

IN THE COURT OF APPEALS OF IOWA

No. 3-1025 / 13-1344
Filed November 6, 2013

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

**J.Y., Mother,
Appellant.**

Appeal from the Iowa District Court for Scott County, Christine Dalton,
District Associate Judge.

A mother appeals the termination of her parental rights. **AFFIRMED.**

Rebecca G. Ruggero, Bettendorf, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Michael J. Walton, County Attorney, and Julie A. Walton,
Assistant County Attorney, for appellee State.

Stephen Newport of Newport & Newport, P.L.C., Davenport, attorney and
guardian ad litem for minor children.

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

POTTERFIELD, J.

A mother appeals the termination of her parental rights. Because grounds for termination have been proved by clear and convincing evidence, and termination will best provide for the children's physical, mental, and emotional needs and their long-term nurturing and growth, we affirm.

I. Standard of review.

Our review of termination of parental rights proceedings is *de novo*. We are not bound by the juvenile court's findings of fact, but we do give them weight, especially in assessing the credibility of witnesses. We will uphold an order terminating parental rights if there is clear and convincing evidence of grounds for termination under Iowa Code section 232.116. Evidence is "clear and convincing" when there are no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence."

In re D.W., 791 N.W.2d 703, 706 (Iowa 2010) (citations omitted).

II. Facts.

The family came to the attention of authorities in March 2010 upon a finding that J.A., born in December 2005, had been physically abused by the mother. J.A. was placed with his paternal grandparents and the Department of Human Services (DHS) implemented services.

Na.R. was born in June 2010 testing positive for THC. When the child was three months old, there were allegations that the mother threw Na.R. on a bed face down, which resulted in the mother being charged with child endangerment.

Nath.R. was born in April 2011 testing positive for cocaine; the mother had tested positive for drugs upon her arrival at the hospital. Na.R. was subsequently tested and results were positive for cocaine, benzoyllecgonine, and norcocaine.

Nath.R. and Na.R. were removed from the mother's custody and placed with the maternal grandmother. All three children were adjudicated children in need of assistance (CINA) in July 2011.

The mother entered a residential treatment program in July 2011, and the children were placed in her care on a trial basis. She completed the program in January 2012. The mother entered Family Wellness Court (FWC) in February 2012. A condition of FWC was that the mother "not possess, use, or consume alcohol or illegal substances or misuse prescription medications."

The mother relapsed on cocaine and alcohol in March 2012. It was learned that the mother was living with a known drug user and dealer, often exposing the younger two children to that environment, while leaving J.A. with the mother's intellectually-disabled aunt. All three children were again removed from the mother's care. At this time the children were placed with a maternal aunt. Hair stat screens of the mother and Na.R. in April 2012 were positive for cocaine and benzoylecgonine.

The children were moved to family foster care on May 24, 2012, when the aunt could no longer provide care. The children remain together in foster care, and the mother's visits remain fully-supervised.

In addition to substance abuse issues, the mother has been diagnosed with mental health concerns¹ for which she is prescribed medications. Domestic

¹ She has been diagnosed on the lower end of the spectrum for bi-polar disorder, depression, anxiety, and obsessive compulsive disorder.

abuse has been a part of her personal relationships: all three fathers of the children were abusive.²

The mother has received numerous services for three years aimed at addressing parenting, substance abuse, and mental health concerns. For a period of time, the mother displayed significant progress in maintaining sobriety, participating in mental health treatment, and maintaining employment—particularly in the structured settings of incarceration and residential treatment.

In March 2013, following a dispositional review and permanency hearing, the juvenile court wrote, in part:

It is clear from the exhibits and testimony that [the mother] is not ready to manage all three children full time now. It is equally clear from the exhibits and testimony that [the mother] has greatly improved over the past year. She has nearly one year of demonstrated sobriety. She is stable and employed. Her attitude towards others is far less angry and confrontational. The question for the Court is can [the mother] change her lifestyle and parenting in time for her children?

