

**IN THE COURT OF APPEALS OF IOWA**

No. 3-163 / 12-2255  
Filed March 13, 2013

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

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

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

A mother appeals the termination of her parental rights to eight children.

**AFFIRMED.**

Dawn M. Bowman of Bowman Law Office, Pleasantville, for appellant.

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

Jacob Mason of JL Mason Law, P.L.L.C., Ankeny, for father of T.G.

Donna Beary, Des Moines, for father of N.G.

Kimberly Ayotte of Youth Law Center, Des Moines, attorney and guardian  
ad litem for D.G., K.G., K.G., T.G., N.G., H.G., and J.G.

Jessica Millage of Millage Law Firm, Des Moines, guardian ad litem for  
T.G.

Kate Strickler, Des Moines, attorney for T.G.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

**MULLINS, J.**

A mother appeals the termination of her parental rights to eight children. She contends clear and convincing evidence does not support the grounds for termination, termination is not in the children's best interest, and the strength of the parent-child bond weighs against termination. We affirm.

**I. Background Facts & Proceedings**

The mother's parental rights to eight children are at issue in this appeal—T.G. (born 1999), T.G. (born 2004), N.G. (born 2005), K.G. (born 2006), K.G. (born 2007), H.G. (born 2009), D.G. (born 2010), and J.G. (born 2011). The fathers of the children provided virtually no support, financial or otherwise, to the mother in raising the eight children. The fathers do not appeal the termination of their parental rights.

The mother has a long history with the Department of Human Services (DHS). In 2001, DHS filed a confirmed child protective assessment against the mother for denial of critical care. The mother could not recall this incident at the subsequent termination proceedings. In 2002, the mother allowed two children under her care to wander around outside an apartment complex unsupervised for several hours. DHS investigated the incident and filed a confirmed child protective assessment against the mother for denial of critical care.

In 2004, DHS investigated reports the mother was intoxicated while providing care for the children and was involved in an incidence of domestic violence with the children present. During the course of the DHS investigation, law enforcement authorities contacted DHS after the mother was stabbed during

a separate altercation. At the time of the stabbing, the mother was pregnant, intoxicated, and reportedly holding one of her children. As a result DHS filed a founded child protective assessment against the mother for denial of critical care. After the incident T.G. and T.G. were temporarily removed from the mother's care and placed with the children's maternal grandmother. DHS later returned the children to the mother.

In 2010, DHS investigated reports that the mother left her oldest child—approximately ten years old at the time—with the responsibility of serving as the sole caretaker for the six younger children including an autistic child with special needs. DHS confirmed the reports and filed a founded child protective assessment against the mother for denial of critical care.

In March 2011, the mother left the children with a babysitter at neighboring apartment. After the mother left, the neighbor realized one of the seven children was missing.<sup>1</sup> The neighbor contacted the mother's apartment manager to search the mother's apartment for the missing child. The apartment manager found the eight-month-old child, D.G., in the mother's apartment unattended. The mother later admitted to forgetting about the child. As a result, DHS filed a founded child protective assessment against the mother for denial of critical care and failure to provide proper supervision.

In April 2011, the juvenile court granted the State's petition for removal and placed T.G., T.G., N.G., K.G., K.G., H.G., and D.G. with their maternal aunt. The mother consented to removal. In early May 2011, the court adjudicated the

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<sup>1</sup> The eighth, and youngest, child had not yet been born.

children as children in need of assistance pursuant to Iowa Code section 232.6(c)(2) and (n) (2011). At some point the juvenile court became aware the mother was pregnant with an eighth child, J.G.

In mid-May 2011, the mother ceased contact with DHS and other service providers. At the end of May 2011 the mother gave birth to J.G. In the interim the mother missed several visits with the other children and was not cooperative in notifying DHS about the birth or location of J.G. In June 2011, the mother stipulated to J.G.'s removal.

In July 2011, the juvenile court adjudicated J.G. as a child in need of assistance pursuant to section 232.6(c)(2) and (n). The mother did not contest adjudication. The juvenile court also held a dispositional hearing for the other seven children. The court confirmed the children as children in need of assistance. The court then ordered the seven children be removed from the maternal aunt's home and placed into foster care. The mother was not attending individual therapy and had not complied with the court's order to participate in adult services. Visits at that time were with all eight children. Providers noted the mother had difficulty supervising the children.

