

IN THE COURT OF APPEALS OF IOWA

No. 3-702 / 13-0735
Filed August 7, 2013

**IN THE INTEREST OF J.A., Y.A., AND T.R.,
Minor Children,**

**J.A., Y.A., AND T.R., Minor Children,
Appellants,**

**T.C., Mother,
Appellant,**

**V.B., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Mark F. Schlenker,
District Associate Judge.

The mother and father appeal from the juvenile court's order terminating parental rights, claiming there was not clear and convincing evidence that termination was in the children's best interest. The children, J.A., Y.A., and T.R., filed a joinder in the mother's notice of appeal. **AFFIRMED.**

Paul White of the Des Moines Juvenile Public Defender, Des Moines, for appellants, the minor children.

Patrick W. O'Bryan of O'Bryan Law Firm, Des Moines, for appellant mother.

Christopher Kemp of Kemp & Sease, Des Moines, for appellant father.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and John Sarcone, County Attorney, for appellee State.

Vicki Meade, West Des Moines, guardian ad litem for minor children.

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

VOGEL, P.J.

I. Factual and Procedural Background

The mother of J.A. (born 2001), Y.A. (born 2003), and T.R. (born 2004), as well as the father of J.A. and Y.A., appeal the termination of their parental rights.¹ The children were removed and later adjudicated children in need of assistance on January 18, 2011 due to “physical abuse by mother despite numerous services to address this issue” and lack of reasonable supervision. The court cited Iowa Code sections 232.2(6)(b) and (6)(c)(2) (2011) as a basis for its order. On February 22, 2011, the juvenile court determined the children would remain out of the home, as they could not be protected from physical abuse or neglect if placed with the mother, who continued to reside with an inappropriate paramour.

This family has a long history with the department of human services (“DHS”). The children have been the subject of thirteen founded child abuse reports, adjudicated children in need of assistance on three separate occasions and in two different counties, as well as subjected to removal three times on previous occasions. In between foster care placements, they have stayed in psychiatric hospitals and shelters, as they have notable behavioral issues. This history is due in part to the mother’s physical health issues, as she suffers from Lupus, as well as her mental health and substance abuse problems, which result in an inability to properly care for her children. She has also continued a relationship with a substance abuser, in spite of knowing the relationship was detrimental to the children.

¹ The father of T.R. does not appeal the termination of his parental rights.

In attempting to keep the boys in her custody, DHS has offered the mother the following services: substance abuse evaluations, urine analysis, hair stat tests, supervised visitation, parenting skill education, individual therapy, family therapy, anger management counseling, and substance abuse counseling. DHS reports indicated the mother has struggled to change her behavior, and has taken over two years to do so, but has eventually learned to engage in less abusive behavior and acknowledge her mistakes. As such, this case was originally moving towards reunification.

However, it was discovered the mother's live-in paramour, Javid Woodson, was continuing to use cocaine. Specifically, in therapy he admitted to using drugs eight times in the prior thirty days, and tested positive for cocaine shortly before the termination hearing. Woodson was responsible for a great deal of supervision of the children, and according to DHS reports, the boys viewed him as an authority figure. Woodson was also responsible for the majority of the home's financial support, given the mother's inability to work due to her mental and physical conditions. Because of his drug use, DHS required Woodson to move out of the home. However, without Woodson's support, the mother is unable to care for the boys, either physically or financially. Even though the mother is making progress, given she has no support system, DHS and various therapists noted it will take her another six months to a year before she would conceivably be capable of taking care of her children. Even then, though, it is not a certainty she will be a competent parent. This observation is based on the fact she continues to make inappropriate comments and threaten physical abuse during visits with the boys. This situation resulted in the mother's

rights to her fourth and youngest child being terminated, which was affirmed by this court in *In re J.W. Jr.*, No. 13-0308, 2013 WL 2376881 (Iowa Ct. App. May 30, 2013).

After a three-and-one-half day hearing, in which nine witnesses testified, the juvenile court terminated parental rights as to all three parents. With respect to the mother, it cited Iowa Code sections 232.116(1)(f) and (g) as grounds for termination. Specifically, the court found more time would be needed before the mother was able to take care of the children, and even with additional services provided, there was no guarantee she would be a fit parent. Given how important certainty, stability, and finality are to the children, the court determined it was in their best interest to terminate the mother's parental rights. The grounds on which the court relied in terminating the rights of Y.A. and J.A.'s father was abandonment, failure to maintain significant meaningful contact, and the children being unable to return to the home, pursuant to Iowa Code sections 232.116(1)(b), (e) and (f), respectively.

The mother, as well as the father of Y.A. and J.A., separately appeal. Both parents assert the juvenile court erred in finding it was in the children's best interest to terminate parental rights, and each contest the various statutory grounds on which the juvenile court based its ruling.

II. Standard of Review

We review the termination of parental rights proceedings de novo. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The grounds for termination must be proven by clear and convincing evidence. *Id.* Our primary concern is the child's best interest. *Id.* 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 to affirm. *Id.*

III. Mother's Appeal

The mother contends the State did not meet its burden to show her rights should be terminated, and the juvenile court overlooked the strong bond she shares with her sons. However, we agree with the juvenile court's findings. The thirteen founded child abuse reports, in combination with the mother's physical, financial, and emotional instability do not bode well for the children's future. See *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981) (we can glean insight into a parent's ability to care for a child based on the parent's past performances). While the mother has made efforts to correct her behavior, none of the service workers are certain more time will render her a fit parent. As was found in the November 9, 2011 removal order: "This Mother has literally had *years* of services and dozens of professionals working with her and her family to remedy her parenting deficiencies. Despite that fact, this Mother is still unable to meet these children's basic needs."² It has taken over two years to reach what progress she has made, and she still continues to exhibit concerning behavior toward her children during supervised visits. Therefore, we find clear and convincing evidence, under Iowa Code sections 232.116(1)(f) and (g), that supports the juvenile court's finding the children could not be returned to the mother's care at the time of the termination proceedings, and more time would not correct the situation.

² Services began with prior DHS involvement as early as 2003.

Furthermore, it is within the children's best interest to have certainty, finality, and stability in their lives, and this should be taken into account when deciding whether to terminate parental rights. See Iowa Code § 232.116(2); *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000) (mother's inability to promptly resolve her significant drug abuse issues required termination, as it was within child's best interest to achieve security and stability). As more time would not necessarily result in resolution of any of the mother's parenting issues, and the children are suffering under a great deal of stress due to this uncertainty, it is within their best interest to terminate the mother's rights. See *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997) ("When the statutory time standards found in section 232.116 are approaching, and a parent has made only minimal progress, the child deserves to have the time standards followed by having termination of parental rights promptly pursued."). Therefore, the juvenile court was correct in granting the State's termination petition as to the mother.

IV. Father's Appeal

The father of Y.A. and J.A. also appeals the termination of his parental rights, claiming the juvenile court erred in finding he abandoned his children and did not maintain significant and meaningful contact. He further contends it is not in Y.A.'s and J.A.'s best interests that his rights be terminated.

The father is incarcerated in a federal penitentiary in Illinois, and will not be eligible for parole until 2029. Given his inability to care for the children, the State met its burden to show the children cannot be returned to his custody, pursuant to Iowa Code section 232.116(1)(f). Moreover it was in the children's best interest to terminate, as the record demonstrates they have no relationship

and no bond with their father. See Iowa Code §§ 232.116(2), (3). Therefore, we affirm the juvenile court's termination of the father's parental rights.

AFFIRMED.