Pursuant to [Iowa Code] section 232.104(2)(b) this court finds that continuing the placement of the children for an additional three months would allow time for the mother to demonstrate her ability to parent and provide for her children. Assuming continued improvement and compliance by the mother, a progressive visitation schedule aimed at return of the children shortly after the close of the school year is in the best interest of these children. . . .

. . . .

A definite barrier remains lifestyle choices. [The mother] still associates with negative people. [The mother] should do an inventory of all her friends and family and honestly ask herself whether or not his person is good for her kids. If the answer is no then they should be avoided. If she is not sure, [the mother] needs to process this with her FWC team, parent partner, or other professionals working with her.

The parents are specifically advised than any party may file a termination of Parental Rights Petition at any time.

² The rights of all fathers were terminated as well. None appeal.

In an April 9, 2013 case plan review report, it was noted that the mother acknowledged at a family team meeting that she had helped her step-father sell marijuana by sending messages on her cell phone. By mid-May 2013, the mother had quit treatment, quit her job, and was not attending FWC or parenting education. She would not meet with her social worker, Nicki Enderle, and was involved with Herman B., a man who has substance abuse issues, an extensive criminal background, and who assaulted her on May 18, resulting in a charge of domestic abuse assault.

A contested permanency review hearing was held on May 29. On June 11, 2013, the juvenile court ordered the children to remain in foster care and the permanency goal modified to termination of parental rights and adoption. The court explained:

The court entered a Permanency Order on March 11, 2013, that allowed additional time for reunification. At that time [the mother] was doing well with sobriety and improving her parenting skills. She reported lifestyle changes regarding her associates and friends, job and home stability, and safe relationships. The Department was skeptical, but continued with diligent reunification services. Unfortunately, since the permanency hearing, [the mother] sent a text asking if anyone wanted to buy marijuana. (Pet Ex #5) It would be a felony offense if she were prosecuted. While there is no evidence that [the mother] herself is using drugs, there is clear and convincing evidence that she still lives the lifestyle. She claimed that she ended her relationship with Herman [B.], a known drug user. However, facebook activity suggest[s] a current relationship as do sighting[s] of the two together. [The mother] recently quit her job, leaving her with no income or ability to pay her rent. Her solicitation to sell marijuana severely jeopardizes her children's safety if in her care, and her own sobriety. Her continued relationship with [Herman B.] also would jeopardize her personal safety and that of her children. [J.A.] is fearful of the men [the] mother associates with. He was traumatized by her personal choices. That has apparently not changed.

A permanency review and termination hearing was held on August 1, 2013. Enderle testified the mother was currently only “minimally engaged” in services, attending supervised visits with her children, but not participating in substance abuse treatment or parenting education, not attending AA meetings, and failing to attend scheduled mental health appointments. She had been discharged from FWC. Enderle testified the mother reported she may be pregnant by Herman B. Enderle expressed concern about the mother’s relationship with Herman B., noting, “All three of the fathers in this case have issues with violence. It’s been a pattern for the relationships that [the mother] gets in, and her children have been severely affected by that.”

The mother testified she was working and had a residence. She explained she had a bond with her younger two children and that her bond with J.A. had been getting stronger. She stated her drug of choice had been crack cocaine and that she had been able to stay away from crack even after learning about the shift to termination of parental rights by “[t]alking to my Parent Partner, my worker that transports me, and my CADS counselor.” She testified her issue with alcohol was not as serious as with crack. On cross-examination the mother acknowledged that she was no longer attending AA meetings or talking to her CADS counselor. She acknowledged her drinking alcohol was considered a relapse.

The mother stated she did not feel she could meet DHS’s expectations,

How I feel is like they wanted me to turn around and be this complete 360 person, and, like, soon, and like, you know, granted, I was changing things. I was doing things, but to rewrite 22 years over three months of time, I believe it takes a bit more than just telling me and expecting me to just do it, you know.

She further testified her recovery efforts “started dwindling” in May because it was “pointless.”

