

**IN THE COURT OF APPEALS OF IOWA**

No. 2-1142 / 12-1849  
Filed January 9, 2013

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

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

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

A mother appeals the juvenile court order terminating her parental rights.

**AFFIRMED.**

Yvonne C. Naanep, Des Moines, for appellant mother.

Christine Bisignano, Windsor Heights, for father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, John Sarcone, County Attorney, and Stephanie Brown,  
Assistant County Attorney, for appellee.

John Jellineck of Public Defender's Office, Des Moines, attorney and  
guardian ad litem for minor children.

Considered by Potterfield, P.J., and Danilson and Tabor, JJ.

**DANILSON, J.**

A mother appeals the juvenile court order terminating her parental rights to her two children. The juvenile court terminated her parental rights under Iowa Code section 232.116(1)(d) and (h) (2011). The father's rights were also terminated, but he does not appeal. The mother claims there is insufficient evidence in the record to support termination of her parental rights under either of these provisions. She also claims termination of her parental rights is not in the children's best interests. Upon our de novo review, we affirm the decision of the juvenile court.

**I. Background Facts & Proceedings**

Cory and Patrick are the parents of two minor children, T.K. (born in 2010) and F.K. (born in 2011). The oldest child was removed from Cory's care a few days after his birth in September 2010 due to unresolved mental health and aggression issues that left her unable to safely parent the child. The parents participated in services, and the child was returned about two weeks later. T.K. was adjudicated to be in need of assistance pursuant to section 232.2(6)(c)(2) and (n) (2009).

The parents subsequently separated, and their relationship became acrimonious. Service providers reported that Cory seemed overwhelmed and was unable to balance working and taking care of the child. On January 6, 2011, the child was placed in Patrick's care. The disposition order continued the child in the care of Patrick, citing Cory's homelessness, improper supervision of the child, and her mental health problems. A review order from June 2011 noted the

mother had been rude and verbally abusive to professionals and Patrick. It additionally found she was uncooperative and resistant to therapy.

In June 2011, Patrick permitted Cory to move in with him and T.K. The parents resided together for two weeks during a time when both were aware that Cory was not permitted unsupervised contact. During this period, Cory cared for T.K. when Patrick was at work or otherwise absent from the home. As a result, on June 30, 2011, T.K. was removed from Patrick's care. The child was placed in foster care. The parents were found to be in contempt for violating a court order restricting contact between Cory and T.K. In a permanency order dated August 3, 2011, the juvenile court gave Patrick six months to work on reunification pursuant to section 232.104(2)(b) (2011). The court determined it did not make sense to bifurcate matters, and so Cory was also given an additional six months. T.K. was returned to Patrick's care on October 6, 2011.

F.K. was born to Cory and Patrick in October 2011. F.K. was removed from Cory's care a few days after his birth and placed in foster care. The child was adjudicated to be in need of assistance under sections 232.2(6)(b), (c)(2), and (n). On January 6, 2012, T.K. was removed from Patrick's care and placed in the same foster home with F.K. The court noted Cory was more stable than in the past, but she needed to focus on her children and not her romantic relationships. The juvenile court granted the mother an additional three months to work on reunification. She, however, did not make further progress in her ability to safely care for the children.

The State filed a petition seeking to terminate the parents' rights on August 10, 2012. As noted above, the juvenile court terminated Patrick's and Cory's parental rights under section 232.116(1)(d) and (h). The court found, "she is simply unable to meet their needs without further adjudicatory harm coming to them." During visitation there continued to be problems with her supervision of the children based on her inability to focus on more than one child at a time. The court concluded termination of Cory's parental rights was in the children's best interests. Cory appeals.

## **II. Standard of Review**

The scope of review in termination cases is *de novo*. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). Clear and convincing evidence is needed to establish the grounds for termination. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Where there is clear and convincing evidence there is no serious or substantial doubt about the correctness of the conclusion drawn from the evidence. *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). "The paramount concern in termination proceedings is the best interest of the child." *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011).