In September 2011, the mother moved for unsupervised visitation with all eight children. The juvenile court held a hearing on the mother's motion in November 2011. The juvenile court found DHS and other service providers had gone to great lengths to provide visitation and parenting skills development for the mother. Despite those efforts the juvenile court found the mother was not

able to properly supervise all eight children at the same time and denied the mother's request for unsupervised visitation.

In December 2011, the juvenile court held an uncontested review hearing. All parties agreed the mother would cooperate with and participate in services. The maternal aunt re-engaged in services, and DHS temporarily placed T.G. (born 1999) and D.G. in the maternal aunt's care. The mother agreed to exercise visitation with four children at a time during each visit.

DHS required the mother to confirm visits with the children by 5:00 p.m. the day before the visit. Despite the mother's confirmation, she was not consistently at home during the time of the scheduled visitations. The children who had been transported to the mother's apartment for visitation were visibly upset each time this occurred. DHS eventually required the mother to confirm visits two hours in advance. Despite confirming just two hours before the visit was to occur, the mother was not consistent in being available during the scheduled visitation. On one occasion, the service providers transported the children to the mother's apartment and could hear music playing within the home. When service providers attempted to contact the mother, no one answered the door. The children were upset about the missed visit.

In March 2012, the juvenile court held a contested permanency hearing. At some point the court became aware of a pending operating while intoxicated charge the mother received during the fall of 2011. The court found the mother needed to address substance abuse concerns. The court also found that additional time was not reasonably likely to result in reunification because of the

mother's failure to acknowledge her deficiencies and her unwillingness to accept services. DHS placed T.G. (born 1999) and D.G. back in family foster care.

At the time of the permanency hearing, the eight children were in two separate foster homes with four children in each home. The children continued in these homes throughout the remainder of the case. Each foster family intends to adopt the children pending the outcome of these proceedings.

After the permanency hearing the guardian ad-litem moved to bifurcate her role regarding T.G. (born 1999). The juvenile court granted the motion, and appointed a separate guardian ad-litem to represent T.G. (born 1999). The court also entered an order to appoint an attorney to represent T.G. (born 1999).

Throughout this case DHS workers and family safety, risk, and permanency (FSRP) service providers documented significant concerns about the mother's mental health and ability to provide proper supervision for eight young children. The mother was diagnosed with a learning disability at an early age. She receives Supplemental Security Income (SSI) based on that disability. She also receives Family Investment Program (FIP) assistance and Section 8 housing assistance.

In September 2012, the juvenile court held termination of parental rights proceedings. The mother, a DHS worker, and two FSRP service providers testified. The mother testified that she could properly supervise all eight children. The DHS worker and both FSRP services providers recommended terminating the mother's parental rights to all eight children. The State and both guardians ad litem urged the court to terminate the mother's parental rights. The attorney

for T.G. (born 1999) requested additional time to work toward reunification based on the strength of the parent-child relationship. The juvenile court terminated the mother's parental rights to all eight children, T.G., T.G., N.G., K.G., K.G., H.G., D.G., and J.G., under Iowa Code section 232.116(1)(d), (e), (f), and (h).

The mother now appeals the termination of her parental rights. Additional facts and circumstances will be developed as necessary below.

## **II. Standard of Review**

We review decisions to terminate parental rights de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). While we give deference to the juvenile court's factual findings, we are not bound by them. *Id.* Our primary concern is the best interests of the children. *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007).

## **III. Analysis**

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

The mother contends the State failed to present clear and convincing evidence of grounds for termination for each child under Iowa Code section 232.116(1)(d), (e), (f), and (h). We may affirm if clear and convincing evidence supports any one ground for termination. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010).

#### **1. Iowa Code section 232.116(1)(f)**

First, we will address the termination of the mother's parental rights to the five oldest children—T.G. (born 1999), T.G. (born 2004), N.G. (born 2005), K.G. (born 2006), K.G. (born 2007). To terminate parental rights under section 232.116(1)(f), the State must show the child is at least four years of age or older,

has been adjudicated in need of assistance, has been removed from the home for a requisite period of time, and the juvenile court could not return the child to the parent's custody pursuant to section 232.102. See Iowa Code § 232.116(1)(f) (setting forth the statutory requirements for termination). In this case, five children—T.G. (born 1999), T.G. (born 2004), N.G. (born 2005), K.G. (born 2006), K.G. (born 2007)—were four years of age or older at the time the juvenile court ordered termination. It is undisputed that each child was adjudicated as a child in need of assistance and each child was removed for the requisite period of time. See *id.* § 232.116(1)(f)(1)–(3).

