consequently, I would reverse the decision to do so. I believe that the majority has correctly determined that the father's parental rights should be terminated.<sup>1</sup>

I recognize, as the majority has aptly pointed out, that these parents struggle with substance abuse issues. The mother has made great efforts to stay sober. True, her path to sobriety has not been smooth and she has, at times, failed. Yet, to her credit, she has not let her failure keep her from trying again.

Most importantly, she has a strong bond with her children and she is not an inappropriate parent. Witnesses testified that the children have a strong bond with her. A parent education coordinator that has been providing services to the mother and children stated that the children are very attached to the mother and comfortable with her. The coordinator stated the mother has strong interaction with the children and she has seen no "red flags" indicating the mother would be an inappropriate parent. A social worker with the Department of Human Services testified regarding the children,

They're loving. There are no major behavior difficulties. They're bonded to each other. Even when things have not always been good for them, [their mother's] always been there, and she's always been supportive of them, so they've had a – a nurturing caretaker, and they've received that affection that they should have.

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<sup>1</sup> However, were the mother's parental rights not being terminated, I would not terminate the father's rights because I believe he should not, under those circumstances, be relieved of the responsibility to support his children.



After acknowledging that the mother has been the most consistent caretaker in their lives, the social worker was asked, "What is the importance of having a consistent, nurturing caretaker in their life?" The social worker responded,

I think that it's probably what has kept these kids afloat throughout all the changes that they've had so far. It - - it's really hard for children to bond with new people if they haven't formed those appropriate bonds with the people that are taking care of them until that point.

The social worker had difficulty recommending termination because, in addition to the fact that the mother was doing better than she had through most of the case, the worker was concerned about the children's close attachment to their mother, their relationship with her, and the impact severing that relationship would have on the children. She admitted she had wavered on the recommendation for termination.

The parenting education coordinator also noted the mother has been receptive to all of the parenting education instruction, following through with the coordinator's recommendations, and seeking the coordinator's advice when she has questions.

The mother has also established a home for the children and gained employment. She is ready to receive them. I recognize that she will have a substance abuse problem the rest of her life; but, importantly she has accepted responsibility for her actions. She has maintained sobriety since the beginning of this case with two brief relapses. She was sober for the first thirteen months after the case was opened. At trial she had been sober for nearly ninety days. The substance abuse counselor noted that "[R]elapse is typical." He stated that

the mother's failures were more "lapses" than "relapses." He described a lapse as a short-term period of resuming drug use where the substance abuser is able to "get back up fairly quickly and get on track." The substance abuse counselor from MECCA found the mother to be not only compliant, but performing well in the program. The mother has also been proactive in her treatment. At one point, her therapist recommended she see a psychologist for treatment for ADHD and depression. When the mother discovered it would take a while to get into the psychologist the therapist recommended, she took it upon herself to contact a psychologist she had previously seen to receive prompt treatment. The mother has compiled a support network including her twenty-year-old son who has not had substance abuse issues, an aunt, a cousin, and her current substance abuse counselor.

This loving mother is focused on keeping her children in her life. There is no evidence that the State can provide the children with more. They have been disrupted by repeated moves between numerous foster homes. They are not now in a preadoptive home. They need to be returned to the care of their mother with whom they are bonded.