

IN THE COURT OF APPEALS OF IOWA

No. 1-563 / 11-0573
Filed August 24, 2011

**IN THE INTEREST OF T.D., J.D., and N.D.,
Minor Children,**

S.D., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Rachael E. Seymour,
District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Jesse A. Macro, Jr. of Gaudineer, Comito & George, L.L.P., West Des
Moines, for appellant.

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

Kimberly Ayotte of the Youth Law Center, Des Moines, attorney and
guardian ad litem for minor children.

Considered by Eisenhauer, P.J., and Doyle and Mullins, JJ.

MULLINS, J.

A mother appeals the juvenile court order terminating her parental rights to her three children, N.D. (born 2005), J.D. (born 2009), and T.D. (born 2010).¹ The mother argues the State failed to prove the statutory grounds by clear and convincing evidence, and termination was not in the children's best interests. Upon our review, we affirm.

I. Background Facts and Proceedings.

In February 2009, the Iowa Department of Human Services (DHS) initiated a child protective assessment after J.D. tested positive for marijuana at birth. During the assessment, the mother (then age nineteen) stated that she last used marijuana when she was approximately three months pregnant, but denied any more recent usage. When informed that the test revealed the usage had to be more recent, the mother continued to deny any recent usage. DHS determined the assessment was founded for child abuse, and began providing voluntary services including family safety, risk, and permanency services as well as drug screens.

In mid-June 2009, the mother tested positive for marijuana and cocaine. The mother also tested positive for marijuana three times in July and was minimally compliant with the voluntary services. Accordingly, on August 20, 2009, the State filed a petition alleging N.D. to be a child in need of assistance (CINA) under Iowa Code section 232.2(6)(c)(2), and for J.D. to be a CINA under

¹ The juvenile court also terminated the parental rights of the children's known and putative fathers. The fathers have not appealed.

sections 232.2(6)(c)(2) and (o) (2009). The children were adjudicated CINA on September 24, 2009. Custody remained with the mother under DHS supervision.

Over the next few months, the mother continued to struggle with substance abuse. Despite being pregnant, the mother tested positive for marijuana five times between late-August and late-October 2009. She had also entered outpatient treatment at Urban Dreams, but missed several individual and group therapy sessions. As a result, the mother was unsuccessfully discharged and Urban Dreams recommended inpatient treatment. In addition, the mother was homeless after being evicted from her apartment, was unemployed, and remained resistive to services and uncooperative with DHS.

At the dispositional hearing held December 1, 2009, the children were removed from the mother's care and temporarily placed into the custody of the children's maternal grandmother. However, when the maternal grandmother tested positive for marijuana on the following day, the children were removed from her care and placed with DHS for family foster care. During the post-removal health screen, N.D. tested positive for cocaine exposure believed to be due to the maternal grandmother's home.

On January 12, 2010, the mother moved into the House of Mercy for inpatient substance abuse treatment, individual therapy, and parenting assistance. Although the mother began to provide her first negative drug tests, she struggled with the structure of the program, and was reported to have several verbal altercations with staff and peers. On February 25, 2010, the

mother was asked to leave House of Mercy due to her overall noncompliance with the program and its rules.

The mother gave birth to T.D. in early-March 2010. The day after T.D.'s birth, the mother consented to temporary removal. The State filed a petition alleging T.D. to be a CINA pursuant to Iowa Code sections 232.2(6)(c)(2) and (n) on March 10. Removal was confirmed at an uncontested hearing on March 16, and T.D. was placed with his siblings in family foster care.

On March 23, 2010, a review hearing was held. At this time, the mother was providing clean drug screens, but still had not successfully completed a drug treatment program. There were also concerns that the mother continued to lack stable housing or employment. Therefore, T.D. was adjudicated a CINA and N.D. and J.D. were confirmed to be CINA. The children remained in the care of DHS for family foster care, and the mother continued to receive services and supervised visitation.