At issue is whether the State presented clear and convincing evidence the children could not be returned to the mother's care pursuant to section 232.102. See *id.* § 232.116(1)(f)(4). To meet its burden, the State must show the children have suffered or are imminently likely to suffer an adjudicatory harm upon their return to the mother's care. See *id.* §§ 232.116(1)(f)(4), .102(5)(a)(2), .2(6)(c); *In re A.M.S.*, 419 N.W.2d 723, 725 (Iowa 1988).

DHS documented the mother's struggles to provide proper supervision for her children over the last decade. Even with the assistance of DHS and service providers, the mother could not provide proper supervision for even four children at a time during her supervised visits. She frequently left the children unattended while she talked on the phone, failed to recognize significant safety hazards, and was unable to monitor the whereabouts of each child. At the termination hearing, a DHS worker testified she knew the mother could not safely parent these children. The DHS worker based her conclusion on her work with the mother



over the course of this case and direct observations during visits with the children.

The mother has been unwilling or unable to identify and address deficiencies in her parenting abilities. The record supports the juvenile court's finding that the mother suffers from substance abuse issues. She admitted to drinking to the point of intoxication twice in 2004 when she was pregnant—once while she was involved in an incidence of domestic violence in the presence of her children and another time where she was stabbed in front of the children. While this case was pending, the mother was charged with and pleaded guilty to operating while intoxicated. The mother admitted to drinking five pint sized bottles of alcohol every week. Despite the offer of substance abuse evaluations and treatment, the mother denies substance abuse issues.

We find the State met its burden to show T.G. (born 1999), T.G. (born 2004), N.G. (born 2005), K.G. (born 2006), K.G. (born 2007) are imminently likely to suffer an adjudicatory harm if returned to the mother's care. See Iowa Code § 232.116(1)(f)(4), .102(5)(a)(2), .2(6)(c); see also *A.M.S.*, 419 N.W.2d at 725. Upon our de novo review of the entire record, we find clear and convincing evidence supports terminating the mother's parental rights to T.G. (born 1999), T.G. (born 2004), N.G. (born 2005), K.G. (born 2006), K.G. (born 2007) under section 232.116(1)(f). We need not consider whether another statutory ground supports termination of the mother's parental rights to the five oldest children. See *D.W.*, 791 N.W.2d at 706.

## 2. Iowa Code section 232.116(1)(h)

We now address the termination of the mother's parental rights to the three youngest children—H.G. (born 2009), D.G. (born 2010), and J.G. (born 2011). To terminate parental rights under section 232.116(1)(h), the State must show the child is three years of age or younger, has been adjudicated in need of assistance, has been removed from the home for a requisite period of time, and the juvenile court could not return the child to the parent's custody pursuant to section 232.102. See Iowa Code § 232.116(1)(h) (setting forth the statutory requirements for termination). In this case, three children—H.G. (born 2009), D.G. (born 2010), and J.G. (born 2011)—were three years old or younger when the juvenile court ordered termination. It is undisputed that each child was adjudicated as a child in need of assistance and each child was removed for the requisite period of time. See *id.* § 232.116(1)(h)(1)–(3).

At issue is whether the State presented clear and convincing evidence the children could not be returned to the mother's care pursuant to section 232.102. See *id.* § 232.116(1)(h)(4). As previously articulated, the mother has been unwilling or unable to address deficiencies in her parental abilities to provide proper supervision for these children. In the termination order, the juvenile court outlined extensive services offered to the mother to work toward reunification. A non-exhaustive list of those services included: intelligence testing, individual therapy, parent partner services, relative placement, family foster care, visitation, FSRP services including intensive parent skill development, pre-removal conferences, family team meetings, substance abuse evaluations, substance

abuse treatment, attachment assessment, area education agency services, restorative justice services to locate relative placement, court-appointed special advocate services, parenting classes, paternity testing, DHS eligible case management, and adult case services. Throughout the course of this case, the mother failed to participate in adult services, did not attend individual therapy on a regular basis, declined additional meetings designed to improve her parenting skills, and refused to engage in family team meetings unless the meetings were held in her home.