## **III. Sufficiency of the Evidence**

Cory contends there is insufficient evidence to support termination of her parental rights under either section 232.116(1)(d) or (h). "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." *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). In our review we

rely on section 232.116(1)(h), but believe there is sufficient evidence in the record to affirm based on section 232.116(1)(d) as well.

Under section 232.116(1)(h), a parent's rights may be terminated if the juvenile court finds all of the following:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

T.K. was born in 2010, and F.K. was born in 2011, so both are under the age of three. See Iowa Code § 232.116(1)(h)(1). The children were adjudicated to be in need of assistance, as provided in section 232.96. See *id.* § 232.116(1)(h)(2). At the time of the termination hearing on September 25, 2012, T.K. had been out of Cory's care since January 6, 2011, more than twenty months, and out of the care of both parents since January 6, 2012, more than eight months. F.K. had been out of the care of both parents since October 27, 2011, about eleven months. See *id.* § 232.116(1)(h)(3).

Cory claims the children could be returned to her care because she had been in her residence for over a year, and she had food in the house and clothing for the children. She also asserts she had semi-supervised visitation. She claims she would be able to keep the children safe.

The juvenile court found the children could not be returned to Cory's care without further adjudicatory harm coming to them. The court noted Cory was

“only at the very beginning stages of developing insight into her issues and she is far from demonstrating changes that would enable her to safely care for small children.” The court also noted Cory stated she would not continue with therapy if the children were returned to her care. The court found that during an overnight visit, a child turned on the stove and got into paint while Cory was sleeping, and there continued to be concerns about her ability to supervise the children. Cory was also unable to display the ability to focus on more than one child at a time, and thus was unable to meet their safety needs. This lack of ability to supervise more than one child became most evident when Cory lost track of a child at a mall and the mall’s security personnel found the child. The juvenile court also noted Cory’s “long term FSRP worker regrettably recommends termination of parental rights,” as he could not envision returning the children to her unless “we all raise them with her.” We are also troubled by the fact Cory has numerous diagnoses<sup>1</sup> and her relationship with her long-term therapist deteriorated to the point the therapist is no longer willing to work with her.<sup>2</sup>

We conclude there is clear and convincing evidence the children cannot be returned to Cory’s custody at the present time. We agree with the juvenile court’s conclusion that the children would likely be subjected to adjudicatory harm, as provided in section 232.102, if they were returned to her care. *See id.*

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<sup>1</sup> In a psychosocial evaluation for this case Cory was diagnosed with generalized anxiety disorder, bipolar disorder, and mixed personality disorder. She has past diagnoses of post-traumatic stress disorder and depression.

<sup>2</sup> We acknowledge this circumstance occurred before F.K.’s birth. However, subsequent therapists have been unable to assist Cory in showing consistent improvement.

§ 232.116(1)(h)(4). We determine Cory's parental rights were properly terminated under section 232.116(1)(h).

#### **IV. Best Interests**

Cory asserts termination of her parental rights is not in the children's best interests. The mother does not raise a best-interests argument under section 232.116(2). See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010) (noting that if a parent does not dispute this step it does not have to be discussed). On appeal, she claims the court should have decided not to terminate her parental rights based on the closeness of the parent-child relationship. See Iowa Code § 232.116(3)(c).

The juvenile court addressed this issue, stating, "While the children love Cory and Cory loves the children, she is simply unable to meet their needs without further adjudicatory harm coming to them." The court also found, "Even though there is a bond with Cory, the bond with the foster parents is described as stronger, and it is important for the children to know where they are going to grow up."

We agree with the juvenile court's conclusions. Cory has not shown termination of her parental rights would be detrimental to the children based on the closeness of the parent-child relationship. See *id.* We conclude the exception in this section should not prevent termination of Cory's parental rights. See *P.L.*, 778 N.W.2d at 41 (noting when the evidence does not show a closeness of the parent-child relationship, the exception will not prevent termination).

We affirm the decision of the juvenile court terminating Cory's parental rights to T.K. and F.K.

**AFFIRMED.**