On May 6, 2010, the mother was admitted to the Intensive Outpatient Program at Mecca. However, the mother only attended ten of sixteen group sessions and one of five individual sessions. Due to her sporadic attendance, the mother was unsuccessfully discharged on June 21. On July 28, Mecca allowed the mother to reenroll in the outpatient program. At this time, Mecca determined the mother only needed to undergo two-weeks of group sessions and four individual sessions for a successful discharge. The mother completed the group portion of the program, but not the individual sessions.

The State filed a petition to terminate the mother's parental rights pursuant to Iowa Code sections 232.116(1)(d), (e), (f), (h), and (l) on July 23, 2010. The petition came to a hearing on September 14, 2010.

At the hearing, the mother admitted that she still had one individual treatment session left at Mecca. The mother testified that she only used marijuana "a few times" or "[m]aybe one or two" times when she was eighteen. She further stated that it wasn't until she "started with DHS, [that she] started picking up the habit heavily [or] smoking maybe three or four times a day." The mother also testified that she has been evicted three times since DHS initiated services, and has lived in at least six different residences in the previous nineteen months. She also admitted that her current residence was not suitable for the children due to broken glass on the sliding door to her apartment balcony, and that she was looking for a new apartment.

On March 29, 2011, the juvenile court filed an order terminating the mother's parental rights under sections 232.116(1)(d), (e), (f), (h), and (l). The juvenile court determined:

The Court finds the Department of Human Services attempted to engage Mother in services to address her substance abuse, lack of stability, relationship, and parenting issues. Not only has Mother failed to follow through with these necessary services, she does not even recognize the need for many of the services. She showed lack of insight to her own problems and showed no insight on how those problems affect her children. Mother took no initiative to address the problems that brought her before the Court.

The mother appeals.

II. Standard of Review.

We review termination of parental rights proceedings de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We give weight to the juvenile court's factual findings, especially when assessing the credibility of witnesses, but are not bound by them. *Id.* The State must prove the grounds for termination by clear and convincing evidence. *Id.* "Clear and convincing evidence" means there are no serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

III. Analysis.

A. Statutory Grounds. The mother asserts the State failed to prove the statutory grounds for termination by clear and convincing evidence. When the juvenile court terminates parental rights on more than one statutory ground, we need only find termination appropriate under one of the grounds to affirm. *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010); *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). We find termination to be appropriate under sections 232.116(1)(f) and (h).

Under both sections 232.116(1)(f) and (h), the mother does not dispute the children meet the requisite age requirements, that the children have been adjudicated CINA, and that the children have been removed from her physical custody for the requisite amount of time without any home trial placements. See Iowa Code §§ 232.116(1)(f)(1)-(3); 232.116(1)(h)(1)-(3). Rather, the mother only challenges the common fourth element asserting the State failed to prove by clear and convincing evidence that the children could not presently be returned to

her care. See *id.* §§ 232.116(1)(f)(4); 232.116(1)(h)(4). We believe the State met its burden.

The children cannot be returned to the mother's care due to continued concerns regarding substance abuse. At the time of the termination hearing, the mother had been receiving services for over a year, but still had not successfully completed a substance abuse treatment program. Further, her testimony reveals a continued lack of understanding and minimization of her substance abuse issues. See *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998) ("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."). In addition, the mother admitted that her current residence was not suitable for the children and that she needed to find new housing before the children could be returned to her care. Accordingly, we find clear and convincing evidence exists that the children cannot presently be returned to the mother's care.

B. Best Interests of the Children. The mother also challenges whether termination is in the children's best interests. *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). In considering a child's best interests, we "give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing growth of the child, and to the physical, mental, and emotional condition and needs of the child." *Id.* (quoting Iowa Code § 232.116(2)).

As stated above, the mother is unable to provide her children with a safe home since she has not adequately addressed her substance abuse issues. In

addition, the mother continues to have significant issues with the stability of her housing and employment. The children are healthy, adoptable, and placed together in the same foster home. The children should not be forced to endlessly await their mother's maturity. *In re D.W.*, 385 N.W.2d 570, 578 (Iowa 1986). "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). Based upon the statutory factors, we find termination is in the children's best interests.

For the foregoing reasons, we affirm the order of the juvenile court terminating the mother's parental rights to N.D., J.D., and T.D.

AFFIRMED.