Upon our de novo review, we find the State met its burden to show H.G. (born 2009), D.G. (born 2010), and J.G. (born 2011) are imminently likely to suffer an adjudicatory harm if returned to the mother's care. See *id.* § 232.116(1)(h)(4), .102(5)(a)(2), .2(6)(c); see also *A.M.S.*, 419 N.W.2d at 725. Upon our de novo review of the entire record, we find clear and convincing evidence supports terminating the mother's parental rights to H.G. (born 2009), D.G. (born 2010), and J.G. (born 2011) under section 232.116(1)(h). Consequently, we do not reach the question of whether another statutory ground supports termination of the mother's parental rights to the three youngest children. See *D.W.*, 791 N.W.2d at 706.

#### **B. Factors in Termination**

The mother argues termination of her parental rights is not in the children's best interest. To determine whether or not to terminate parental rights, we must consider "the child's safety, . . . the best placement for furthering the long-term nurturing and growth of the child, and . . . the physical, mental, and

emotional condition and needs of the child.” Iowa Code § 232.116(2); *D.W.*, 791 N.W.2d at 708. In our best-interest analysis, we may consider whether the children have been suitably integrated into a foster family and “[w]hether the parent’s ability to provide the needs of the child[ren] is affected by the parent’s mental capacity.” See Iowa Code § 232.116(2)(a), (b).

In our consideration of integration into a foster family, we review the length of time the children have “lived in a stable, satisfactory environment and the desirability of maintaining that environment and continuity for the child[ren].” Iowa Code § 232.116(2)(b)(1); see also *D.W.*, 791 N.W.2d at 708. Here, throughout the majority of this case, the children have lived in foster family care. At the time of the termination proceedings, the children were living in two separate foster families. The service providers testified that each child is thriving in the foster family environment. Each foster family is ready, willing, and able to adopt the children pending the outcome of these proceedings.

We review integration into the foster family with “[t]he reasonable preference of the child.” Iowa Code § 232.116(2)(b)(2). Although T.G. (born 1999) expressed a preference to live with the mother, the child’s best interest—not the child’s preference—is our overriding concern. See *In re. T.P.*, 757 N.W.2d 267, 275 (Iowa Ct. App. 2008).

In appropriate cases our best-interest analysis includes whether “the parent’s ability to provide the needs of the child is affected by the parent’s mental capacity.” Iowa Code § 232.116(2)(a); see *D.W.*, 791 N.W.2d at 708 (recognizing lower mental functioning alone is not sufficient grounds for

termination, but consideration of mental capacity is appropriate in weighing the parent's ability to provide a safe and stable home). Throughout the course of this case, the mother has demonstrated an inability or unwillingness to recognize and address deficiencies in her parenting skills that would foster the long-term nurturing and growth these children deserve.

Upon our de novo review of the entire record we find termination in the best interests of T.G., T.G., N.G., K.G., K.G., H.G., D.G., and J.G. See Iowa Code § 232.116(2). Given children's need for permanency and the length of these proceedings, we find no error in the juvenile court's refusal to grant the mother additional time to work toward reunification.

### **C. Exceptions to Termination**

The mother argues the bond between her and the children weighs against terminating her parental rights. We need not terminate parental rights 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.” *Id.* § 232.116(3). We recognize “[a] strong bond between parent and child is a special circumstance which militates against termination when the statutory grounds have been satisfied.” *In re Z.H.*, 740 N.W.2d 648, 652 (Iowa Ct. App. 2007) (citing Iowa Code § 232.116(3)). But, “this is not an overriding consideration . . . merely a factor to consider.” *Id.*

The State, the DHS worker, both FSRP service providers, and both guardians ad litem urged the juvenile court to terminate the mother's parental rights in this case. The attorney for the oldest child, T.G., argued the bond

between the mother and T.G. weighed against termination. It is well-established Iowa “law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child.” *In re P.L.*, 778 N.W.2d 33, 41 (Iowa 2010). Upon our de novo review, we find the parent-child bond in this case is insufficient to preclude termination. We find no error in the juvenile court’s order terminating the mother’s parental rights to all eight children under section 232.116(3).

**AFFIRMED.**