

IN THE COURT OF APPEALS OF IOWA

No. 2-1146 / 12-2070
Filed January 9, 2013

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

A.J., Mother,
Appellant,

J.F.-O., Father,
Appellant.

Appeal from the Iowa District Court for Story County, Stephen A. Owen,
Associate Juvenile Judge.

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

Nathan Hostetter, Ames, for appellant mother.

Duane Huffer of Huffer Law, P.C., Story City, for appellant father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Stephen Holmes, County Attorney, and Tiffany Meredith,
Assistant County Attorney, for appellee State.

Shannon Leighty of Public Defender's Office, Nevada, for minor children.

Considered by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ.

EISENHAUER, C.J.

A mother and father appeal separately from the order terminating their parental rights. The mother contends one statutory ground is not supported by clear and convincing evidence and termination would be harmful because of the closeness of the parent-child bond. The father contends the court erred in admitting hearsay and considering his criminal charges, not convictions. He also contends termination is not in the children's best interests and there is a strong parent-child bond. We affirm on both appeals.

The mother has five children, ranging in age from one-and-a-half to twelve years. The youngest three children are children of the father who has appealed. The family became involved with the Iowa Department of Human Services in 2009 when a child protective assessment resulted in a founded report of denial of critical care by the mother based on her use of marijuana while caring for her four children. The children were placed outside the home in August 2010 and adjudicated children in need of assistance in the fall of 2010. They were returned home in January 2011. The youngest child was born after the other children were returned home and was adjudicated a child in need of assistance in November 2011. The oldest child was removed again in June 2011 based on defiance toward the mother and aggression toward the siblings and has remained in foster care since that time. The four youngest children were removed in September 2011 and have remained in foster care since.

Services related to substance abuse and domestic violence were offered to the parents. The mother was inconsistent in addressing her substance abuse, testing positive for methamphetamine use in late 2011 and missing more than

twenty drug screens in 2012. A test shortly before the termination hearing was negative for drug use. She was jailed during April and May 2012 on theft charges. The father never cooperated with substance abuse treatment and never participated in any drug screens. He was convicted of possession of a controlled substance in May 2012. His criminal history includes convictions for drug possession, domestic assaults of the mother, sexual abuse of the mother, and violations of no-contact orders.

In August 2012 the State petitioned to terminate the mother's and father's parental rights to all five children under Iowa Code section 232.116(1)(a), (b), (f),¹ and (j) (2011). At the time of the termination hearing in October, the father was in jail on multiple felony charges. The mother did not have stable employment. She was living with her parents, but had applied for housing suitable for only three children. The court found clear and convincing evidence the children could not be returned to the custody of either parent at that time. It further found neither parent had attained any of the reasonable reunification goals, including "obtaining and maintaining a safe and stable home, providing income stability, [removing] domestic violence from the children's lives, and overcoming substance abuse issues." The court found the children had a weak emotional bond with the mother, but they were "not significantly or materially bonded to their parents," but were "significantly bonded to their foster parents." Concerning the children's best interests, the court found the children's safety was best served

¹ Although the petition concerning the eighteen-month-old child cites section 232.116(1)(f), which applies to a child aged four or older, the facts alleged in the petition correctly state the child was "three years of age or younger" as required to support termination under section 232.116(1)(h). The court correctly cited section 232.116(1)(h) in the termination order.

by termination because it would “free the children from abuse and the dangers of associating with drug addicted and dealing parents.” It further found the long-term nurturing and growth of the children was best in their preadoptive homes. The court terminated both parents’ parental rights to the older children under section 232.116(1)(f) and the youngest child under section 232.116(1)(h). It also terminated the mother’s parental rights under section 232.116(1)(l).

We review terminations of parental rights de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We examine both the facts and law, and adjudicate anew those issues properly preserved and presented. *In re L.G.*, 532 N.W.2d 478, 480-81 (Iowa Ct. App. 1995). We accord considerable weight to the findings of the juvenile court, especially concerning the credibility of witnesses, but are not bound by them. *Id.* at 481. Our main concern lies with the children’s welfare and best interests. *Id.*

Mother. The mother contends there was not clear and convincing evidence to terminate her parental rights under section 232.116(1)(l) because she does not have a chronic substance abuse problem and there was evidence the children could be returned to her care within a reasonable time. She does not challenge the other statutory grounds cited by the court—section 232.116(1)(f) and (h). When asked if she was ready to have the children returned to her she responded, “I don’t think right now I can take all of them on.” When the juvenile court terminates parental rights on more than one statutory ground, we may affirm the juvenile court’s order on any ground we find supported by the record. *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010). The first three elements of section 232.116(1)(f) and (h) are not in dispute. There is clear and

convincing evidence supporting the fourth element—the children could not be returned to the mother’s custody at the time of the termination hearing. We affirm the termination of the mother’s parental rights on these statutory grounds. We do not address her challenge to section 232.116(1)(l).

The mother also contends termination would be harmful to the children because of the closeness of the parent-child relationship. See Iowa Code § 232.116(3)(c). Her bond with the two oldest children is an unhealthy bond. Her youngest child confuses her with the foster mother. This discretionary factor does not serve to preclude an otherwise appropriate termination of the mother’s parental rights. See *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010).

Father. The father contends the court erred in admitting hearsay evidence concerning his criminal history and in using criminal charges, not convictions, to prove he is unfit to have custody of the children. When the father’s attorney raised hearsay objections, the court overruled them, stating it went to the weight of the evidence, not its admissibility. We have not considered any evidence concerning criminal charges unless they resulted in convictions.

The father has not participated in services or made any significant progress in addressing his substance abuse. He never progressed beyond supervised visits and exercised “a measly three to four visits with the children.” The older children reported abuse at his hands. The father’s criminal record shows convictions of domestic abuse, sexual abuse, and violation of no-contact orders. At the time of the termination hearing, he was in jail. Clear and convincing evidence support a finding the children could not be returned to his care at that time. We affirm the termination of his parental rights under section

232.116(1)(f) as to his older two children, and section 232.116(1)(h) as to the youngest child.

The father also contends the court “did not fully analyze the best interest of the children in relation to Iowa Code § 232.116(2) & (3) (2011) including whether the children may be returned to the home of the parents and the parent-child bond.” He argues splitting the children up in different homes “is a concern.” He further argues the “bond between a father and his children is one of the important bonds needed for the child to grow up correctly and without it the child will grow up wondering what happened to the father.”

We find the children’s immediate and long-term best interests are served by termination of the father’s parental rights so the children can be adopted into families committed to maintaining the relationship between the children. They are in safe, secure, and stable homes that meet their needs. See Iowa Code § 232.116(2). We do not find section 232.116(3)(c) applies to prevent termination of the father’s parental rights.

AFFIRMED ON BOTH APPEALS.