

**IN THE COURT OF APPEALS OF IOWA**

No. 3-987 / 13-1224  
Filed October 23, 2013

**IN THE INTEREST OF C.M.-S.,  
Minor Child,**

**C.M., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Harrison County, Susan Larson Christensen, District Associate Judge.

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

Joel T. Niebaum, Missouri Valley, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Jennifer Mumm, County Attorney, and Judson Frisk, Assistant County Attorney, for appellee.

Jack White, Missouri Valley, for father.

Abby Davison, Office of State Public Defender, Council Bluffs, attorney and guardian ad litem for minor child.

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

**TABOR, J.**

A mother appeals the termination of parental rights to her five-year-old daughter. She argues the State failed to meet its burden to show that the child, C.M.-S., could not be returned home on the day of the termination hearing. Because we find the State offered clear and convincing evidence that reunification was not presently possible due to the mother's unresolved substance abuse issues, we affirm.

**I. Background Facts and Proceedings**

Cayli gave birth to C.M.-S. in April 2008.<sup>1</sup> The child came to the attention of the Department of Human Services (DHS) on March 20, 2011, following an argument between Cayli and her own mother over the possession of methamphetamine. Cayli and her boyfriend fled the state to avoid apprehension by the police. They were later found with the children<sup>2</sup> in Blair, Nebraska. When they returned, DHS removed C.M.-S. from Cayli's custody on March 20, 2011. On March 22, 2011, the court entered an order of temporary removal and directed C.M.-S. to remain with the child's maternal aunt. In that order the court also required drug screenings and substance abuse evaluations for Cayli.

On May 2, 2011, the court found C.M.-S. to be a child in need of assistance (CINA) because Cayli exposed her child to drug use and domestic violence. C.M.-S. has been out of Cayli's custody since that time. On December 6, 2011, the court ordered Cayli's boyfriend to have no contact with C.M.-S. But

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<sup>1</sup> The juvenile court terminated the rights of the child's father, Joe, on July 22, 2013. According to testimony, Joe has not had contact with C.M.-S. since November 2011.

<sup>2</sup> C.M.-S. has a younger half-sibling who is now in the custody of the child's father in Nebraska.

Cayli's relationship with the boyfriend has continued despite the court order prohibiting his contact with her children.<sup>3</sup> In addition, Cayli has continuously refused to participate in any drug testing or treatment program from December 2011 to the present. At a November 2012 permanency review hearing, the juvenile court found Cayli continued to disregard its orders regarding reunification services.

The State filed a petition for the termination of Cayli's parental rights on March 27, 2013. The juvenile court held a termination hearing on May 3, 2013. Since C.M.-S. was removed from Cayli's care, the child has been in the custody of her aunt and uncle. Cayli has been allowed to call C.M.-S. daily since April of 2013, but was not allowed to visit until she complied with drug screens.

Gina West-Hendrickson testified at the termination hearing at the request of the child's guardian ad litem. She is a mental health therapist who has worked with C.M.-S. West-Hendrickson testified C.M.-S. now feels at home with the aunt and uncle. They would like to adopt C.M.-S.. The aunt testified Cayli blames them for losing custody of C.M.-S. Because Cayli harassed her sister, the court issued a no-contact order between them. The aunt also testified C.M.-S. misbehaves when the mother is around. C.M.-S. no longer listens to instructions and acts defiantly. The aunt testified C.M.-S.'s "age level drops" when Cayli is present. The court terminated Cayli's parental rights on July 22, 2013.

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<sup>3</sup> Cayli's parental rights to her younger child have not been terminated.

Cayli filed a petition on appeal. The guardian ad litem agreed Cayli's rights should be terminated, joining the State's response to the petition on appeal.

