

IN THE COURT OF APPEALS OF IOWA

No. 3-956 / 13-1332
Filed October 23, 2013

**IN THE INTEREST OF M.M. AND A.M.,
Minor Children,**

**A.M., Mother,
Appellant,**

**L.M., Father,
Appellant.**

Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

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

Esther J. Dean, Muscatine, for appellant mother.

Matthew D. Hatch of Hatch Law Firm, P.C., Bettendorf, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Alan Ostergren, County Attorney, and Kevin McKeever, Assistant County Attorney, for appellee State.

Patricia Rolfstad, Davenport, attorney and guardian ad litem for minor children.

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

DOYLE, J.

A mother and father separately appeal from the order terminating their parental rights. Upon our de novo review, see *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010), we affirm on both appeals.

I. Background Facts and Proceedings.

A.M. is the mother and L.M. is the father of M.M., born in 2007, and A.M., born in October 2012. The parents have a history of substance and alcohol abuse. The mother has an IQ of 63, and she has been diagnosed with mild mental retardation, major depressive disorder, and personality disorder, not otherwise specified, with paranoid and schizoid traits.

In January 2012, M.M. was removed from the parents' care and placed with a relative after it was determined the parents' substance and alcohol abuse caused them to fail to provide appropriate supervision of the child. In addition to the parents' intoxication and substance abuse, they both allowed unsafe individuals in their home and in the presence of the child. The child has since remained in the relative's care.

The parents were offered and received services to reunify them with the child, but despite multiple attempts at treatment, the parents made little to no progress. After A.M. was born, she was immediately placed in foster care because of continuing concerns for the children's safety in the parents' care.

Ultimately, the State filed a petition to terminate the parents' parental rights in June 2013. Following a hearing on the petition, the juvenile court entered its order terminating both parents' parental rights. The parents now separately appeal.

II. Discussion.

On appeal, the father contends the juvenile court erred in finding the State proved by clear and convincing evidence the grounds for termination, and termination was in the children's best interests. The mother also appeals the grounds for termination found by the juvenile court, as well as its decision not to grant her additional time for reunification. We address their arguments in turn.

A. The Father's Appeal.

1. Grounds for Termination.

The father's parental rights were terminated to M.M. pursuant to Iowa Code section 232.116(1) paragraph (f), and to A.M. pursuant to paragraph (h) (2013). These two grounds for termination are essentially the same but for the applicable age of the child and the amount of time the child has been out of the home. See Iowa Code § 232.116(1)(f) ("The child is four years of age or older" and "has been removed . . . for at least twelve of the last eighteen months"), (h) ("The child is three years of age or younger" and "has been removed . . . for at least six months of the last twelve months"). Both paragraphs (f) and (h) require the State to prove, by clear and convincing evidence, "the child cannot be returned to the custody of the child's parents . . . at the present time." See *id.* § 232.116(1)(f)(4), (h)(4). It is the latter element of those paragraphs that the father challenges here. Upon our de novo review, we find the State has met its burden.

While the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," this patience has been built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa

2000). Our supreme court has stated that “the legislature, in cases meeting the conditions of [the Iowa Code], has made a categorical determination that the needs of a child are promoted by termination of parental rights.” *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990) (discussing Iowa Code section 232.116(1)(e)). The public policy of the state having been legislatively set, we are obligated to heed the statutory time periods for reunification.

Upon our de novo review, we agree with the juvenile court’s conclusion the State proved the children could not be returned to the father’s care at the time of the termination hearing. Throughout the case, the father’s use of alcohol was a substantial issue. Despite attending treatment, the father has been unable to maintain sobriety. We commend the father’s reduction in consumption of alcohol, from his prior self-reported usage of two packs of thirty beers and two bottles of hard liquor per day to two “40-ouncers” per day, but he has yet to establish any sustained period of sobriety. We note the juvenile court’s observations that, in spite of the continuing concerns of his alcohol abuse, the father appeared hung-over at the termination-of-parental-rights hearing with the odor of alcohol coming from his breath, evidencing his lack of insight and acceptance of responsibility. “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). The father’s alcohol abuse prevents him from providing the children with a safe and stable home. *See id.* We agree with the juvenile court the State proved by

clear and convincing evidence the children could not be returned to his care at the time of the termination hearing.