The juvenile court terminated the mother’s parental rights pursuant to Iowa Code section 232.116(1)(d) (2013) (child previously adjudicated CINA and circumstances remain despite services), (f) (as to J.A.—child four years or older who has previously been adjudicated CINA, has been out of parent’s custody for at least twelve consecutive months, and cannot be returned safely to the parent’s custody at present), (h) (as to Na.R. and Nath.R.—child three years or younger who has previously been adjudicated CINA, has been out of parent’s custody for at least six consecutive months, and cannot be returned safely to the parent’s custody at present), and (i) (child meets definition of CINA, abuse or neglect posed a significant risk to the life of the child or constituted imminent danger, and offer or receipt of services will not correct the conditions that led to the abuse or neglect within reasonable period of time).

The mother appeals.

III. Discussion.

The mother contends reasonable efforts at reunification were not made, and termination is not in the children’s best interest. We find no merit in her complaints.

A. Reasonable Efforts. The State must show reasonable efforts, codified in Iowa Code section 232.102(5) and (10), “as part of its ultimate proof that the child cannot be safely returned to the care of the parent.” *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). Here, the juvenile court found:

The Department provided reasonable efforts repeatedly throughout the history of the case to help [the mother] end her substance abuse, separate herself from violent men, improve her parenting skills, and provide a safe environment for her children. Intensive long term substance abuse treatment was provided through CADS, and FWC. Mental health services, parenting education, and general child safety education was provided to [the mother]. Visitation/interaction services, housing referrals, as well as other support services and referrals were offered. [The mother] participated in those services, but, in the end, was unable to internalize them in the time allowed. Had the services been internalized by [the mother], they would have resulted in return of the children.

The mother asserts the efforts made by DHS were illusory and, in fact, DHS sabotaged her progress by attempting to “catch mother doing something bad.” The record does not support her contention. DHS has the responsibility of not only assisting a parent, but also assuring the safety of the children in its custody. See *id.* (noting the concept of reasonable efforts includes “providing adequate protection for the child”).

Here, the mother had received services since 2010. She showed progress while in residential treatment in the latter half of 2011 and early 2012, but relapsed shortly after leaving that controlled environment. She showed another period of effort and progress, but shortly after the juvenile court allowed her additional time to seek reunification in March 2013, the mother displayed numerous indicators her sobriety was at risk: she was offering marijuana for sale on her cellphone; she was associating with people engaged in using and selling drugs; and she was again involved with a violent paramour. In these circumstances, the failure of DHS to increase visitation in the last months before termination is understandable.

We have repeatedly followed the principle that the statutory time line must be followed and children should not be forced to wait for their parent to grow up. We have also indicated that a good prediction of the future conduct of a parent is to look at the past conduct. Thus, 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. 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 re N.F., 579 N.W.2d 338, 341 (Iowa Ct. App. 1998); see also *In re J.A.D.-F.*, 776 N.W.2d 879, 884-85 (Iowa Ct. App. 2009).

B. Statutory best interests. Iowa Code section 232.116(3)(c) provides that the “court need not terminate the relationship between the parent and child” if “[t]here is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.” The mother argues the parent-child bond should preclude termination.³

Upon our de novo review, we conclude that termination and adoption will best further the “long-term nurturing and growth” of the children, and best provide for their physical, mental, and emotional needs. See Iowa Code § 232.116(2). The children have been with the same foster family since May 2013 and have done well in that environment. See *id.* § 232.116(2)(b). They have become integrated into the foster family and that family is willing and able to provide permanency. See *id.* And while there is evidence of a bond between mother and children, the evidence does not establish that bond is so close that

³ The State contends the mother has not preserved this issue for review. However, the mother did argue at the termination hearing that she had a bond with the children and thus termination was not in the children’s best interests. We will address the issue.

termination will be detrimental to the children. See *id.* § 232.116(3)(c). The younger two children have spent much of their lives out of the mother's care and custody, and the oldest child continues to distrust the mother's ability to protect him. We agree with the juvenile court that termination of the mother's parental rights "is the only reasonable means to establish permanency and safety for the children." We therefore affirm the termination of the mother's parental rights.

AFFIRMED.