## II. Standard of Review

We review termination of parental rights de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We give weight to the juvenile court's fact findings, especially in regard to witness credibility, though they are not binding on us. *Id.*

## III. Analysis

Termination of parental rights calls for a three-part analysis. First, the court must determine whether a ground for termination exists under section 232.116(1). *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). In deciding whether to terminate parental rights, the court next must apply section 232.116(2). The primary consideration is “‘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) (2013). Finally, before terminating parental rights, the court must consider if any of the factors in section 232.116(3) counsel against termination. *Id.* § 232.116(3); see *P.L.*, 778 N.W.2d at 39.

Here, the juvenile court terminated Cayli's parental rights under Iowa Code section 232.116(1)(d),<sup>4</sup> (e),<sup>5</sup> and (f).<sup>6</sup> On appeal, we need only find one

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<sup>4</sup> Under section 232.116(1)(d), termination is proper if the court finds that both of the following have occurred:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both

ground to affirm the termination. See *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010) (holding where the juvenile court bases termination on multiple grounds, the appellate court may affirm on any ground supported by clear and convincing evidence). The State met its burden pursuant to subsection (f).

C.M.-S. is over the over age of four and was adjudicated as a CINA in May 2011. C.M.-S. has been living with the child's aunt and uncle since March 2011. In reviewing the record, we agree C.M.-S. cannot be returned to the mother's custody at this time. Cayli has admitted using drugs in the past. In March 2012, she refused drug screens. She also refused to wear a patch to detect drug use. She again refused to test in August 2012. The maternal aunt testified at the termination hearing she was concerned Cayli was using drugs again. Despite knowing she needed to take steps to demonstrate she was no longer abusing controlled substances, Cayli has refused to do so. The drug

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parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

<sup>5</sup> Under 232.116(1)(e), termination is proper if the court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The child has been removed from the physical custody of the child's parents for a period of at least six consecutive months.

(3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so.

<sup>6</sup> Under section 232.116(1)(f), termination is proper if the court finds the child is four years of age or older, has been adjudicated CINA, has been removed for twelve consecutive months, and cannot be returned to the parent's custody at the present time.

screens were a clear condition of the DHS case plan, yet Cayli refused to participate.

And drug screening is not the only impediment to reunification. At the November 28, 2012 permanency review hearing, the court found the mother had not complied with orders regarding mental health evaluations and treatment. At another review hearing on March 27, 2013, the court found Cayli was still living with her paramour. He is the same person who participated in methamphetamine use that led to the filing of CINA proceedings. The court issued an order prohibiting his contact with C.M.-S. Yet Cayli continues her relationship with him. C.M.-S cannot reside with him because of the no-contact order, but Cayli has not secured housing independent from him. The police have responded to reports of domestic violence between Cayli and her boyfriend. The juvenile court aptly decided the child could not be returned to Cayli's home.

The mother contends termination is not in C.M.-S's best interest because the child's relationship with her half-brother will be damaged. Cayli also argues C.M.-S. knows the difference between her mother and her aunt.

As noted above, the child's physical, mental, and emotional needs are being met by the aunt and uncle. See Iowa Code § 232.116(2). While sibling relationships are important, the record does not show returning C.M.-S. to the mother's custody would increase C.M.-S.'s contact with her half-sibling, who resides with the biological father in Nebraska. Cayli has not cooperated with drug testing and has not addressed her drug abuse. She has placed her

relationship with a boyfriend before the safety and well-being of her child. We believe termination is in the child's best interests.

Finally, section 232.116(3) gives the juvenile court discretion not to terminate parental rights in certain circumstances. For instance, the court may opt not to terminate if it finds "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." As described above, this record does not show the kind of intimate bond between C.M.-S. and the mother, such that termination would harm the child. See *In re D.S.*, 806 N.W.2d 458, 475 (Iowa Ct. App. 2011) (noting child's bond with biological parents was limited due to time out of their care). Section 232.116(3) also allows the court to avoid terminating if "a relative has legal custody of the child." Here, C.M.-S. lives with an aunt. But because Cayli has harassed the aunt and blamed her for the mother's separation from C.M.-S., the relative placement does not offer a safe harbor for Cayli.

Considering all of the circumstances, we affirm the termination of Cayli's parental rights.

**AFFIRMED.**