2. Best Interests.

For the reasons stated above in finding the children could not be returned to the father's care at the time of the termination hearing, we find the best-interests framework in Iowa Code section 232.116(2) supports termination of his parental rights. In that section, the legislature highlighted the children's safety, the best placement for furthering the long-term nurturing and growth of the children, and the physical, mental, and emotional condition and needs of the children as primary considerations. *P.L.*, 778 N.W.2d 37; see also Iowa Code § 232.116(2). "A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests." *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially). Those best interests are to be determined by looking at the children's long-range as well as immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). We are to consider what the future likely holds for the children if the children are returned to their parents. *In re J.K.*, 495 N.W.2d 108, 110 (Iowa 1993). Insight for that determination is to be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493–94 (Iowa 1990).

Under the facts and circumstances in this case and considering the children's long-term and immediate best interests, we agree with the juvenile court that termination of the father's parental rights is in the children's best interests. We do not doubt the father's love for the children, but lacking a pause

button, a child's crucial days of childhood cannot be suspended while waiting for a parent to remedy a lack of parenting skills. "It is well-settled 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." *P.L.*, 778 N.W.2d at 41. "At some point, the rights and needs of the child rise above the rights and needs of the parents." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997), *overruled on other grounds by P.L.*, 778 N.W.2d at 39; *see also P.L.*, 778 N.W.2d at 39-40. Here, M.M. had been out of his parents' care almost a year-and-a half at the time the termination-of-parental-rights petition was filed, and A.M. has never been in her parents' care. Despite the offering of treatment and other services since January 2012, the father has not demonstrated a period of sobriety or the ability to meet the ongoing needs of the children. They could not be returned to his care at the time of the hearing, and they cannot now or in the future be safely returned to his care.

Our supreme court has held that it is not in the best interests of children to continue to keep them in foster homes. *In re J.L.P.*, 449 N.W.2d 349, 353 (Iowa 1989). "Child custody should be quickly fixed and little disturbed. Children should not be made to suffer indefinitely in parentless limbo." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). The caseworker testified the children were adoptable, and she believed termination of the parents' parental rights was in the children's best interests. The children's guardian ad litem also recommended termination of the parents' parental rights. Terminating the parents' rights will allow these children permanency. Due to the father's lack of sobriety and lack of

progress towards recognizing and meeting the needs of the children, we agree with the juvenile court that termination of his parental rights is in the children's best interests.

B. The Mother's Appeal.

1. Grounds for Termination.

The mother's parental rights were also terminated pursuant to Iowa Code section 232.116(1) paragraphs (f) and (h). On appeal, she too argues the State failed to prove the last element paragraphs (f) and (h) as statutory grounds for termination of her parental rights, that the children could not have been returned to her care at the time of the termination hearing. Applying the same legal precepts set forth above, we conclude on our de novo review the State also met its burden as to the mother.

The mother's struggles with alcohol and substance abuse continued to be issues throughout the case, and, like the father, she was unable to evidence any prolonged period of sobriety, despite her participation in treatment and other services. The mother's low functioning and mental illness added further obstacles to reunification, because the mother at times had difficulty even caring for herself. Although the mother participated in services, the service provider was unable to recommend moving forward with any unsupervised visitation because the mother was not making significant progress and was still unable to meet the children's basic needs. The mother's therapist opined that the mother could only parent her children if somebody was there to help her raise children, and even the mother herself said she too had concerns about her ability to handle both children at the same time by herself. The mother relied heavily on

the father for assistance in caring for the children, but he too could not safely parent the children due to his continued intoxication. Upon our review, we agree with the juvenile court the State proved by clear and convincing evidence the children could not be returned to the mother's care at the time of the termination hearing.

2. Section 232.117(3) and Additional Time.

As we stated above, these children are in need of permanency. Further delay in permanency would also be contrary to the legislature's intent that "termination proceedings must be viewed with a sense of urgency." See *C.B.*, 611 N.W.2d at 495. Unfortunately, the record here does not establish that additional time would yield any different result, and these children cannot be deprived of permanency after the State has proved a ground for termination under section 232.116(1) by hoping the mother will someday learn to be a parent and be able to provide a stable home for these children. See *P.L.*, 778 N.W.2d at 41. Due to the mother's relapses and her lack of progress towards recognizing and meeting the children's needs, we find termination of her parental rights is in the children's best interests. We do not find that any of the factors in section 232.116(3) weigh against termination of her parental rights, and we find no error in the juvenile court's decision not to grant her additional time for reunification.

III. Conclusion.

For the foregoing reasons, we affirm the juvenile court's order terminating both parents' parental rights to the children.

AFFIRMED ON BOTH APPEALS.